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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas, Ninth Judicial Circuit
Hon. Bentley D. Price, Circuit Court Judge

Appellate Case No. 2020-001030

Maybank 2754, LLC, ...Appellant,

v.

Eugene Zurlo, Individually and as Co-Trustee of the Eugene J. Zurlo
Living Trust Dated December 11, 1997; 1776, LLC; Beach Fenwick, LLC;
The Beach Company; Seamon, Whiteside & Associates, Inc.; Penny
Creek Associates, LLC; John Doe and Mary Roe Respondents.

RECORD ON APPEAL
VOLUME I

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiff,

vs.

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

Defendants.

Michel Laplante,

Third-Party Plaintiff,

vs.

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

Third-Party Defendant.

IN THE CIRCUIT COURT

Case No. 2014-CP-10-04946

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

**(Deficiency Not Waived;
not HAMP eligible)**

FILED
2017 JUN 23 PM 2:52
JULIE J. ARMSTRONG
CLERK OF COURT

Pursuant to Rules 53 and 71, SCRCF, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said reference, a hearing was held on June 19, 2017, and attended by the following persons:

Robert C. Byrd – Attorney for the Plaintiff
Thomas B. Pritchard – Attorney for Defendant Penny Creek Associates, LLC
J. Rutledge Young, Jr. – Attorney for Defendants Charlotte R. Zurlo and Eugene J. Zurlo, individually and as Co-Trustees of The Nicklaus Lane Realty Trust No. 1 under Declaration of Trust dated May 22, 1998, and The Zurlo Investment Trust No 1 pursuant to trust agreement dated August 10, 1998 (severed from the foreclosure claim)
Defendant Michel F. Laplante (severed from the foreclosure claim)
Brian Hellman – Attorney for Intervenor 1776, LLC
J. Christopher Lanning – Manager of Penny Creek Associates, LLC

Based on the evidence presented at the hearing, I hereby find, conclude and order as follows:

FINDINGS OF FACT

1. The Lis Pendens, Summons, Complaint and Notice of Intent to Refer were filed August 14, 2014.
2. Service was made upon the defendants in this action, as is shown by the proofs of service filed herein.
3. Defendant Michel F. LaPlante a/k/a Michel Laplante a/k/a Mitch Laplante (“LaPlante”) filed a Motion for Injunction on August 29, 2014.
4. Defendant LaPlante filed a Motion for Temporary Restraining Order on September 9, 2014, and the Order denying said motion was entered on September 19, 2014.



5. Defendants Fenwick Hall Plantation Property Owners Assn., Inc. a/k/a Fenwick Hall Plantation Property Owners' Association, Inc.; Preserve at Fenwick Hall Property Owners Association, Inc. a/k/a The Preserve at Fenwick Hall Property Owners' Association, Inc.; and The Grove At Fenwick Plantation Condominium Association, Inc. (collectively, the "POA Defendants") filed an Answer and Counterclaim on September 29, 2014.

6. Defendants Charlotte R. Zurlo and Eugene J. Zurlo filed a Memorandum in Opposition to defendant LaPlante's Motion for Injunction on September 29, 2014.

7. Defendants Charlotte R. Zurlo, Eugene J. Zurlo, and Charlotte R. Zurlo and Eugene J. Zurlo, as Co-Trustees of The Nicklaus Lane Realty Trust No. 1 under Declaration of Trust dated May 22, 1998, and The Zurlo Investment Trust No. 1 pursuant to trust agreement dated August 10, 1998 (collectively, the "Zurlo Defendants"), filed an Answer and Cross Claim on October 16, 2014.

8. Defendant LaPlante filed an Answer, Cross Claims, and Third-Party Claims on October 27, 2014.

9. Defendant Penny Creek Associates, L.L.C. a/k/a Penny Creek Associates, LLC ("Penny Creek") and The Grove at Fenwick Plantation, LLC filed an Answer on November 6, 2014.

10. Defendant LaPlante filed a Reply to the Zurlo Defendants' Cross-Claims on November 10, 2014.

11. Third-party defendant Paul Zurlo filed a Motion to Dismiss defendant LaPlante's Third-Party Complaint on November 25, 2014.

12. Third-party defendant Eugene J. Zurlo Living Trust filed an Answer to defendant LaPlante's Third-Party Complaint on November 26, 2014.

13. The Plaintiff's Reply to the POA Defendants' Answer and Counterclaim was filed on December 4, 2014.

14. Defendant LaPlante filed Memoranda on January 15, 2015, in opposition to the Plaintiff's Motion to Strike Jury Demand and to Refer and in opposition to third-party defendant Paul Zurlo's Motion to Dismiss.

15. The Plaintiff filed a Memorandum of Law in support of its Motion to Refer on January 16, 2015.

16. Third-party defendant Paul Zurlo filed an Answer to Third-Party Complaint on January 30, 2015.

17. The Order granting Plaintiff's Motion to Refer was entered on March 5, 2015.

18. Defendant LaPlante filed a Motion on March 23, 2015, seeking to alter or amend the Order granting the Plaintiff's Motion to Refer.

19. The Zurlo Defendants filed an Amended Answer and Cross Claim on April 15, 2015.

20. Defendant LaPlante filed a Reply to the Cross-Claims of the Zurlo Defendants on April 27, 2015.

21. The Order denying defendant LaPlante's Motion to Alter or Amend the Order granting Plaintiff's Motion to Refer was entered on June 3, 2015.

22. Defendant LaPlante filed a Notice of Appeal on July 6, 2015, appealing the Order granting Plaintiff's Motion to Refer.

23. The Stipulation dismissing the third-party complaint against Paul Zurlo with prejudice was filed on July 17, 2015.



24. The Plaintiff filed a Motion to Dismiss defendant LaPlante's appeal in the Court of Appeals on August 4, 2015.

25. The Order granting the Plaintiff's Motion to Dismiss Appeal was entered by the Court of Appeals on October 20, 2015.

26. The Plaintiff's Motion for Partial Summary Judgment and Supporting Affidavit were filed on February 2, 2016.

27. The Stipulation was filed on May 26, 2016, dismissing the claims relating to The Grove at Fenwick Plantation loan and dismissing defendant The Grove at Fenwick Plantation, LLC as a party defendant.

28. The case originally asserted four (4) causes of action, two of which related to a loan by the Plaintiff to The Grove at Fenwick Plantation, LLC (the "Fenwick Loan"). During the course of the action, the Fenwick Loan was paid off and the parties stipulated to the dismissal of the two claims relating to that loan. Only the claims relating to loan to defendant Penny Creek remain.

29. The Consent Order Striking Case from Trial Docket Pursuant to Rule 40(j), SCRCF was filed on September 30, 2016.

30. The Notice to Restore Case to Active Trial Docket was filed on April 12, 2017.

31. The Order Restoring Case to Active Trial Docket was entered on April 12, 2017.

32. The Stipulation to Entry of Order and Judgment of Foreclosure and Sale was filed on April 13, 2017; and

33. The Plaintiff's Motion to Sever and for Entry of Stipulated Final Order and Judgment of Foreclosure and Sale was filed on May 25, 2017, which this Court granted on June 19, 2017.



34. The Motion to Intervene was filed by 1776, LLC on June 19, 2017.
35. This Court granted the Plaintiff's Motion to Sever on June 19, 2007.
36. The Court also grants 1776, LLC's Motion to Intervene, as set forth more fully hereinafter.
37. All parties were notified of the date, time and place of the hearing in this matter.

The \$5,300,000.00 Loan

38. Defendant Penny Creek, for consideration, made, executed and delivered that certain Promissory Note dated August 7, 2000 ("Original Note 1"), payable to the order of First Union National Bank ("First Union"), in the original principal sum of \$5,300,000.00, together with interest as provided therein.

39. To secure payment of the indebtedness evidenced by Original Note 1, in accordance with the terms and conditions thereof, defendant Penny Creek, for consideration, made, executed and delivered to First Union a certain Mortgage and Absolute Assignment of Leases dated August 7, 2000 ("Mortgage 1"), covering certain real property located in Charleston County, South Carolina and described more fully therein. Mortgage 1 was recorded in the RMC Office for Charleston County on August 8, 2000, in Book P-352 at Page 613. Other terms and conditions are stated in the said Mortgage 1, which is of record herein.

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

41. Certain terms of the Original Note 1 were amended, modified and/or renewed by, among other things, that certain renewal Promissory Note dated April 28, 2008, in the original



principal sum of \$3,142,781.92 ("Renewal Note 1"). (Original Note 1 and Renewal Note 1 are hereinafter referred to, collectively, as "Note 1.")

The \$2,200,000.00 Loan

42. Defendant Penny Creek, for consideration, made, executed and delivered that certain Promissory Note dated April 5, 2006 ("Original Note 2"), payable to the order of the Plaintiff, then known as Wachovia Bank, National Association, in the original principal sum of \$2,200,000.00, together with interest as provided therein. Other terms and conditions are stated in the said Original Note 2, which is of record herein.

43. To secure payment of the indebtedness evidenced by Original Note 2, in accordance with the terms and conditions thereof, defendant Penny Creek, for consideration, made, executed and delivered to the Plaintiff a certain Mortgage and Assignment of Rents dated April 5, 2006 ("Mortgage 2"), covering certain real property located in Charleston County, South Carolina and described more fully therein. Mortgage 2 was recorded in the RMC Office for Charleston County on April 7, 2006, in Book G-579 at Page 249. Other terms and conditions are stated in the said Mortgage 2, which is of record herein. (Mortgage 1 and Mortgage 2 are hereinafter referred to, collectively, as the "Mortgages.")

44. Certain terms of Original Note 2 were thereafter amended, modified and/or renewed by: (i) that certain renewal Promissory Note dated July 5, 2007, in the original principal sum of \$4,450,000.00; and (ii) that certain Modification Number One to Promissory Note dated April 28, 2008 (collectively, "Renewal Note 2"). Other terms and conditions are stated in the said Renewal Note 2, which is of record herein. (Original Note 2 and Renewal Note 2 are hereinafter referred to, collectively, as "Note 2.")



45. Thereafter, Mortgage 2 was amended and/or modified by that certain Modification of Mortgage and Notice of Future Advance dated July 5, 2007, and recorded in the RMC Office for Charleston County on July 27, 2007, in Book V-633 at Page 342. Other terms and conditions are stated in the said Modification of Mortgage and Notice of Future Advance, which is of record herein.

2009 Modification and Consolidation

46. Thereafter, certain terms of Note 1 and Note 2 were amended, modified and/or renewed by, among other things, that certain renewal Promissory Note dated July 28, 2009, in the original principal sum of \$7,592,781.92, which, among other things, consolidated Note 1 and Note 2 (collectively, the "Note"). Other terms and conditions are stated in the said Note, which is of record herein.

47. In order to induce the Plaintiff to modify or extend the aforesaid loan as evidenced by the Note, and to further secure the same, defendants LaPlante and the Zurlo Defendants, for consideration, executed separate, written Unconditional Guaranties dated July 28, 2009 (collectively, the "Guaranties"), whereby the said defendants absolutely, unconditionally and irrevocably guaranteed to the Plaintiff the full and prompt payment of the obligations of defendant Penny Creek to the Plaintiff under the Note, as consolidated. Other terms and conditions are stated in the said Guaranties, which are of record herein.

2012 and 2013 Modifications

48. Thereafter, certain terms of the Note were amended, modified and/or renewed by: (i) that certain First Modification to Promissory Note dated August 14, 2012; and (ii) that certain Second Modification to Promissory Note dated May 23, 2013 (collectively, the "Note



Modifications"). Other terms and conditions are stated in the said Note Modifications, which are of record herein.

49. In connection with the aforesaid modifications, Mortgage 1 and Mortgage 2 were amended and/or modified by that certain Modification of Mortgages dated October 1, 2012 (the "Mortgage Modification"), and recorded in the RMC Office for Charleston County on October 15, 2012, in Book 0284 at Page 614. Other terms and conditions are stated in the said Mortgage Modification, which is of record herein.

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

51. Certain portions of the subject mortgaged properties were thereafter released from the lien of the Mortgages, as amended and/or modified, which remains in full force and effect as to the remaining property described in the said Mortgages (the "Property").

**Loan Defaults, Forbearance Agreement and Stipulation
to Entry of Order and Judgment of Foreclosure and Sale**

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

53. In May 2016, the Plaintiff and defendants Penny Creek, LaPlante and the Zurlo Defendants entered into that certain Forbearance Agreement dated as of May 4, 2016 (the "Forbearance Agreement"), wherein the said defendants agreed and acknowledged, among other things, that the subject loan is in default and further agreed to execute the Stipulation to Entry of Order and Judgment of Foreclosure and Sale attached as Exhibit A to the Forbearance Agreement. Other terms and condition are stated in the said Forbearance Agreement, which is of record herein.



54. Pursuant to and in reliance upon the Forbearance Agreement and Stipulation, the case was removed from the active calendar pursuant to Rule 40(j), with leave to restore, by Consent Order entered on September 30, 2016.

55. The forbearance period set forth in the Forbearance Agreement expired on March 31, 2017, and the case was restored to active calendar on April 12, 2017.

56. The Plaintiff is entitled to proceed with foreclosure of its Mortgages, as amended and/or modified.

57. The Plaintiff's Mortgages constitute valid first priority liens on the Property.

58. Subsequent to the commencement of this action, the Eugene J. Zurlo Living Trust Dated December 11, 1997 (the "1997 Zurlo Trust") recorded a Second Mortgage on the subject Property in the Office of the RMC for Charleston County on May 25, 2016, in Book 0556 at Page 242 (the "Second Mortgage").

59. The Second Mortgage arose out of that certain Settlement Agreement between the 1997 Zurlo Trust and defendant Penny Creek Associates, LLC, the terms of which Settlement Agreement were entered on the record before The Honorable Markley Dennis, Jr. on February 29, 2016, in Case No. 2013-CP-10-07280. A copy of the transcript from the February 29, 2016 hearing before Judge Dennis in Case No. 2013-CP-10-07280, together with a copy of the Second Mortgage and the promissory note it secures, were presented to this Court and have been made a part of the record herein.

60. In accordance with the terms of the Settlement Agreement, the 1997 Zurlo Trust and its successor and assigns are only entitled to recover the principal sum of \$3,250,000.00, without any interest.

61. The Second Mortgage was assigned from the 1997 Zurlo Trust to 1776, LLC



pursuant to that certain Assignment of Note and Mortgage recorded in the Office of the RMC for Charleston County on April 7, 2017, in Book 629 at Page 45, a copy of which was presented to this Court and has been made a part of the record herein.

62. The parties to the foreclosure hereby consent to the joinder of 1776, LLC as a party defendant on the following express terms and conditions, which are hereby adopted and ordered by this Court:

a. That 1776, LLC expressly acknowledges and stipulates that the lien of its Second Mortgage is junior and subordinate to the lien of the Plaintiff's Mortgages;

b. That 1776, LLC further acknowledges and stipulates that it is bound by the terms of the Stipulation to Entry of Order and Judgment of Foreclosure and Sale filed on April 13, 2017; and

c. That all parties to the foreclosure, including 1776, LLC, consent to the immediate disposition of the foreclosure proceeding, expressly waiving the time limitations contained in Rule 40(b), SCRPC.

63. In the Plaintiff's loan documents, defendant Penny Creek agreed to pay all reasonable costs and expenses of collection including, but not limited to, reasonable attorneys' fees. I find and conclude that the sum of Thirty-Two Thousand Three Hundred Five and No/100 Dollars (\$32,305.00) is a reasonable amount to award as Plaintiff's unreimbursed attorneys' fees for services performed and anticipated to be performed until final adjudication of the within action, and that the sum of Two Thousand Six Hundred Sixty-Eight and 50/100 Dollars (\$2,668.50) is a reasonable amount to award as legal costs. In reaching this conclusion, I have carefully considered the nature, extent and difficulty of the legal services provided by Plaintiff's counsel in this commercial foreclosure action, the time and labor necessarily devoted by Plaintiff's

counsel to the case, the professional standing of Plaintiff's counsel and his firm, the fees customarily charged in Charleston County for similar legal services, and the beneficial results obtained by Plaintiff's counsel in this matter.

64. The amount due and owing on the loan evidenced by the Note, as of June 19, 2017, including attorneys' fees and costs of collection, is as follows:

(1)	Principal due	\$5,775,289.35
(2)	Interest on principal only 02/28/17 – 03/29/17 @ 5.75% (30 days @ \$922.44205 per day)	\$ 27,673.26*
(3)	Interest on principal only 03/30/17 – 03/31/17 @ 6.00% (2 days @ \$962.54823 per day)	\$ 1,925.09*
(4)	Interest on principal only 04/01/17 – 04/29/17 @ 8.00% (29 days @ \$1,283.39763 per day)	\$ 37,218.53**
(5)	Interest on principal only 04/30/17 – 05/29/17 @ 8.00% (30 days @ \$1,283.39763 per day)	\$ 38,501.93**
(6)	Interest on principal only 05/30/17 – 06/19/17 @ 8.00% (21 days @ \$1,283.39763 per day)	\$ 26,951.35**
(7)	Legal Fees	\$ 32,305.00
(8)	Legal Costs	\$ <u>2,668.50</u>
	Total Debt Secured by Mortgages:	\$5,942,533.01

* Interest accruing at forbearance period rate of Prime plus 2.00%. It is a variable rate that has been and is subject to change.

** Interest accruing at default rate of Prime + 1% + 3.00%. It is a variable rate that has been and is subject to change.

Interest for the period from June 19, 2017, through the date of this judgment at the rate of 8.00% per annum shall be added to the above stated Total Debt Secured by Mortgages to comprise the amount of the judgment debt entered herein, and interest after the date of judgment at the same rate shall be added to such judgment debt to comprise the amount of the debt through the date to which such interest is computed.

65. Inasmuch as the Plaintiff has not waived deficiency, the bidding will remain open for thirty (30) days after the sale, unless waived by the Plaintiff, in writing, prior to the sale.

CONCLUSIONS OF LAW

1. The Plaintiff should have judgment of foreclosure of its Mortgages, as amended and/or modified.

2. The subject Property should be ordered sold at public auction after due advertisement.

3. The Plaintiff has not waived its right to seek a personal judgment for any deficiency remaining after the sale, but expressly reserves the right to waive deficiency, in writing, prior to the sale.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That there is due to the Plaintiff on the loan secured by the Mortgages, as amended and/or modified, set forth in the Complaint the sum of **Five Million Nine Hundred Forty-Two Thousand Five Hundred Thirty-Three and 01/100 Dollars (\$5,942,533.01)** representing the "Total Debt Secured By Mortgages" due the Plaintiff as set out in paragraph 64 hereinabove, together with interest after the aforesaid date at the rate of 8.00% per annum and thereafter, in the event of a deficiency judgment, at the legal rate of interest for judgments.

2. That the party or parties liable for the aforesaid debt, shall, on or before the date of sale of the Property hereinafter described, pay to the Plaintiff or its attorneys the amount of the debt owed as aforesaid, together with the costs and disbursements of this action.

3. That on default of payment at or before the time herein indicated, the Property be sold by the undersigned Master-in-Equity or his designee, at public auction, at the Charleston County Courthouse, in the City of Charleston, County and State aforesaid; on some convenient Sales Day hereafter as set by the Court, on the following terms, that is to say:



a. FOR CASH: The Master-in-Equity will require a deposit of five (5%) percent on the amount of the bid, in cash or its equivalence, same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

b. The sale shall be subject to taxes, assessments, existing easements, and easements and restrictions of record.

c. Purchaser to pay for deed stamps and cost of recording the deed.

d. That if the Plaintiff is the successful bidder at said sale for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the Master-in-Equity only the amount of the costs and expenses, crediting the balance of the bid on its indebtedness.

e. That if defendant 1776, LLC is the successful bidder at said sale for a sum not exceeding the amount of costs, expenses, the indebtedness of the Plaintiff in full, and the indebtedness owed on the Second Mortgage, the Plaintiff may pay to the Master-in-Equity only the amount of the costs, expenses, and the full amount of the Plaintiff's indebtedness, crediting the balance of the bid against its own indebtedness.

4. Inasmuch as the Plaintiff has not waived deficiency, the bidding will remain open for thirty (30) days after the sale, unless waived by the Plaintiff, in writing, prior to the sale.

5. That the Master-in-Equity will, by advertisement according to law, give notice of the time and place of such sale, and the terms thereof; and will execute to the purchaser or purchasers a deed to the Property sold. The Plaintiff or any other party to this action may become a purchaser at such sale, and if, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof within thirty (30) days after date of sale, then the Master-in-



Equity may advertise the said Property for sale on the next or some other subsequent Sales Day, as set by the Court, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

6. That the Master-in-Equity shall apply the proceeds of the sale of the Property as follows:

FIRST: To payment of the amount of costs and expenses of this action;

NEXT: To the payment to Plaintiff or its attorney of the amount of debt owed to Plaintiff and interest, so much thereof as the purchase money will pay on the same; and

NEXT: Any surplus should be held pending further Order of this Court.

7. That the defendants named herein and all persons whosoever claiming under the defendants be forever barred and foreclosed of all right, title, interest and equity of redemption in the subject Property, or any part thereof.

8. That the deed(s) of conveyance made pursuant to said sale shall contain the names of only the Plaintiff, the defendant who was the titleholder of the Property at the time of the filing of the Lis Pendens, and the grantee; and the RMC is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deeds.

9. A description of the Property encumbered by the Mortgages and herein ordered to be sold is attached hereto as Exhibit "A" and Exhibit "A-1".

10. That the undersigned Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure and to hear any post-judgment matters, including, but not limited to, the issuance of a Writ of Assistance.



AND IT IS SO ORDERED.

June 21, 2017

Charleston, South Carolina

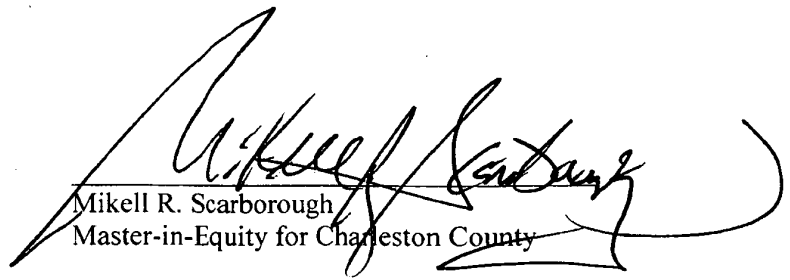

Mikell R. Scarborough
Master-in-Equity for Charleston County

EXHIBIT A-1

Tract B-2:

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

And Tract A:

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

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

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

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

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

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

plat for a more full and complete description, being all of the said dimensions, a little more or a little less. Together with an exclusive easement for drainage and maintenance purposes over all drainage easement shown on the said plat.

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

THE ABOVE REFERENCED PROPERTY IS ALSO KNOWN AS

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

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

TMS#: 346-00-00-004

AND

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

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

TMS#: 346-00-00-076

ALSO

Tract C:

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

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

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

LESS AND EXCEPTING: ALL that certain piece, parcel or tract of land, situate, lying and being in the City of Charleston, Charleston County, South Carolina, containing 15.63 acres, more or less, shown and designated as "TRACT C-1" on that certain plat entitled, "PLAT SHOWING THE ADJUSTMENT OF THE PROPERTY LINE BETWEEN TMS 346-00-00-078 (TRACT C, R/W), TMS 346-00-00-076 (TRACT B-2-2) & TMS 346-00-00-002 (TRACT C), TO FORM RESIDUAL TRACT C 137.1 ± ACRES, RESIDUAL TRACT B-2-2 22.91 ACRES AND TRACT C, R/W 0.71 ACRES TO BE DEDICATED AS A PUBLIC RIGHT OF WAY AND SHOWING TRACT C-1 (TMS NO. 346-00-00-077) CONTAINING 15.63 ACRES PREPARED FOR PENNY CREEK ASSOCIATES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Hoffman Lester & Associates, Inc., dated June 11, 2001, and recorded August 29, 2001, in the Charleston County RMC Office in Plat Book EF at Page 23 (the "Plat"), said property having such location, size, shape, dimensions, courses, distances, buttings and boundings as will by reference to said plat more fully and at large appear.

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

LESS AND EXCEPTING: ALL that certain streets, roads, drives and cul-de-sacs situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina and being shown and designated as "EXTENSION OF FENWICK HALL ALLEÉ" on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT C-1 (TMS NO. 346-00-00-077), TRACT B-2-1 (TMS NO. 346-00-00-

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

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

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

LESS AND EXCEPTING: ALL those pieces, parcels or lots of land located in the City of Charleston, Charleston County, South Carolina and shown and designated as "P.O.A. OPEN SPACE 9,701 SF 0.223 AC," "P.O.A. OPEN SPACE 23,630 SF

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

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

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

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

size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL that certain piece, parcel or lot of land, situate lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as LOT 13 on that certain plat entitled, "A SUBDIVISION PLAT OF RESIDUAL LOT 3 OWNED BY PENNY CREEK ASSOCIATES, LLC THE PRESERVE AT FENWICK PLANTATION TO CREATE A NEW LOT 13, CONTAINING 0.187 ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated June 25, 2008, revised June 3, 2010, and recorded June 9, 2010, in the RMC Office for Charleston County, South Carolina in Plat Book L10 at Page 0154. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL those certain pieces, parcels or lots of land, situate lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as LOT 58 and LOT 59 on that certain plat entitled, "A SUBDIVISION PLAT OF LOT 2 OWNED BY PENNY CREEK ASSOCIATES, LLC TO CREATE LOT 58, #1612 ZURLO WAY AND LOT 59, #1608 ZURLO WAY, THE PRESERVE AT FENWICK PLANTATION LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by SWA Surveying LLC, dated March 7, 2014, and recorded March 20, 2014, in the RMC Office for Charleston County, South Carolina in Plat Book L14 at Page 0094. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

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

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

EXHIBIT "A-2"

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

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

TMS#: 346-00-00-004

ALSO

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

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

TMS#: 346-00-00-076

ALSO

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

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

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

LESS AND EXCEPTING: ALL those certain pieces, parcels or lots of land, situate lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as LOT 58 and LOT 59 on that certain plat entitled, "A SUBDIVISION PLAT OF LOT 2 OWNED BY PENNY CREEK ASSOCIATES, LLC TO CREATE LOT 58, #1612 ZURLO WAY AND LOT 59, #1608 ZURLO WAY, THE PRESERVE AT FENWICK PLANTATION LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by SWA Surveying LLC, dated March 7, 2014, and

recorded March 20, 2014, in the RMC Office for Charleston County, South Carolina in Plat Book L14 at Page 0094. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

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

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

ALSO

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

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

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

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

LESS AND EXCEPTING: ALL that certain piece, parcel or lot of land, situate lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as LOT 13 on that certain plat entitled, "A SUBDIVISION PLAT OF RESIDUAL LOT 3 OWNED BY PENNY CREEK ASSOCIATES, LLC THE PRESERVE AT FENWICK PLANTATION TO CREATE A NEW LOT 13, CONTAINING 0.187 ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated June 25, 2008, revised June 3, 2010, and recorded June 9, 2010, in the RMC Office for Charleston County, South Carolina in Plat Book L10 at Page 0154. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

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

Property

TMS#

Lot 3 Residual (9.76 acres)

346-00-00-259

2014-CP-10-4946

NOTICE OF SALE

BY VIRTUE of the Order heretofore granted in the case of Wells Fargo Bank, N.A., as Successor by Merger to Wachovia Bank, National Association, as Successor by Merger to First Union National Bank, against Penny Creek Associates, L.L.C. a/k/a Penny Creek Associates, LLC; Michel F. LaPlante a/k/a Michel Laplante a/k/a Mitch Laplante; Charlotte R. Zurlo; Eugene J. Zurlo; Charlotte R. Zurlo and Eugene J. Zurlo, as Co-Trustees of The Nicklaus Lane Realty Trust No. 1 under Declaration of Trust dated May 22, 1998, and The Zurlo Investment Trust No. 1 pursuant to trust agreement dated August 10, 1998; Fenwick Hall Plantation Property Owners Assn., Inc. a/k/a Fenwick Hall Plantation Property Owners' Association, Inc.; Preserve at Fenwick Hall Property Owners Association, Inc. a/k/a The Preserve at Fenwick Hall Property Owners' Association, Inc.; and The Grove at Fenwick Plantation Condominium Association, Inc., Case No. 2014-CP-10-04946, the undersigned as Master-in-Equity, or his designee, will offer for sale at public auction at the Charleston County Judicial Center, 100 Broad Street, Charleston, South Carolina, on **August 1, 2017, at 11:00 a.m.**, the following-described property:

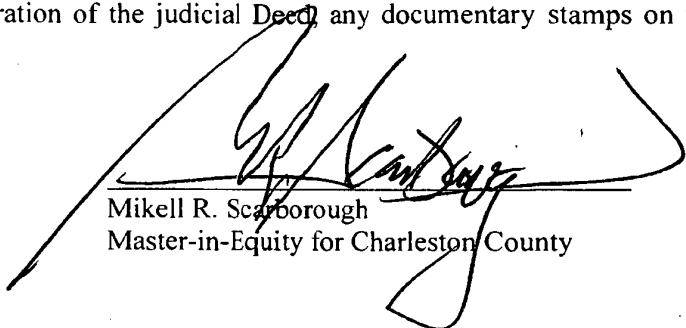
SEE ATTACHED EXHIBITS "A-1" AND "A-2".

SUBJECT TO CHARLESTON COUNTY TAXES AND ASSESSMENTS.

TERMS OF SALE: The successful bidder, other than the Plaintiff, will deposit with the Court, at the conclusion of the bidding, five (5%) percent of the bid, in cash or its equivalent, as evidence of good faith, same to be applied to the purchase price only in case of compliance with the bid, but to be forfeited and applied first to costs and then to Plaintiff's debt in the case of non-compliance. Should the last and highest bidder fail or refuse to make the required deposit at the time of the bid or to comply with the other terms of the bid within thirty (30) days, then the Master-in-Equity or his designee may resell the property on the same terms and conditions on some subsequent date to be determined by the Court, at the risk of the said highest bidder.

As the right to seek a deficiency judgment has been demanded, the bidding will remain open for thirty (30) days after the sale, unless waived by the Plaintiff, in writing, prior to the sale.

Purchaser to pay for preparation of the judicial Deed, any documentary stamps on the Deed and recording of the Deed.



Mikell R. Scarborough
Master-in-Equity for Charleston County

June 21, 2017

Charleston, South Carolina

Robert C. Byrd
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

Attorneys for the Plaintiff

EXHIBIT A-1

Tract B-2:

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

And Tract A:

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

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

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

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

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

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

dimensions, a little more or a little less. Together with an exclusive easement for drainage and maintenance purposes over all drainage easement shown on the said plat.

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

THE ABOVE REFERENCED PROPERTY IS ALSO KNOWN AS

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

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

TMS#: 346-00-00-004

AND

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

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

TMS#: 346-00-00-076

ALSO

Tract C:

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

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

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

LESS AND EXCEPTING: ALL that certain piece, parcel or tract of land, situate, lying and being in the City of Charleston, Charleston County, South Carolina, containing 15.63 acres, more or less, shown and designated as "TRACT C-1" on that certain plat entitled, "PLAT SHOWING THE ADJUSTMENT OF THE PROPERTY LINE BETWEEN TMS 346-00-00-078 (TRACT C, R/W), TMS 346-00-00-076 (TRACT B-2-2) & TMS 346-00-00-002 (TRACT C), TO FORM RESIDUAL TRACT C 137.1 ± ACRES, RESIDUAL TRACT B-2-2 22.91 ACRES AND TRACT C, R/W 0.71 ACRES TO DEDICATED AS A PUBLIC RIGHT OF WAY AND SHOWING TRACT C-1 (TMS NO. 346-00-00-077) CONTAINING 15.63 ACRES PREPARED FOR PENNY CREEK ASSOCIATES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Hoffman Lester & Associates, Inc., dated June 11, 2001, and recorded August 29, 2001, in the Charleston County RMC Office in Plat Book EF at Page 23 (the "Plat"), said property having such location, size, shape, dimensions, courses, distances, buttings and boundings as will by reference to said plat more fully and at large appear.

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

LESS AND EXCEPTING: ALL that certain streets, roads, drives and cul-de-sacs situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina and being shown and designated as "EXTENSION OF FENWICK HALL ALLEÉ" on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT C-1 (TMS NO. 346-00-00-077), TRACT B-2-1 (TMS NO. 346-00-00-004), AND TRACT B-2-2 (TMS NO. 346-00-00-076) TO CREATE AN

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

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

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

LESS AND EXCEPTING: ALL those pieces, parcels or lots of land located in the City of Charleston, Charleston County, South Carolina and shown and designated as "P.O.A. OPEN SPACE 9,701 SF 0.223 AC," "P.O.A. OPEN SPACE 23,630 SF 0.543 AC" and "P.O.A. OPEN SPACE 26,343 SF 0.605 AC" on a plat entitled, "A FINAL SUBDIVISION PLAT OF A PORTION OF THE

PRESERVE AT FENWICK PLANTATION LOTS 19 THRU 25, LOTS 31 THRU 35 AND PUBLIC RIGHT-OF-WAY BEING A PORTION OF LOT 1, OWNED BY EPIC DEVELOPMENT GROUP, LLC AND LOT 15, HELD IN TRUST AND TO BE CONVEYED TO EPIC DEVELOPMENT GROUP, LLC, BEING A PORTION OF LOT 3 AND EASEMENTS LOCATED ON LOT 2, OWNED BY PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated January 25, 2006, last revised April 13, 2006, and recorded May 5, 2006, in Plat Book EJ at Pages 722-727, in the RMC Office for Charleston County. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

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

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

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

LESS AND EXCEPTING: ALL that certain piece, parcel or lot of land, situate lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as LOT 13 on that certain plat entitled, "A SUBDIVISION PLAT OF RESIDUAL LOT 3 OWNED BY PENNY CREEK ASSOCIATES, LLC THE PRESERVE AT FENWICK PLANTATION TO CREATE A NEW LOT 13, CONTAINING 0.187 ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated June 25, 2008, revised June 3, 2010, and recorded June 9, 2010, in the RMC Office for Charleston County, South Carolina in Plat Book L10 at Page 0154. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL those certain pieces, parcels or lots of land, situate lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as LOT 58 and LOT 59 on that certain plat entitled, "A SUBDIVISION PLAT OF LOT 2 OWNED BY PENNY CREEK ASSOCIATES, LLC TO CREATE LOT 58, #1612 ZURLO WAY AND LOT 59, #1608 ZURLO WAY, THE PRESERVE AT FENWICK PLANTATION LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by SWA Surveying LLC, dated March 7, 2014, and recorded March 20, 2014, in the RMC Office for Charleston County, South Carolina in Plat Book L14 at Page 0094. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

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

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

EXHIBIT "A-2"

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

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

TMS#: 346-00-00-004

ALSO

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

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

TMS#: 346-00-00-076

ALSO

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

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

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

LESS AND EXCEPTING: ALL those certain pieces, parcels or lots of land, situate lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as LOT 58 and LOT 59 on that certain plat entitled, "A SUBDIVISION PLAT OF LOT 2 OWNED BY PENNY CREEK ASSOCIATES, LLC TO CREATE LOT 58, #1612 ZURLO WAY AND LOT 59, #1608 ZURLO WAY, THE PRESERVE AT FENWICK PLANTATION LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by SWA Surveying LLC, dated March 7, 2014, and recorded March 20, 2014, in the RMC Office for Charleston County, South

Carolina in Plat Book L14 at Page 0094. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

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

Property

TMS#

Lot 2 Residual (14.46 acres)
Zurlo Way (Private R/W)

346-00-00-258
346-00-00-781

ALSO

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

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

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

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

LESS AND EXCEPTING: ALL that certain piece, parcel or lot of land, situate lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as LOT 13 on that certain plat entitled, "A SUBDIVISION PLAT OF RESIDUAL LOT 3 OWNED BY PENNY CREEK ASSOCIATES, LLC THE PRESERVE AT FENWICK PLANTATION TO CREATE A NEW LOT 13, CONTAINING 0.187 ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated June 25, 2008, revised June 3, 2010, and recorded June 9, 2010, in the RMC Office for Charleston County, South Carolina in Plat Book L10 at Page 0154. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

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

Property

TMS#

Lot 3 Residual (9.76 acres)

346-00-00-259

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiff,

vs.

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

Defendants.

Michel Laplante,

Third-Party Plaintiff,

vs.

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

Third-Party Defendant.

IN THE CIRCUIT COURT

Case No. 2014-CP-10-04946

RECORD OF HEARING

FILED
JUN 23 2017
JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

.....
Charleston, South Carolina – June 19, 2017
.....

Pursuant to the Order entered in the above-entitled cause on March 5, 2015, a hearing was held before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, on the 19th day of June, 2017, attended as follows:

Robert C. Byrd – Attorney for the Plaintiff

Mr. Byrd, attorney for the Plaintiff, called attention to the following matters of record:

(1) The filing of the Lis Pendens, Summons, Complaint and Notice of Intent to Refer on August 14, 2014;

(2) The proofs of service filed with the Clerk of Court showing due and legal service of the pleadings upon the defendants;

(3) The Motion for Injunction filed by defendant Michel F. LaPlante a/k/a Michel Laplante a/k/a Mitch Laplante (“LaPlante”) on August 29, 2014;

(4) The Motion for Temporary Restraining Order filed by defendant LaPlante on September 9, 2014, and the Order denying said motion entered on September 19, 2014;

(5) The Answer and Counterclaim filed by defendants Fenwick Hall Plantation Property Owners Assn., Inc. a/k/a Fenwick Hall Plantation Property Owners’ Association, Inc., Preserve at Fenwick Hall Property Owners Association, Inc. a/k/a The Preserve at Fenwick Hall Property Owners’ Association, Inc., and The Grove At Fenwick Plantation Condominium Association, Inc. (collectively, the “POA Defendants”) on September 29, 2014;

(6) The Memorandum in Opposition filed by defendants Charlotte R. Zurlo and Eugene J. Zurlo on September 29, 2014, in response to defendant Laplante’s Motion for Injunction;

(7) The Answer and Cross Claim filed by defendants Charlotte R. Zurlo, Eugene J. Zurlo, and Charlotte R. Zurlo and Eugene J. Zurlo, as Co-Trustees of The Nicklaus Lane Realty Trust No. 1 under Declaration of Trust dated May 22, 1998, and The Zurlo Investment Trust No. 1 pursuant to trust agreement dated August 10, 1998 (collectively, the “Zurlo Defendants”) on October 16, 2014;

(8) The Answer, Cross Claims, and Third-Party Claims filed by defendant LaPlante on October 27, 2014;

(9) The Answer filed by defendant Penny Creek Associates, L.L.C. a/k/a Penny Creek Associates, LLC ("Penny Creek") and The Grove at Fenwick Plantation, LLC on November 6, 2014;

(10) The Reply to the Zurlo Defendants' Cross-Claims filed by defendant LaPlante on November 10, 2014;

(11) The Motion to Dismiss defendant LaPlante's Third-Party Complaint filed by third-party defendant Paul Zurlo on November 25, 2014;

(12) The Answer to defendant LaPlante's Third-Party Complaint filed by third-party defendant Eugene J. Zurlo Living Trust on November 26, 2014;

(13) The Reply to the POA Defendants' Answer and Counterclaim filed by the Plaintiff on December 4, 2014;

(14) The Memoranda filed by defendant LaPlante on January 15, 2015, in opposition to the Plaintiff's Motion to Strike Jury Demand and to Refer and in opposition to third-party defendant Paul Zurlo's Motion to Dismiss;

(15) The Memorandum of Law filed by the Plaintiff on January 16, 2015, in support of its Motion to Refer;

(16) The Answer to Third-Party Complaint filed by third-party defendant Paul Zurlo on January 30, 2015;

(17) The Order entered on March 5, 2015, granting Plaintiff's Motion to Refer;

(18) The Motion filed by defendant LaPlante on March 23, 2015, seeking to alter or amend the Order granting the Plaintiff's Motion to Refer;

(19) The Amended Answer and Cross Claim filed by the Zurlo Defendants on April 15, 2015;

(20) The Reply to the Cross-Claims of the Zurlo Defendants filed by defendant LaPlante on April 27, 2015;

(21) The Order entered on June 3, 2015, denying defendant LaPlante's Motion to Alter or Amend the Order granting Plaintiff's Motion to Refer;

(22) The Notice of Appeal filed by defendant LaPlante on July 6, 2015, appealing from the Order granting Plaintiff's Motion to Refer;

(23) The Stipulation filed on July 17, 2015, dismissing the third-party complaint against Paul Zurlo with prejudice;

(24) The Motion to Dismiss defendant LaPlante's appeal filed by the Plaintiff in the Court of Appeals on August 4, 2015;

(24) The Order entered by the Court of Appeals on October 20, 2015, granting the Plaintiff's Motion to Dismiss Appeal;

(25) The Motion for Partial Summary Judgment and Supporting Affidavit filed by the Plaintiff on February 2, 2016;

(26) The Stipulation filed on May 26, 2016, dismissing the claims relating to The Grove at Fenwick Plantation loan and dismissing defendant The Grove at Fenwick Plantation, LLC as a party defendant;

(27) The Consent Order Striking Case from Trial Docket Pursuant to Rule 40(j), SCRCF filed on September 30, 2016;

(28) The Notice to Restore Case to Active Trial Docket filed on April 12, 2017;

(29) The Order Restoring Case to Active Trial Docket entered on April 12, 2017;

(30) The Stipulation to Entry of Order and Judgment of Foreclosure and Sale filed on April 13, 2017; and

(31) The Motion to Sever and for Entry of Stipulated Final Order and Judgment of Foreclosure and Sale filed by the Plaintiff on May 25, 2017.

WHEREUPON, Mr. Byrd stated to the Court as follows:

(1) The defendants were duly notified of the date, time and place of this hearing.

(2) The case originally asserted four (4) causes of action, two of which related to a loan by the Plaintiff to The Grove at Fenwick Plantation, LLC (the "Fenwick Loan"). During the course of the action, the Fenwick Loan was paid off and the parties stipulated to the dismissal of the two claims relating to that loan. Only the claims relating to loan to defendant Penny Creek remain.

\$5,300,000.00 Penny Creek Loan

(3) From the records in his possession and from examination of the public records of Charleston County, it appears that defendant Penny Creek, for consideration, made, executed and delivered that certain Promissory Note dated August 7, 2000 ("Original Note 1"), payable to the order of First Union National Bank ("First Union"), in the original principal sum of \$5,300,000.00, together with interest as provided therein.

(4) To secure payment of the indebtedness evidenced by Original Note 1, in accordance with the terms and conditions thereof, defendant Penny Creek, for consideration, made, executed and delivered to First Union a certain Mortgage and Absolute Assignment of Leases dated August 7, 2000 ("Mortgage 1"), covering certain real property located in Charleston County, South Carolina and described more fully therein. Mortgage 1 was recorded in the RMC Office for Charleston County on August 8, 2000, in Book P-352 at Page 613. A copy of Mortgage 1 was identified, offered and received into evidence as Exhibit "A".

(5) Wells Fargo Bank, N.A. is the successor by merger to Wachovia Bank, National Association who is the successor by merger to First Union and is the sole owner and holder of Original Note 1, Mortgage 1, and all other related loan documents.

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

\$2,200,000.00 Penny Creek Loan

(7) It further appears that defendant Penny Creek, for consideration, made, executed and delivered that certain Promissory Note dated April 5, 2006 ("Original Note 2"), payable to the order of the Plaintiff, then known as Wachovia Bank, National Association, in the original

principal sum of \$2,200,000.00, together with interest as provided therein. A copy of Original Note 2 was identified, offered and received into evidence as Exhibit "B".

(8) To secure payment of the indebtedness evidenced by Original Note 2, in accordance with the terms and conditions thereof, defendant Penny Creek, for consideration, made, executed and delivered to the Plaintiff a certain Mortgage and Assignment of Rents dated April 5, 2006 ("Mortgage 2"), covering certain real property located in Charleston County, South Carolina and described more fully therein. Mortgage 2 was recorded in the RMC Office for Charleston County on April 7, 2006, in Book G-579 at Page 249. A copy of Mortgage 2 was identified, offered and received into evidence as Exhibit "C". (Mortgage 1 and Mortgage 2 are hereinafter referred to, collectively, as the "Mortgages.").

(9) Certain terms of Original Note 2 were thereafter amended, modified and/or renewed by: (i) that certain renewal Promissory Note dated July 5, 2007, in the original principal sum of \$4,450,000.00; and (ii) that certain Modification Number One to Promissory Note dated April 28, 2008 (collectively, "Renewal Note 2"). Copies of Renewal Note 2 were identified, offered and received into evidence, collectively, as Exhibit "D". (Original Note 2 and Renewal Note 2 are hereinafter referred to, collectively, as "Note 2.")

(10) Thereafter, Mortgage 2 was amended and/or modified by that certain Modification of Mortgage and Notice of Future Advance dated July 5, 2007, and recorded in the RMC Office for Charleston County on July 27, 2007, in Book V-633 at Page 342, and a copy of the same was identified, offered and received into evidence as Exhibit "E".

2009 Modification and Consolidation

(11) Thereafter, certain terms of Note 1 and Note 2 were amended, modified and/or renewed by, among other things, that certain renewal Promissory Note dated July 28, 2009, in the original principal sum of \$7,592,781.92, which, among other things, consolidated Note 1 and Note

2 (collectively, the “Note”). A copy of the Note was identified, offered and received into evidence as Exhibit “F”.

(12) In order to induce the Plaintiff to modify or extend the aforesaid loan as evidenced by the Note, and to further secure the same, defendants Laplante and the Zurlo Defendants, for consideration, executed separate, written Unconditional Guaranties dated July 28, 2009 (collectively, the “Guaranties”), whereby the said defendants absolutely, unconditionally and irrevocably guaranteed to the Plaintiff the full and prompt payment of the obligations of defendant Penny Creek to the Plaintiff under the Note, as consolidated. Copies of the Guaranties were identified, offered and received into evidence, collectively, as Exhibit “G”.

2012 and 2013 Modifications

(13) Thereafter, certain terms of the Note were amended, modified and/or renewed by: (i) that certain First Modification to Promissory Note dated August 14, 2012; and (ii) that certain Second Modification to Promissory Note dated May 23, 2013 (collectively, the “Note Modifications”). Copies of the Note Modifications were identified, offered and received into evidence, collectively, as Exhibit “H”.

(14) In connection with the aforesaid modifications, Mortgage 1 and Mortgage 2 were amended and/or modified by that certain Modification of Mortgages dated October 1, 2012 (the “Mortgage Modification”), and recorded in the RMC Office for Charleston County on October 15, 2012, in Book 0284 at Page 614. A copy of the Mortgage Modification was identified, offered and received into evidence as Exhibit “I”.

(15) Under the express terms of the aforesaid Mortgage Modification, Mortgage 1 and Mortgage 2 (collectively, the “Mortgages”) secure the Note in its entirety.

(16) Certain portions of the subject mortgaged properties were thereafter released from the lien of the Mortgages, as amended and/or modified, which remains in full force and effect as to

the remaining property described in the said Mortgages (the “Property”)

**Loan Defaults, Forbearance Agreement, and Stipulation to
Entry of Order and Judgment of Foreclosure and Sale**

(17) The obligations under the terms and conditions of the Note, as amended, modified and/or renewed, are in default for, among other reasons, failing to repay the indebtedness in accordance with the terms thereof, including without limitation failing to repay the loan in full at maturity on April 18, 2014. The defendants were duly notified, in writing, of the outstanding defaults, and this action was commenced.

(18) In May 2016, the Plaintiff and defendants Penny Creek, LaPlante, and the Zurlo Defendants entered into that certain Forbearance Agreement dated as of May 4, 2016 (the “Forbearance Agreement”), wherein the said defendants agreed and acknowledged, among other things, that the subject loan is in default and further agreed to execute the Stipulation to Entry of Order and Judgment of Foreclosure and Sale attached as Exhibit A to the Forbearance Agreement. A copy of the Forbearance Agreement was identified, offered and received into evidence as Exhibit “J”.

(19) Pursuant to and in reliance upon the Forbearance Agreement and Stipulation, the case was removed from the active calendar pursuant to Rule 40(j), with leave to restore, by Consent Order entered on September 30, 2016.

(20) The forbearance period set forth in the Forbearance Agreement expired on March 31, 2017, and the case was restored to active calendar on April 12, 2017.

(21) Plaintiff is entitled to proceed with foreclosure of its Mortgages, as amended and/or modified.

(22) The amount due and owing on the loan evidenced by the Note, as of June 19, 2017, excluding costs of collection and attorney's fees, is as follows:

(1)	Principal due	\$5,775,289.35
(2)	Interest on principal only 02/28/17 – 03/29/17 @ 5.75% (30 days @ \$922.44205 per day)	\$ 27,673.26*
(3)	Interest on principal only 03/30/17 – 03/31/17 @ 6.00% (2 days @ \$962.54823 per day)	\$ 1,925.09*
(4)	Interest on principal only 04/01/17 – 04/29/17 @ 8.00% (29 days @ \$1,283.39763 per day)	\$ 37,218.53**
(5)	Interest on principal only 04/30/17 – 05/29/17 @ 8.00% (30 days @ \$1,283.39763 per day)	\$ 38,501.93**
(6)	Interest on principal only 05/30/17 – 06/19/17 @ 8.00% (21 days @ \$1,283.39763 per day)	<u>\$ 26,951.35**</u>

TOTAL DUE AS OF 06/19/17: \$5,907,559.51

(Total due consists of \$5,775,289.35 in principal and \$132,270.16 in accrued and unpaid interest.)

* Interest accruing at forbearance period rate of Prime plus 2.00%. It is a variable rate that has been and is subject to change.

** Interest accruing at default rate of Prime + 1% + 3.00%. It is a variable rate that has been and is subject to change.

(23) The Plaintiff's Mortgages constitute valid first priority liens on the subject Property described hereinabove.

(24) Upon examination of the records in Charleston County, there were no persons other than the parties to this action having any subordinate liens or claims against the subject Property, by way of assessment or otherwise, as of the date of the filing of the Lis Pendens.

(25) The loan documents provide for the payment of all costs of collection, including reasonable attorneys' fees. Certain of the Plaintiff's legal fees and costs were paid out of the proceeds from the sale of the Fenwick property and portions of the Penny Creek property. The Plaintiff respectfully requests that the Court award attorneys' fees in the amount of \$32,500.00

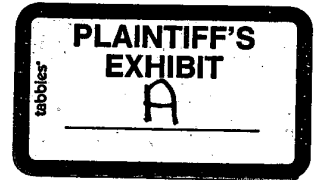
and costs in the amount of \$2,668.50, none of which has been reimbursed to the Plaintiff to date, as supported by the Affidavit of Attorneys' Fees and Costs submitted herewith. The said amount is approximately one-half of one percent (0.5%) of the outstanding indebtedness.

(26) Demand was made for full payment of the aforesaid loan, but payment has not been received.

(27) The Plaintiff does not waive the right to a judgment for any deficiency remaining after the sale of the subject Property, but expressly reserves the right to waive the same prior to the sale.



BK P 352PG613



PREPARED BY: Jean Dooley
RETURN TO: Quality Control
First Union National Bank
P.O. Box 13327
Roanoke, Virginia 24040-7391

MORTGAGE AND ABSOLUTE ASSIGNMENT OF LEASES

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

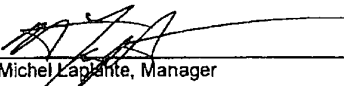
Miscellaneous Provisions. Mortgagor agrees to the following: (i) All remedies available to Bank with respect to this Mortgage or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Bank in exercising any remedy shall operate as a waiver of that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

Waiver of Appraisal Rights. Mortgagor understands that upon the occurrence of an Event of Default hereunder, among the other remedies set out herein or in the other Loan Documents, Mortgagee may foreclose upon the Property and proceed for a deficiency judgment pursuant to South Carolina law. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **MORTGAGOR HEREBY EXPRESSLY WAIVES AND RELINQUISHES ANY APPRAISAL**

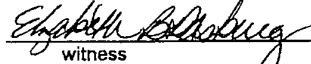
RIGHTS WHICH MORTGAGOR MAY HAVE UNDER SECTION 29-3-680 THROUGH SECTION 29-3-770 OF THE SOUTH CAROLINA CODE OF LAWS (1976), AS SUCH MAY BE AMENDED, AND UNDERSTANDS AND AGREES THAT A DEFICIENCY JUDGMENT, IF PURSUED BY MORTGAGEE, SHALL BE DETERMINED BY THE HIGHEST PRICE BID AT THE JUDICIAL SALE OF THE PROPERTY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

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

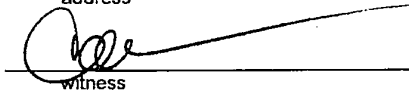
Mortgagor
PENNY CREEK ASSOCIATES, L.L.C.

By:  (SEAL)
Michel Laplante, Manager

Signed, sealed and delivered in presence of:


witness

1208 Oakcrest Dr. Charleston SC 29412
address


witness

10 NASHMORE ROAD, CHARLESTON, SC 29407
address

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

BK P 352PG620

State of South Carolina
County of Charleston

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

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

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

My commission expires:
7-17-08

Elizabeth B. Dasburg
Notary Public

36307

EXHIBIT ATract B-2

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

And Tract 'A':

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

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

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

This conveyance is subject, however, to the following:

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

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

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

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

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

ALSO:

Parcel A, River Road:

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

This conveyance is subject, however, to the following:

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

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

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

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

ALSO:

Tract C:

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

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

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

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

This conveyance is subject, however, to the following:

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

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

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

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

BR P 352PG627

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

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CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

20.00
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PROMISSORY NOTE

\$2,200,000.00

April 5, 2006

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Penny Creek Associates, L.L.C.

Members:

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

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

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

Michel Laplante (SEAL)
Michel Laplante, Manager/Member

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

BKG 579PG249

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

MORTGAGE AND ASSIGNMENT OF RENTS

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

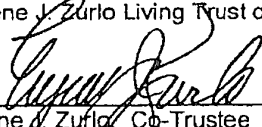
IN WITNESS WHEREOF, Mortgagor has signed and sealed this instrument as of the day and year first above written.

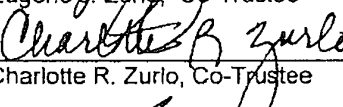
Mortgagor

Penny Creek Associates, L.L.C.

Members:

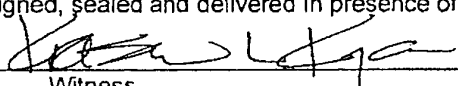
The Eugene J. Zurlo Living Trust dated December 11, 1997

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

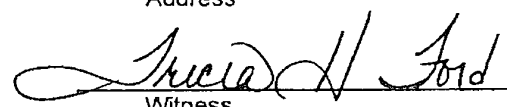
By:  (SEAL)
Charlotte R. Zurlo, Co-Trustee

 (SEAL)
Michel Laplante, Manager/Member

Signed, sealed and delivered in presence of:


Witness

JOHN ISLAND, SC 29455
Address


Witness

John's Island, SC 29455
Address

State of South Carolina
County of Charleston

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

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

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

My commission expires:

My Comm. Exp.
May 8, 2010

Tricia H. Ford
Notary Public

State of South Carolina
County of Charleston

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

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

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

My commission expires:

My Comm. Exp.
May 8, 2010

Tricia H. Ford
Notary Public

State of South Carolina
County of Charleston

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

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

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

My commission expires:

My Comm. Exp.
May 8, 2010

Tricia H. Ford
Notary Public

Tracking #: 67529rke
CAT - Deal # 642716 Facility # 447998

PARCEL 1 (Tract B-2-1):

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

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

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

TMS # 346-00-00-004

ALSO

PARCEL 2 (Tract B-2-2):

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

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

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

TMS # 346-00-00-076

ALSO

PARCEL 3 (Lot 2):

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

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

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

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

TMS # 346-00-00-258

ALSO

PARCEL 4 (Lot 3):

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

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

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

TMS # 346-00-00-259

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

BKG 579PG261

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



SAI

Filed By:

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

[Handwritten signature]

FILED

April 7, 2006

4:16:23 PM

BKG

579PG249

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION	AMOUNT
	\$ 18.00
Postage	

TOTAL	\$ 18.00

DRAWER:

	A - bmm

DO NOT STAMP BELOW THIS LINE

PROMISSORY NOTE

\$4,450,000.00

July
June 5, 2007

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

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

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

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

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

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

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

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

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

07198P305806

071982506006

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Penny Creek Associates, L.L.C.

By:

Michel F. LaPlante, Manager

By:

Eugene J. Zurlo Member

By Curtis M. Byars
Attorney In Fact

(SEAL)

(SEAL)

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

**MODIFICATION NUMBER ONE
TO PROMISSORY NOTE**

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

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

THIS AGREEMENT is entered into as of April 29, 2008 by and between Bank and Borrower.

RECITALS

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

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

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

AGREEMENT

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

MODIFICATIONS.

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

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

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

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



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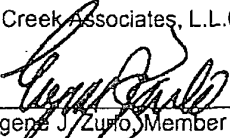
MISCELLANEOUS. This Agreement shall be construed in accordance with and governed by the laws of the applicable state as originally provided in the Loan Documents, without reference to that state's conflicts of law principles. This Agreement and the other Loan Documents constitute the sole agreement of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

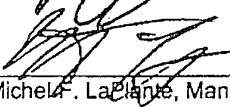
WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION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

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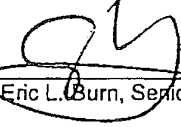
IN WITNESS WHEREOF, the undersigned have duly signed and sealed this Agreement the day and year first above written.

Penny Creek Associates, L.L.C.

By:  (SEAL)
Eugene J. Zuro, Member

By:  (SEAL)
Michel F. LaPlante, Manager

Wachovia Bank, National Association

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

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



BK V633PG342

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

MODIFICATION OF MORTGAGE AND NOTICE OF FUTURE ADVANCE

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

RECITALS

Bank is owner and holder of a certain Mortgage (the "Mortgage") dated April 5, 2006, recorded in Book No. 579, Page No. 249, of the public land records of the Town of John's Island, County of Charleston, State of South Carolina together with all extensions and modifications thereof whenever made.

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

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

WITNESSETH:

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

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

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



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

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

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

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

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

Mortgagor

Penny Creek Associates, L.L.C.

By:

Michel F. LaPlante, Manager

(SEAL)

By Custis M. Byars
Attorney in Fact

Signed, sealed and delivered in presence of:

Charles E. Keener
Witness

John's Island, SC
Address

Michael H. Ford
Witness

John's Island, SC
Address

BK V633PG344

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

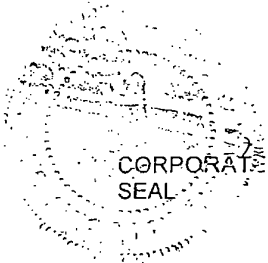
Signed, sealed and delivered in presence of:

Dale Huntley
Witness

18 Clinton St. Poughkeepsie NY 12601
Address

Dale Huntley
Witness

370 Point on Lee Rd., Champlain, NY
Address



Bank
Wachovia Bank, National Association

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

Signed, sealed and delivered in presence of:

Eric L. Burn
Witness

177 Meeting St., Charleston, SC 29401
Address

Patricia H. Becker
Witness

177 Meeting St., Charleston, SC 29401
Address

State of South Carolina
County of Charleston

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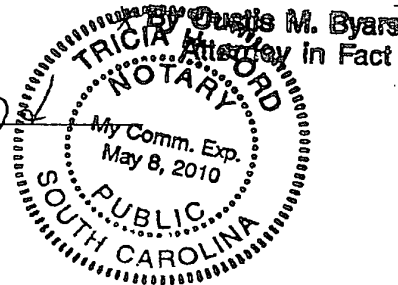
PARTNERSHIP, LIMITED PARTNERSHIP or L.L.C. PROBATE

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

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

My commission expires:

Tricia H Ford
Notary Public



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

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

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

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

My commission expires:

7/31/09

John Zurlo Jr.
Notary Public

JOHN ZURLO JR
Notary Public - State of New York
NO. 01ZU4512512
Qualified in Clinton County
My Commission Expires July 31, 2009

State of South Carolina
County of Charleston

BANK PROBATE

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

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

My commission expires:

2-14-2015

Patricia H. Becker
Notary Name

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

BK V633PG346
RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



FILED

July 27, 2007

2:36:05 PM

BK V633PG342

Charlie Lybrand, Register
Charleston County, SC

Filed By:

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

Number of Pages:

5

DESCRIPTION AMOUNT

MTG/MOD	\$ 9.00
Postage	

TOTAL \$ 9.00

DRAWER:

C - tps

DO NOT STAMP BELOW THIS LINE

PROMISSORY NOTE

\$7,592,781.92

July 18, 2009

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

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

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

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

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

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

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

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



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Note doc



CNOTE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

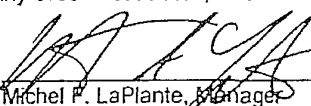
to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation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

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

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

Penny Creek Associates, LLC

By:  (SEAL)
Michel P. LaPlante, Manager

By:  (SEAL)
Eugene J. Zurlo, Member

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

UNCONDITIONAL GUARANTY

July 28, 2009

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

Michel F. LaPlante
155 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Guarantor")

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

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank, (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any

defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for,

dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor, and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

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

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor

irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time) **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

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

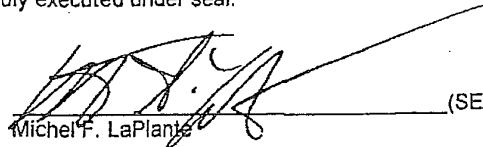
NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

PERSONAL FINANCIAL STATEMENTS. Each Guarantor who is an individual shall deliver to Bank annually, no later than April 30th of each fiscal year, Guarantor's financial statement. Said financial statement shall disclose all of Guarantor's assets, liabilities, net worth, income and contingent liabilities, all in reasonable detail and acceptable to Bank and submitted on a form to be provided by Bank or on such other form acceptable to Bank, signed by Guarantor and certified by Guarantor to Bank to be true, correct and complete.

TAX RETURNS. Guarantor shall deliver to Bank, no later than August 28th of each year, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, including, without limitation, K-1 statements for all Partnerships and Sub Chapter S Corporations, each of which shall be signed and certified by Guarantor to be true and complete copies of such returns. In the event an extension is filed, Guarantor shall deliver a copy of the extension within 30 days of filing.

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

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


Michel F. LaPlante (SEAL)

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

UNCONDITIONAL GUARANTY

July 28, 2009

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

Charlotte R. Zurlo
4 Nicklaus Lane
Kiawah Island, South Carolina 29455

Eugene J. Zurlo
4 Nicklaus Lane
Kiawah Island, South Carolina 29455
(Individually and collectively, "Guarantor")

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

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition



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to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations. (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f)

presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral, Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan

Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

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

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt"), to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment

letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. 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EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final

agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

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

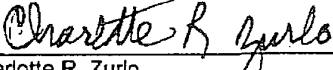
NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

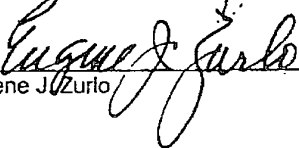
PERSONAL FINANCIAL STATEMENTS. Each Guarantor who is an individual shall deliver to Bank annually, no later than March 18th of each year, Guarantor's financial statement. Said financial statement shall disclose all of Guarantor's assets, liabilities, net worth, income and contingent liabilities, all in reasonable detail and acceptable to Bank and submitted on a form to be provided by Bank or on such other form acceptable to Bank, signed by Guarantor and certified by Guarantor to Bank to be true, correct and complete.

TAX RETURNS. Guarantor shall deliver to Bank, no later than October 31st of each year, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Guarantor to be true and complete copies of such returns. In the event an extension is filed, Guarantor shall deliver a copy of the extension within 30 days of filing.

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

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


Charlotte R. Zurlo (SEAL)


Eugene J. Zurlo (SEAL)

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

UNCONDITIONAL GUARANTY

July 28, 2009

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

The Nicklaus Lane Realty Trust No. 1
4 Nicklaus Lane
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Guarantor")

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

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank, (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon; and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor, (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled, (g) the right to assert against Bank or its affiliates any

defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for,

dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

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

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor

irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

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

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

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

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

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

The Nicklaus Lane Realty Trust No. 1

By: Eugene J. Zurlo (SEAL)
Eugene J. Zurlo,
as Trustee under Declaration of Trust dated May 22, 1998

By: Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo,
as Trustee under Declaration of Trust dated May 22, 1998

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

UNCONDITIONAL GUARANTY

July 28, 2009

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

The Zurlo Investment Trust No. 1
4 Nicklaus Lane
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Guarantor")

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

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

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TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, *et seq.*, N.C.G.S. §§ 26-7, *et seq.*, Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any

defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral. Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for,

dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

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

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor

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irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

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

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

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

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

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

The Zurlo Investment Trust No. 1

By: Eugene J. Zurlo (SEAL)
Eugene J. Zurlo, as Co-Trustee pursuant to trust agreement
Dated August 10, 1998

By: Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo, as Co-Trustee pursuant to trust agreement
Dated August 10, 1998

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

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FIRST MODIFICATION TO PROMISSORY NOTE

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

RECITALS

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

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

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

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

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

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

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

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

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"INTEREST RATE: The outstanding principal balance of this Note shall bear interest at a rate per annum one percent (1.0%) above the Prime Rate in effect from time to time. The term "Prime Rate" means at any time the rate of interest most recently announced within Bank at its principal office as its Prime Rate, with the understanding that the Prime Rate is one of Bank's base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Bank may designate. Each change in the rate of interest hereunder shall become effective on the date each Prime Rate change is announced within Bank."

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

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

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

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

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

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

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

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

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

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

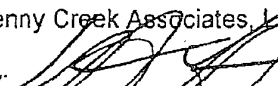
(c) Borrower and each guarantor hereunder hereby specifically acknowledge and agree that: (i) none of the provisions of this General Release shall be construed as or constitute an admission of any liability on the part of Bank; (ii) the provisions of this General Release shall constitute an absolute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

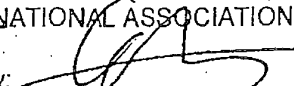
WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the property apply to the court for an order of appraisal. The statutory appraisal value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

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

Penny Creek Associates, LLC

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By:  (SEAL)
Michel E. LaPlante, Manager

By: 
Eric L. Burn, Senior Vice President

By:  (SEAL)
Eugene J. Zurlo, Member

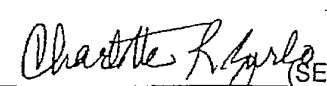
GUARANTORS' CONSENT AND REAFFIRMATION

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

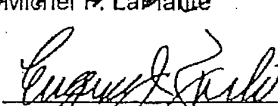
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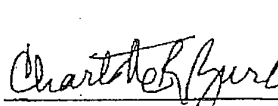
GUARANTORS:

 (SEAL)
Eugene J. Zurlo

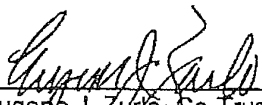
 (SEAL)
Charlotte R. Zurlo

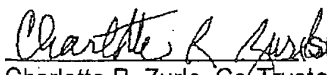
 (SEAL)
Michel E. LaPlante

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

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

2025 RELEASE

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

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

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SECOND MODIFICATION TO PROMISSORY NOTE

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

RECITALS

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

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

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

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

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

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

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

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Legal reviewed-Haynesworth
Sinkler & Boyd

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

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

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

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

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

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

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

PENNY CREEK ASSOCIATES, LLC

WELLS FARGO BANK,
NATIONAL ASSOCIATION

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

By: _____
Steven A. Jasinski, Private Banker

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

GUARANTORS:

Michel F. LaPlante

Eugene J. Zurlo

Charlotte R. Zurlo

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

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

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

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

PENNY CREEK ASSOCIATES, LLC

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: [Signature] (SEAL)
Michel F. LaPlante, Manager

By: _____
Steven A. Jasinski, Private Banker

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

GUARANTORS:

Michel F. LaPlante

Eugene J. Zurlo

Charlotte R. Zurlo

Eugene J. Zurlo, Trustee of The
Nicklaus Lane Realty Trust No. 1 under
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trust agreement dated August 10, 1998

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Legal reviewed-Haynesworth
Sinkler & Boyd

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GUARANTORS' CONSENT AND REAFFIRMATION

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

GUARANTORS:

Michel F. LaPlante

Eugene J. Zurlo

Charlotte R. Zurlo

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

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



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BP0284614

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

MODIFICATION OF MORTGAGES

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

(CHARLESTON)

THIS MODIFICATION, is made effective October 1st, 2012, by Penny Creek Associates, LLC, whose address is _____, the Mortgagor under the Mortgages described below ("Mortgagor"), and delivered to Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, National Association, a national banking association, as Mortgagee (referred to herein as "Bank"), whose address is 90 South 7th Street Minneapolis, MN 55402.

RECITALS

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

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

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

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

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

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

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

WITNESSETH:

Columbia: 1693658 v.1

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

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

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

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

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

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

Mortgagor

Penny Creek Associates, LLC

By: [Signature] (SEAL)

Name: Mitch Laplante

Title: Manager

Signed, sealed and delivered in presence of:

[Signature]
witness

Ramen Raplante
witness

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

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

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

[SEAL]

Bank

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

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

Signed, sealed and delivered in presence of:

[Signature]
witness
[Signature]
witness

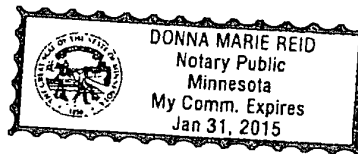
STATE OF SOUTH CAROLINA } Minnesota
COUNTY OF RICHLAND } Hennepin

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

Donna Marie Reid

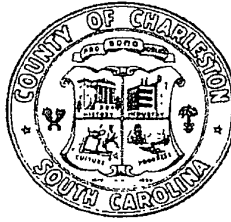
Notary Public for ~~South Carolina~~ Minnesota
My Commission Expires: 1-31-2015

[SEAL]



RECORDER'S PAGE

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



Filed By:

HAYNSWORTH SINKLER BOYD, PA

PO BOX 11889
COLUMBIA SC 29211

RECORDED

Date: October 15, 2012

Time: 1:39:30 PM

Book

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Mtg/Mod

Charlie Lybrand, Register
Charleston County, SC

MAKER:

PENNY CREEK ASSOCS LLC

of Sats:

of Pages: 5

of References: 2

Note:

RECIPIENT:

WELLS FARGO BANK

Recording Fee \$ 6.00

Extra Reference Cost \$ 6.00

Extra Pages \$ 3.00

Postage \$ -

Chattel \$ -

TOTAL \$ 15.00

Original Book:

P352

Original Page:

613

DRAWER
CLERK

Drawer 1
KLH



0284
Book



614
Page



10/15/2012
Recorded Date



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Pgs



P352
Original Book



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Original Page



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Recorded Time

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT ("Agreement") dated as of MAY 4, 2016 (the "Effective Date") is entered into by and among PENNY CREEK ASSOCIATES, L.L.C., a South Carolina limited liability company (the "Borrower"); EUGENE J. ZURLO, CHARLOTTE R. ZURLO, MICHEL F. LAPLANTE, THE ZURLO INVESTMENT TRUST NO. 1, formed under trust agreement dated August 10, 1998, and THE NICKLAUS LANE REALTY TRUST NO. 1, formed under Declaration of Trust dated May 22, 1998 (collectively, the "Guarantors") (Guarantors may, together with Borrower, be collectively referred to herein as the "Obligors"); and Wells Fargo Bank, N.A., successor-by-merger to Wachovia Bank, National Association ("Lender").

WITNESSETH

WHEREAS, Borrower owes to Lender a loan in the original principal amount of \$7,592,781.92 (the "Loan") evidenced by, among other things, that certain Promissory Note executed by Borrower and dated July 28, 2009 (as amended, modified, or renewed, "Note").

WHEREAS, the Note is secured by (i) that certain Mortgage and Absolute Assignment of Leases dated August 7, 2000 made by Borrower to Lender granting Lender a first priority security interest in the collateral described therein, including certain real property located in Charleston County, South Carolina (as amended or modified, "Property 1") and recorded in the public land records for Charleston County, South Carolina in Book P-352, at Page 613 (as amended or modified, "Mortgage 1"); and (ii) that certain Mortgage and Assignment of Rents dated April 5, 2006 made by Borrower to Lender granting Lender a first priority security interest in the collateral described therein, including certain real property located in Charleston County, South Carolina (as amended or modified, "Property 2," and, together with Property 1, the "Property") and recorded in the public land records for Charleston County, South Carolina in Book G-579, at Page 259 (as amended or modified, "Mortgage 2" and together with Mortgage 1, the "Mortgage").

WHEREAS, the Loan is further secured by those certain Unconditional Guaranties from Guarantors each dated July 28, 2009 (collectively, the "Guaranties"). The Mortgage, the Guaranties, and any assignments, financing statements and other security documents securing or evidencing the Loan, as amended or modified, shall be referred to, collectively, as the "Security Documents."

WHEREAS, except as otherwise provided herein, all terms herein shall have the meanings ascribed thereto in the documents related to the Loan, including without limitation the documents referenced above (the "Loan Documents"). All indebtedness, whether now existing or hereafter arising, that is due and owing by Obligors to Lender under the Loan Documents are collectively referred to as the "Obligations,"

WHEREAS, Obligors acknowledge that the Existing Loan Documents are in default for, without limitation, failure to pay the Loan at maturity (the "Existing Default"). As a result of the Existing Default, Obligors further acknowledge that: (1) all Obligations under the Existing Loan

Documents are immediately due and payable in full; and (2) Lender is presently entitled to exercise any and all remedies available to it under the Existing Loan Documents and applicable law.

WHEREAS, Lender has filed the foreclosure lawsuit entitled "Wells Fargo Bank, N.A., as Successor by Merger to Wachovia Bank, National Association, as Successor by Merger to First Union National Bank, vs. Penny Creek Associates, LLC, et. al., Case # 2014-CP-10-4946" (the "Foreclosure").

WHEREAS, Obligors have requested, notwithstanding the occurrence of the Existing Default, that Lender forbear from exercising its remedies otherwise presently available under the Existing Loan Documents and applicable law. Lender, subject to the express terms and conditions of this Agreement and the documents, instruments and agreements executed and to be executed pursuant to this Agreement, has agreed to this request.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, all in accordance with the terms of this Agreement, the receipt, sufficiency and adequacy of which the parties do hereby acknowledge, Lender and Obligors do hereby agree as follows:

1. Principal Balance. The Obligors hereby confirm and agree that, as of the Effective Date, the outstanding principal balance under the Note is \$6,275,289.35. As of April 21, 2016, the accrued unpaid interest on the Note was \$891,683.18.

2. Terms and Conditions During the Forbearance Period.

2.1 Repayment Terms. The Note shall be due and payable from the Effective Date, in consecutive monthly payments of accrued interest only, commencing on May 30, 2016, and continuing on the same day of each month thereafter. In addition, Borrower shall make principal payments of not less than Twenty-Five Thousand and No/100 Dollars (\$25,000.00) at the end of each calendar quarter commencing on September 30, 2016. In any event, all principal and accrued interest shall be due and payable at the end of the Forbearance Period.

2.2 Interest. During the Forbearance Period, Interest shall accrue on the unpaid outstanding principal balance of the Note at a floating rate equal to the sum of the Wells Fargo Prime Rate (the "Index") and a margin of two percent (2%), subject to any floor or ceiling rate that may apply. The Wells Fargo Prime Rate is the Prime Rate set by Wells Fargo Bank, National Association from time to time which serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto. Each change in the Index shall become effective on the date of each change in the Prime Rate. The interest rate will change as and when the Index changes. Interest will be calculated as described in the Interest Accrual Basis paragraph. The initial rate would be approximately 5.5% if the Index rate in effect when this Agreement was prepared remains the same on the day of funding. The actual initial rate will be based upon the Index in effect on the day of funding. Lender may round the Index value or rate to five

decimal places at Lender's discretion. Lender may reamortize payments as described in the Note or from time to time in Lender's discretion to take into account changes in the interest rate. Reamortization will not change the Note's maturity date. If Lender fails for any reason to timely or properly adjust the interest rate or payment amount, Borrower shall notify Lender of the oversight, and Lender may retroactively adjust the interest rate to correct the oversight and/or reamortize and adjust the payment amount at any subsequent time as may be necessary. In no event shall Lender's failure to properly adjust the interest rate or payment amount result in forgiveness of any portion of the indebtedness.

- 2.3 Release of Property. Provided there is no default or event which, with the giving of notice or the passage of time, or both, would constitute a default under the Loan Documents, Lender will, upon request of Borrower, release one or more lots and parcels comprising the Property from Lender's lien under the Mortgage upon (i) the sale of the such lot in an arms-length transaction for a purchase price that is not materially less than market value, (ii) the payment to Lender of a principal payment of the Obligations in an amount equal to or greater than 75% of the net proceeds of the sale of such property, and (iii) the deposit of the remainder of the net proceeds of the sale of such property into an operating account of the Borrower for use in the Borrower's operations and sale and operation of the Property. Prior to any such sale, Borrower shall execute and deliver to Lender a security agreement and account control agreement, in such form as requested by Lender, granting Lender control over the operating account in which any portion of the sales proceeds will be deposited sufficient to establish Lender's first priority perfected security interest in such account. For purposes of this Section, Borrower shall not sell any portion of the property other than in an "arm's length" transaction, and no Obligor will not receive any consideration for such sale, except as described in this Section.

3. Forbearance Requirements. Upon execution of this Agreement and as a condition to the effectiveness of this Agreement, Obligors shall cause to be delivered to Lender, at its own expense, in form acceptable to Lender, in its sole discretion:

- 3.1 A fully executed version of this Agreement;
- 3.2 Reimbursement to Lender of all of Lender's reasonable attorneys' fees and other legal expenses arising out of any defaults under the Loan Documents and the negotiation, drafting, and closing of this Agreement and all related documents;
- 3.3 Evidence that all taxes and assessments currently due and applicable to the Property have been paid;
- 3.4 Payment of all accrued and unpaid interest on the Note;
- 3.5 The fully executed Stipulation (defined below);
- 3.6 Certified resolutions approving the execution and delivery of this Agreement and all other forbearance documents by all non-individual Obligors; and
- 3.7 Such other documents, instruments, agreements and information as Lender may reasonably request.

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4. Conditions to Forbearance. Lender's obligation to forbear during the "Forbearance Period" (hereafter defined) is subject to the fulfillment of the following conditions (each a "Forbearance Condition" and collectively the "Forbearance Conditions"):

- 4.1 Payments. Obligors shall make all payments required under this Agreement and the Loan Documents as and when due to lender;
- 4.2 No Subsequent Defaults. Other than the Existing Default, no new or additional defaults or events of default under the Loan Documents shall arise or occur;
- 4.3 Representations and Warranties. All representations and warranties contained in this Agreement shall be true, correct and complete as of the Closing and shall remain so during the Forbearance Period.
- 4.4 Compliance with Forbearance Covenants and Conditions. Obligors shall comply with all terms, conditions and covenants contained in this Agreement and the Loan Documents.

5. Forbearance. Subject to compliance by Obligors with each of the Forbearance Conditions, during a period (the "Forbearance Period"), which shall commence on the Effective Date and end on the earlier to occur of (a) December 16, 2016; or (b) the date that any of the Forbearance Conditions are no longer satisfied, Lender agrees that it will not, but only by reason of the Existing Default, exercise any remedy available to it under the Existing Loan Documents or under any applicable law to enforce collection from Obligors of any Obligations or foreclose upon its security interest in any of the Collateral. Lender agrees that (i) the date referenced in clause (a) of the preceding sentence shall be automatically extended until March 31, 2017 upon payment to Lender of principal under the Note after the Effective Date in a total amount not less than Five Hundred Thousand and No/100 Dollars (\$500,000.00) prior to December 16, 2016, in addition to all other amounts owed under the Loan Documents, and (b) the date referenced in clause (a) of the preceding sentence shall be automatically further extended until July 17, 2017 upon payment to Lender of principal under the Note after the Effective Date in a total additional amount of not less than Five Hundred Thousand and No/100 Dollars (\$500,000.00) prior to March 31, 2017, in addition to all other amounts owed under the Loan Documents.

6. Enforcement of Lender Remedies.

- 6.1 Waiver and Termination of Rights. Following failure to satisfy any Forbearance Condition, Obligors understand, acknowledge and agree that the Forbearance Period shall, at Lender's option, terminate and all Obligations shall be immediately due and payable in full. In such event, Lender may enforce any and all rights and remedies available under the Loan Documents and applicable law without notice.
- 6.2 Consent to Foreclosure and Appointment of Receiver. Obligors hereby acknowledge that they have no defense to any foreclosure action or proceeding that might be commenced by Lender arising out of the Existing Default(s) and, therefore, expressly consent to Lender's foreclosure of the Mortgage and other Loan Documents and stipulate to the entry of an order directing the sale of the Property in accordance with foreclosure procedures arising from an Existing Default. Subject to the terms of this Agreement, Obligors further expressly

consent and stipulate to the immediate appointment of a receiver for all purposes including without limitation to manage and control the Property or any part thereof, and to apply rents and profits therefrom. Obligors further agree that such a receiver may be appointed by a court of competent jurisdiction with written notice to the Obligors, without regard to whether the Obligors have committed waste or permitted deterioration of the Property, without regard to the adequacy of any security for the underlying obligations, and without regard to the solvency of the Obligors or any of them. As a condition of the effectiveness of this Agreement, Obligors shall cause their attorneys to execute the Stipulation to Entry of Order and Judgment of Foreclosure and Sale in the form attached as Exhibit A (the "Stipulation"), which shall be held in escrow by Lender or its attorneys until the expiration of the Forbearance Period. Upon the expiration of the Forbearance Period, and without any further consent or approval from Obligors or their attorneys, Lender may direct the Stipulation to be entered of record in the Foreclosure.

7. Marketing of Property. As consideration for the forbearance agreed to by the Lender, at its sole cost and expense, Borrower shall use its best efforts to market the Property for sale to the highest bidder through private sale. Such best efforts shall, at all times during the Forbearance Period, include but not be limited to the retention of the services of a South Carolina-licensed real estate broker who shall list the Property for sale in appropriate forums at a listing price proposed by such listing agent and approved by the Borrower. Any compensation due to the retained real estate broker shall be payable solely by Borrower.

8. Application of Payment. Notwithstanding the application of payment provided in the Payment section of the Note, unless otherwise agreed, all sums received from Obligors may be applied to interest, fees, principal, or any other amounts due to Lender in any order at Lender's sole discretion. ~~If a final payment amount is set out in the Repayment section of the Note,~~ Obligors understand that it is an estimate, and that the actual final payment amount will depend upon when payments are received and other factors.

9. Financial Information. All information furnished by Obligors to Lender in connection with the application for credit was true and accurate in every material respect as of the date the information was furnished, and no material facts were omitted so as to make the information incomplete or misleading. There has been no material adverse change to Borrower's financial condition since the date of the most recent submitted statement. Borrower agrees to provide to Lender, upon request, financial statements prepared in a manner and form acceptable to Lender, and copies of such tax returns and other financial information and statements as may be requested by Lender. Financial statements and tax returns submitted to Lender shall be signed and dated by Borrower and any other party preparing such financial statements or tax returns, or otherwise authenticated to Lender's satisfaction. Each financial statement shall give an accurate and complete picture of Borrower's financial condition as of the statement's date, with ownership accurately reflected. Borrower shall also furnish such other information regarding Borrower (and Borrower's general partners or members, if any), Borrower's business operations, the collateral securing the Obligations, and the use of loan proceeds as may be requested by Lender. Borrower warrants that all financial statements and information provided to Lender are

and will be accurate, correct and complete. Upon request by Lender, Borrower will provide copies of the Borrower's tax returns and financial statements, all at no cost to Lender.

10. Effectiveness of Loan Documents. Except as otherwise modified hereby, the terms and provisions of the Loan Documents shall remain in full force and effect. The Security Documents shall secure the repayment of the Note, as modified, with the same force and effect as when originally executed. It is intended that this Agreement will not disturb the existing priority of any of the Security Documents.

11. Title to Collateral Property. Borrower represents and warrants that, at the time of the execution and delivery of this Agreement, Borrower has good and absolute title to the collateral property encumbered by the Security Documents and have full power and authority to subject the same to the lien of the Security Documents and the same is free and clear of all liens, charges, and encumbrances whatsoever, except those created by the Security Documents or those known to Lender.

12. Bankruptcy. Obligors hereby represent that they have no present intent to file a voluntary petition under any chapter of Title 11 of the United States Code (the "Bankruptcy Code"), or in any manner to seek relief, protection, reorganization, liquidation, dissolution or similar relief for debtors under any local, state, federal or other insolvency laws. Neither the execution and delivery of this Agreement nor the performance of any actions required by this Agreement is being consummated by any party to hinder, delay or defraud any entity to which Obligors were, are now or will hereafter become indebted.

13. Events of Default. In addition to any defaults or events of defaults that may be described in the Note or the other Loan Documents, each of the following shall constitute an Event of Default that, should it occur, would cause Borrower to be in default of the Note and the other Loan Documents: (a) Borrower fails to pay any principal, interest, fees, or charges when due under the terms of the Loan Documents or the Note; (b) Borrower fails to comply with any applicable term, condition, agreement or covenant of the Loan Documents; (c) any representation, warranty, or financial statement made in connection with the Loan Documents by Borrower or any Guarantor is incorrect, false or misleading in any material respect when made or furnished; (d) Borrower fails to comply with any terms or conditions of any agreement with Lender or any Wells Fargo Affiliate; (e) an event of default occurs with respect to any agreement with any person or entity other than Lender or a Wells Fargo Affiliate; (f) any of Borrower's properties or accounts is attached, garnished, or similarly levied; (g) Borrower is dissolved or liquidated, or any owner or director takes any action seeking dissolution or liquidation of Borrower; (h) Borrower dies or becomes incapacitated; (i) ownership changes with respect to an aggregate of twenty-five percent (25%) or more of the common stock, members' equity or other ownership interest in Borrower; (j) the withdrawal, resignation or expulsion of any one or more of the general partners in Borrower with an aggregate ownership interest in Borrower of twenty-five percent (25%) or more; (k) if Borrower is a trust, a revocation or termination of the trust or transfer of a substantial part of the assets of the trust occurs; (l) a petition is filed by or against Borrower under the Bankruptcy Code, or any other law relating to bankruptcy, insolvency, reorganization, or other relief for debtors; (m) a receiver, trustee, custodian, or liquidator of any assets or property of Borrower is appointed; (n) Borrower becomes insolvent, or makes a general assignment for the benefit of creditors, or is generally not paying debts as they become due; (o)



Lender in good faith believes any or all of the collateral securing the Loan is in danger of misuse, dissipation, commingling, loss, theft, damage, or destruction, or is otherwise in jeopardy or unsatisfactory in character or value; (p) any material adverse change in Borrower's financial condition occurs, or Lender in good faith believes the prospect of payment or performance under the Loan Documents is impaired; (q) any party to the Loan Agreement or any related document revokes or disputes the validity of any of its liabilities or obligations under the Loan Agreement or any guaranty applicable to the Loan or any other agreement with Lender or any Wells Fargo Affiliate; (r) if any of the preceding events or conditions occurs with respect to any Guarantor, Grantor, or general partner or manager of Borrower; or (s) Borrower or any Guarantor or any chairman, CEO, CFO, president, principal member, manager or general partner of Borrower or any Guarantor is adjudicated a felon. For purposes of this provision, "Wells Fargo Affiliate" means Wells Fargo & Company and any present or future subsidiary of Wells Fargo & Company and any present or future subsidiary of Wells Fargo & Company.

14. Community and Other Property. In addition to the rights of Lender under any applicable community property laws, any Obligor who is a Married Person and who has an interest in marital or community property under applicable law acknowledges and agrees that his/her obligation as a borrower, guarantor or grantor is incurred in the interest of and to benefit the marital community (or domestic partnership, if applicable), and expressly agrees that recourse may be had against his or her separate property and his or her rights in community property and community assets for all of his or her obligations to Lender, in addition to any other property that may be subject to rights of Lender. Each Obligor also agrees not to, without Lender's prior written consent, enter into any community property agreement which alters the separate or community property character of any of such party's property. For the purpose of this provision, "Married Person" means a person in a spousal relationship and shall include parties to a duly registered and/or legally recognized same-sex civil union, domestic partnership, and other terms, whether or not gender-specific in a spousal relationship, that denote spousal relationship, as those terms are used throughout the laws, codes and regulations of states and/or jurisdictions that recognize legally married same-sex couples, civil unions and/or domestic partnerships, and any references herein to a married person or marital status shall be deemed to also include the applicable corresponding term, or other reference relating to a party to a civil union or domestic partnership. To the extent this provision may conflict with another provision contained in the Guaranty, that other provision of the Guaranty shall control.

15. Effectiveness of Guaranties. Guarantors (i) hereby agree to the terms contained herein and confirm that the Guaranties remain in full force and effect taking into account the terms described in this Agreement; and (ii) hereby waive any and all claims against Lender, its successors and assigns, and its attorneys, for the execution of this Agreement, the consummation of the transactions contemplated herein, and/or with respect to the Loan Documents. Lender and the Obligors acknowledge and agree that this Agreement will be enforceable in accordance with its terms, notwithstanding that any Guarantor might decline to execute this Agreement.

16. Release of Claims and Covenant Not to Sue. As a material inducement to Lender to enter into this Agreement, Obligors, jointly and severally, do hereby: (a) remise, release, acquit, satisfy and forever discharge Lender, and all of the past, present and future parent corporations, subsidiary corporations, affiliated corporations, insurers, indemnitors, officers, directors, employees, agents, attorneys, representatives, participants, affiliates, subsidiaries,

parent companies, successors and assigns of Lender, from any and all claims, demands, liabilities, obligations, expenses, damages, judgments, executions and causes of action of any nature whatsoever relating to the Loan, whether at law or in equity, either now accrued or hereafter maturing and whether known or unknown, which any Obligor now has or hereafter can, shall or may have by reason of any matter, cause or thing, from the beginning of the world, including specifically, but without limitation, matters arising out of, in connection with or relating to (i) this Agreement, and (ii) the Loan Documents or the obligations evidenced thereby, including, the administration or funding thereof; and (b) covenant and agree never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against Lender or any of its past, present or future officers, directors, employees, agents, attorneys, representatives, participants, affiliates, subsidiaries, parent companies, successors or assigns, by reason of or in connection with any of the foregoing matters, claims or causes of action.

17. Security Interest and Right of Setoff. In addition to all liens upon and rights of setoff arising by law, Obligors pledge and grant to Lender as security for the obligations under the Note and the other Loan Documents (excluding any consumer obligations subject to the Federal Truth In Lending Act) a security interest and lien upon all monies, securities, securities accounts, brokerage accounts, deposit accounts and other property of Obligors now or hereafter in the possession of or on deposit with Lender or any Wells Fargo affiliate, whether held in a general or special account or for safekeeping or otherwise, excluding however all IRA and Keogh accounts. No security interest, lien or right of setoff will be deemed to have been waived by any act or conduct on the part of Lender, or by any neglect to exercise such right, or by any delay in so doing, and every right of setoff, lien and security interest will continue in full force and effect until specifically waived or released by Lender in writing.

18. Waiver of Automatic Stay; Supplemental Stay. Obligors acknowledge and agree that in the event of the filing of any petition for bankruptcy relief filed by or against any Obligor:

18.1 Stay Relief. Obligors consent to the entry of an order granting Lender relief from the automatic stay of §362 of the Bankruptcy Code and shall not assert or request any other party to assert that the automatic stay provided by §362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has under the Loan Documents or any other rights Lender has against any Obligor or against any property owned by any Obligor; and

18.2 No Actions. Obligors shall not seek or request any other party to seek a supplemental stay or any other relief, whether injunctive or otherwise, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has under the Loan Documents or any other rights Lender has against any Obligor or against any property which it owns.

19. Expenses. Obligors shall, upon demand by Lender, pay or reimburse Lender for all reasonable costs and expenses incurred by Lender in connection with any defaults under the Loan Documents, including, without limitation, all reasonable attorneys' fees, fees incurred by Lender in connection with appraisals of any property securing the indebtedness, and any environmental compliance assessments and remediation costs (if any) required by law or

regulation, and all recording fees. Notwithstanding any other provisions contained in the Loan Documents, if Lender retains an attorney in order to enforce, defend or protect Lender's rights and/or remedies under the Loan Documents, or if Lender retains an attorney in connection with any default of any stated or accelerated maturity under the Loan Documents in order to collect any debt due Lender, or if Lender retains an attorney in connection with any lawsuits, reorganization, bankruptcy or other proceeding involving the Loan Documents, or if any Obligor sues Lender, then in any such instances Obligors agree to pay Lender in addition to all principal and interest, including periodic payments, late charges, fees, and other amounts payable by Obligors or any of them all of Lender's reasonable costs and expenses including reasonable attorneys' fees incurred by Lender.

20. No Novation. The Obligors agree that the execution of this Agreement or any documents contemplated by this Agreement or the consummation of any transaction contemplated by this Agreement shall constitute a forbearance of the Loan and shall not be construed as a novation.

21. Reporting. In addition to all other reporting required under the existing Loan Documents, a copy of all notices delivered by any Obligor under the Loan Documents will be simultaneously delivered to the following addresses:

Wells Fargo Bank, N.A. ATTN: Steven Jasinski MAC N9305-147 SAJ 90 South Seventh Street Minneapolis, MN 55402	BBSG Winston-Salem Loan Ops DSR P.O. Box 2705 Winston-Salem, NC 27199-8182

22. WAIVER OF JURY TRIAL. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, LENDER AND EACH PARTY TO THIS AGREEMENT WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH DISPUTE AND ANY ACTION ON SUCH DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY LENDER AND EACH PARTY TO THIS AGREEMENT, AND LENDER AND EACH PARTY HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE AGREEMENT. LENDER AND EACH PARTY TO THIS AGREEMENT ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH OBLIGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

23. Consent to Sell Loan. The Obligors agree that: (a) Lender may sell or transfer all or part of the Loan to one or more purchasers, whether related or unrelated to Lender; (b) Lender

may provide to any purchaser, or potential purchaser, any information or knowledge Lender may have about the parties or about any other matter relating to this loan obligation, and the parties waive any rights to privacy it may have with respect to such matters; (c) the purchaser of the Loan will be considered its absolute owner and will have all the rights granted under the loan documents or agreements governing the sale of the Loan; (d) the purchaser of the Loan may enforce its interests irrespective of any claims or defenses that the parties may have against Lender; and (e) to waive all notices of sale of the Loan, as well as all notices of any repurchase, and all rights of offset or counterclaim that the Obligors have now or later against Lender or against any purchaser of the Loan.

24. Facsimile and Counterparts. This document may be signed in any number of separate copies, each of which shall be effective as an original, but all of which taken together shall constitute a single document. An electronic transmission or other facsimile of this document or any related document shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

25. Document Delivery and Electronic Transmission of Documents. Each party or person signing this Agreement (referred to in this paragraph as "you") agrees that Lender may, in its sole discretion, rely upon any document, report, financial statement, tax return, agreement or other communication ("Document") physically delivered to Lender by mail, hand delivery or delivery service which Lender in good faith believed was sent by you or any of your representatives or employees. Similarly, Lender may, in its sole discretion, rely upon any Document sent by email, facsimile or other electronic means to Lender which Lender in good faith believed was sent by you or any of your representatives or employees. Lender may treat the Document as genuine and authorized to the same extent as if it was an original document validly executed or authenticated as genuine by you. Lender may from time to time in its sole discretion reject any such Document and require a signed original, or require you to provide acceptable authentication of any such Document before accepting or relying on same. You understand and acknowledge that there is a risk that Documents sent by electronic means may be viewed or received by unauthorized persons, and you agree that by sending Documents by electronic means, you shall be deemed to have accepted this risk and the consequences of any such unauthorized disclosure.

26. Primary Deposit Account. Borrower agrees to maintain Borrower's primary deposit account with Lender or any banking affiliate of Lender and keep such account at all times in good standing. If Borrower does not maintain a separate deposit account for its operations, but rather its operations are primarily administered through a deposit account of Borrower's parent or affiliate, then Borrower agrees to cause such parent or affiliate to maintain its primary deposit account with Lender or any banking affiliate of Lender. As used herein, "primary deposit account" means the deposit account into which substantially all of the receipts from the operations of Borrower, or of Borrower's parent or affiliate if applicable, are deposited and from which substantially all of its disbursements for its operations are made.

27. No Waiver. Lender may, in its discretion, from time to time waive or forbear from enforcing any provision contained in this Agreement or the Loan Documents, and no such waiver or forbearance shall be deemed a waiver by Lender of any other right or remedy provided

herein or by law or be deemed a waiver of the right at any later time to enforce strictly all provisions herein contained and to exercise any and all remedies provided herein and by law.

28. Headings. The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof or thereof.

29. Admissions. Obligors expressly acknowledge and agree that the waivers, estoppels and releases contained in this Agreement shall not be construed as an admission of wrongdoing, liability or culpability on the part of Lender or an admission by Lender of the existence of any claims of Obligors against Lender.

30. Construction of Agreement. Each party acknowledges that it has participated in the negotiation of this Agreement, and no provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. Obligors acknowledge that at all times they have been represented by an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement, or have voluntarily decided not to be represented by an attorney, and have had the opportunity to review and analyze this Agreement for a sufficient period of time prior to the execution and delivery thereof. No representations or warranties have been made by or on behalf of Lender, or relied upon by any Obligor, pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. This Agreement and the Loan Documents embody the entire agreement and understanding among the parties to the subject matter hereof and supersede all prior proposals, negotiations, agreements and understanding relating to such subject matter.

31. Credit Bureau Inquiries. The parties hereto, and each individual signing below in a representative capacity, agree that Lender may obtain business and/or personal credit reports and tax returns on each of them in their individual capacities.

32. Appraisals. Obligors hereby authorize Lender, in its sole discretion, to obtain new or updated appraisals of the Property at Borrower's expense if and when desired by Lender, but not more often than annually. In addition, Lender may obtain new or updated appraisals at other times at Lender's expense. Such appraisals shall be for the use and benefit of Lender only, and shall not be relied upon by Obligors for any purpose. This authorization shall continue until the Mortgage is released.

33. Further Assurances. Each Obligor agrees to (i) do all things deemed necessary by Lender in order to fully document the loan evidenced by the Note and any related agreements, and will fully cooperate concerning the execution and delivery of security agreements, stock powers, instructions and/or other documents pertaining to any collateral intended to secure the Obligations, (ii) assist in the cure of any defects in the execution, delivery or substance of the Note and related agreements, and in the creation and perfection of any liens, security interests or other collateral rights securing the Note, and (iii) pay Lender immediately upon demand the full amount of all charges, costs and expenses (to include fees paid to third parties) expended or

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incurred by Lender to monitor Lender's interest in any real or personal property pledged as collateral for the Note, including without limitation all costs of appraisals.

34. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

35. No Modifications. The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted.

36. Invalid Provision to Affect No Others. If any provisions of this Agreement shall be held invalid, then such provision only shall be deemed invalid, and the remainder of this Agreement shall remain operative and in full force and effect.

37. Obligor Identification Representation and Warranty. If any Obligor is an individual, such Obligor will maintain the current and valid status of such Obligor's driver's license or other state issued identification, and will not change such Obligor's name as reflected on such driver's license or other state issued identification without giving Lender thirty (30) days advance specific written notice of such change by delivering such notice to Lender at the address provided herein.

38. Execution of Documents. Consultation with Counsel. Each Obligor acknowledges and agrees that he/she/it has had an opportunity to review and consider the terms and provisions of this Agreement and each related Loan Document, to consult with counsel of his/her/its choice, if desired, and to suggest changes to the structure and terms of the agreements. Each Obligor hereto warrants and agrees that his/her/its execution of this Agreement and any related Loan Documents is made voluntarily and with full knowledge of the significance and effect of such agreements.

39. Compliance with All Laws. The Obligors shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property.

[Signatures commence on following page]

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

Further, the undersigned acknowledges receipt of written notification before this transaction that signing of a waiver of appraisal rights would be required during this transaction.

PENNY CREEK ASSOCIATES, L.L.C., a South
Carolina limited liability company

By: _____
Name: MICHAEL J. APPLANT
Title: MANAGER, ESR

By: Eugene J. Zurlo (SEAL)
Eugene J. Zurlo, as co-trustee pursuant to trust
agreement dated August 10, 1998

By: Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo, as co-trustee pursuant to
trust agreement dated August 10, 1998

By: Eugene J. Zurlo (SEAL)
Eugene J. Zurlo, as co-trustee pursuant to
Declaration of Trust dated May 22, 1998

By: Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo, as co-trustee pursuant to
Declaration of Trust dated May 22, 1998

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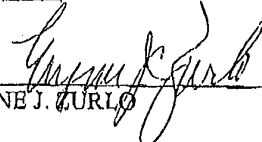
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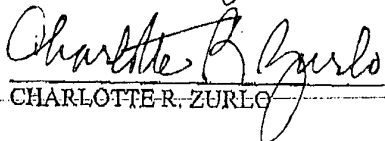
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

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

Further, the undersigned acknowledges receipt of written notification before this transaction that signing of a waiver of appraisal rights would be required during this transaction.

OBLIGORS:


EUGENE J. ZURLO (SEAL)


CHARLOTTE R. ZURLO (SEAL)


MICHEL F. LAPLANTE (SEAL)

[Lender signature appears on following page]

LENDER:

WELLS FARGO BANK, N.A., a national banking association, successor-by-merger to Wachovia Bank, National Association, successor-by-merger to First Union National Bank (SEAL)

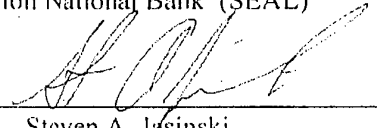
By: 
Name: Steven A. Jasinski
Title: Vice President

EXHIBIT A
FORM OF STIPULATION

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE CIRCUIT COURT

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

Case No. 2014-CP-10-4946

Plaintiff,

vs.

**STIPULATION TO ENTRY OF ORDER
AND JUDGMENT OF FORECLOSURE
AND SALE**

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

Defendants.

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

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✓

Owners' Association, Inc.; Preserve at Fenwick Hall Property Owners Association, Inc. a/k/a The Preserve at Fenwick Hall Property Owners' Association, Inc.; and The Grove At Fenwick Plantation Condominium Association, Inc. (hereinafter, the "Defendants"), hereby state, stipulate and agree as follows:

1. Defendants expressly admit all allegations contained in Plaintiff's Complaint and withdraw all defenses asserted in their respective answers and further stipulate that none of them have any defense, claim or setoff to the Plaintiff's Complaint, whether procedural or substantive in nature.

2. The Defendants stipulate and agree that the amount due and owing on the subject loan as of May 30, 2016, exclusive of costs and attorneys' fees, is \$6,249,998.60, which represents: (1) unpaid principal in the amount of \$6,249,998.60; and (2) accrued and unpaid interest in the amount of \$0.00.

3. The Defendants expressly consent to the Plaintiff's foreclosure of its Note, Mortgage and Guaranty as set forth in the Complaint and other relief sought therein and further consent to the entry of an Order and Judgment of Foreclosure and Sale by the Master in Equity reflecting the aforesaid amounts, together with additional interest, attorneys' fees and costs.

4. This Stipulation shall only be filed by Plaintiff after July 31, 2017 or earlier in accordance with the terms set forth in that certain Forbearance Agreement dated May 4, 2016 between Plaintiff and Defendants, Penny Creek Associates, L.L.C. a/k/a Penny Creek Associates, LLC; The Grove at Fenwick Plantation, LLC; Michel F. LaPlante a/k/a Michel Laplante a/k/a Mitch Laplante; Charlotte R. Zurlo; Eugene J. Zurlo; Charlotte R. Zurlo and Eugene J. Zurlo, as Co-Trustees of The Nicklaus Lane Realty Trust No. 1 under Declaration of

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Trust dated May 22, 1998, and The Zurlo Investment Trust No. 1 pursuant to trust agreement dated August 10, 1998.

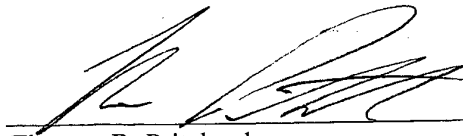
WHEREFORE, Defendants join in the request for relief sought in the Complaint.

[SIGNATURES ON FOLLOWING PAGES]

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June 15, 2016

Charleston, South Carolina



Thomas B. Pritchard
Pritchard Law Group, LLC
129 Broad Street, P.O. Box 630
Charleston, SC 29402
(843) 722-3300
(843) 722-3379 (facsimile)

Attorney for Defendants
Penny Creek Associates, L.L.C. a/k/a Penny Creek
Associates, LLC and The Grove at Fenwick Plantation,
LLC

_____, 2016

Charleston, South Carolina

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Attorney for Defendants
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LaPlante

_____, 2016

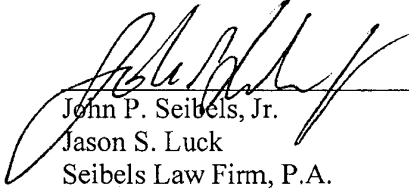
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LLC

6/17, 2016

Charleston, South Carolina



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Charleston, South Carolina

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and Eugene J. Zurlo, as Co-Trustees of The Nicklaus
Lane Realty Trust No. 1 under Declaration of Trust dated
May 22, 1998, and The Zurlo Investment Trust No. 1
pursuant to trust agreement dated August 10, 1998

D:Y
5

_____, 2016
Charleston, South Carolina

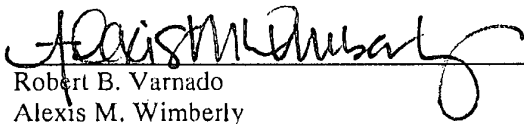
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Charleston, South Carolina

Attorney for Defendants
Charlotte R. Zurlo; Eugene J. Zurlo; Charlotte R. Zurlo
and Eugene J. Zurlo, as Co-Trustees of The Nicklaus
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July 20, 2016
Charleston, South Carolina

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

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1000209

Maybank 2754 Llc
PLAINTIFF(S)

Eugene J Zurlo et al
DEFENDANT(S)

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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff Maybank 2754 LIC's Motion/Temporary Injunction is Denied. Defendant Beech Company's Motion to Dismiss and Refer to the Master, Along with all outstanding motions to the refer to the master, are granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/29/2020 .

Mary Roe
John Doe

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Charleston Common Pleas

Case Caption: Maybank 2754 Llc VS Eugene J Zurlo , defendant, et al

Case Number: 2020CP1000209

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-06-29 10:03:37 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

MAYBANK 2754, LLC,

Plaintiff,

vs.

EUGENE J. ZURLO, Individually and as
Co-Trustee of the Eugene J. Zurlo Living
Trust Dated December 11, 1997; 1776,
LLC; BEACH FENWICK, LLC; THE BEACH
COMPANY; SEAMON, WHITESIDE &
ASSOCIATES, INC.; PENNY CREEK
ASSOCIATES, LLC; JOHN DOE AND
MARY ROE,

Defendant.

Case No. 2020-CP-10-00209

[PROPOSED] ORDER

BRIEF PROCEDURAL HISTORY

This matter came before the Court on June 16 and June 25, 2020 pursuant to certain motions filed by Defendants and a Motion filed on behalf of Plaintiff in this action, including:

- 1) February 17, 2020 – Defendants Beach Fenwick, LLC and The Beach Co.’s (“Beach Entities”) Motion to Dismiss;
- 2) February 17, 2020 – Beach Entities’ Motion to Refer to the Master-In-Equity;
- 3) February 20, 2020 – Defendant Seamon Whiteside Associates, Inc.’s (“Seamon Whiteside”) Motion to Dismiss Civil Conspiracy;
- 4) February 21, 2020 – Defendant 1776, LLC’s (“1776”) Motion to Dismiss;
- 5) February 21, 2020 – 1776’s Motion to Refer to the Master-In-Equity;

- 6) March 10, 2020 – Defendants Eugene J. Zurlo, individually and as co-trustee of Eugene J. Zurlo Living Trust’s (“Zurlo Parties”) Motion to Refer to the Master-In-Equity;
- 7) March 11, 2020 – Plaintiff Maybank 2754’s (“Maybank”) Motion for Temporary Injunction.

Counsel for all parties appeared, via video conference application “Zoom,” and the Court heard oral argument on behalf of all parties.

On June 30, 2020, this Court issued its Form 4 Order, with the following Statement of Judgment:

Plaintiff Maybank 2754 LLC’s Motion/Temporary Injunction is denied. Defendant Beech Company’s Motion to Dismiss and Refer to the Master, along with all outstanding motions to refer to the master, are granted.

The Plaintiff filed a Rule 59 Motion to Reconsider on July 1. That Motion is denied for the reasons set forth below.

PLAINTIFF’S MOTION FOR TEMPORARY INJUNCTION

Plaintiff’s Motion for Temporary Injunction, filed March 11, 2020, seeks to enjoin Beach Fenwick from developing the Subject Property until after a trial on the merits and a judgment is rendered in this matter. In consideration of Plaintiff’s Motion, the Court considered the Beach Entities’ Memorandum of Law in Opposition to Plaintiff’s Motion for Temporary Injunction, filed on June 15, 2020, Plaintiff’s Notice of Filing Order Exhibits in Support of Its Motion for Temporary Injunction, filed June 23, 2020, the testimony of Michel F. Laplante, on behalf of Plaintiff, and the oral argument of Plaintiff’s counsel, and applicable South Carolina authority, based upon which this Court makes the following findings, and denies Plaintiff’s Motion for Temporary Injunction.

A court may issue a temporary injunction “only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.” *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). “An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Id.*

In consideration of the briefing filed with this Court on behalf of Plaintiff and on behalf of the Beach Entities relative to Plaintiff’s Motion for Temporary Injunction, oral argument of counsel, testimony presented on behalf of Plaintiff, as well as the law of the State of South Carolina, this Court finds and so rules that Plaintiff has failed to demonstrate that it will suffer irreparable harm in the absence of the injunction sought. Plaintiff has failed to establish it will suffer irreparable harm if the injunction is not granted. Further, Plaintiff has failed to establish it will likely succeed on the merits of this litigation and likewise failed to establish it has no adequate remedy at law. Additionally, Plaintiff seeks damages in a Conspiracy Cause of Action in its Complaint, so Plaintiff has a remedy at law.

**DEFENDANTS’ MOTIONS FOR ORDER OF REFERENCE
TO THE MASTER-IN-EQUITY**

All Defendants, except Seamon, Whiteside & Associates, Inc., filed motions for an order of reference of this litigation to the Master-In-Equity, as set forth above. Plaintiff filed its Objection and Response in Opposition to the Defendants' Motions for Order of Reference to the Master-In-Equity on April 6, 2020, following which Plaintiff filed its Amended Objection and Response in Opposition to the Defendants' Motions for Order of Reference to the Master-In-Equity on April 9, 2020. Subsequently, the Zurlo Parties filed their Reply to Plaintiff's Amended Objection and Response in Opposition to Motion for Order of Reference to the Master-In-Equity on April 22, 2020, following which Plaintiff filed its Second Amended Objection and Response in Opposition to the Defendants' Motions for Order of Reference to the Master-In-Equity on May 15, 2020. The Zurlo Parties filed their Brief in Support of Motion to Refer to Master on June 11, 2020. The Beach Entities filed their Memorandum of Law in Support of Their Motion for Order of Reference to Master-In-Equity on June 19, 2020.

The Court heard oral argument on Defendants' Motions to Refer to the Master-In-Equity on June 16, with additional argument on June 25, 2020. Based upon the parties' submissions to this Court, as well as oral argument of counsel and the testimony of Mitch Laplante, on behalf of Plaintiff, this Court finds as follows:

The Master-In-Equity may hear any matter referred to him or her by the Circuit Court. See S.C. Code Ann. § 14-11-10 et seq. and Rule 53 of the South Carolina Rules of Civil Procedure. "Pursuant to Rule 53, SCRCP, a master has no power or authority except that which is given to him by the order of reference." *Bunkum v. Manor Props.*, 321 S.C. 95, 98, 467 S.E.2d 758, 760 (Ct. App. 1996). "When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner

as the circuit court, unless the order of reference specifies or limits his powers.” *Smith Cos. of Greenville, Inc. v. Hayes*, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993). “To rewrite the terms of sale after the sale would be patently inequitable.” *Ex parte Johnson*, 371 S.C. 614, 618, 640 S.E.2d 887, 889 (Ct. App. 2006). “[I]t is the long established policy in South Carolina that ‘[t]he courts should be particularly jealous of the integrity of judicial sales.’” *Id.* (citing *In re Wilson*, 141 S.C. 60, 63, 139 S.E. 171, 172 (1927)).

THE BEACH ENTITIES’ MOTIONS TO DISMISS

The portion of the Court’s Order of June 30, 2020, indicating the Beach Entities’ Motion to Dismiss is granted is a scrivener’s error; that Motion was not argued, it was reserved for referral to the Master-in-Equity and not considered by this Court, so that Motion will be transferred to the Master-In-Equity.

CONCLUSION AND ORDER

The Plaintiff’s Motion for a Temporary Restraining Order is Denied, the Plaintiff’s Motion to Reconsider is denied, and the entire case and all the pending Motions are referred to the Master-in-Equity, pursuant to and consistent with South Carolina Rules of Civil Procedure, Rule 53. All pre-trial matters, including the parties’ motions, shall be and are hereby referred to the Master-In-Equity, with finality, with appeal directly to the South Carolina Court of Appeals or the South Carolina Supreme Court.

AND IT IS SO ORDERED.

Charleston, S.C.

July _____, 2020

Bentley Price
Presiding Judge-Ninth Judicial Circuit



Charleston Common Pleas

Case Caption: Maybank 2754 Llc VS Eugene J Zurlo , defendant, et al

Case Number: 2020CP1000209

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-07-13 11:52:27 page 6 of 6

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1000209

Maybank 2754 Llc
PLAINTIFF(S)

Eugene J Zurlo et al
DEFENDANT(S)

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), 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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 was referred to this court by Order entered June 30, 2020 came before the court on August 17, 2020 for a status conference. Plaintiff objects to the court's jurisdiction as it has filed a Notice of Appeal of the Order of Reference on the basis of its Mode of Trial for which Plaintiff demands trial by jury. The Defendants contend that this court has jurisdiction based upon the Order of Reference under Rule 53(b) as well as this court's prior Order in Wells Fargo v. Penny Creek, L.L.C. et al. Case No. 2014CP1004946 in which the court ordered that this court retains jurisdiction of all post foreclosure matters in that action. The property was sold at auction thereafter. This court concludes that the matter should be returned to the circuit court for disposition under Rule 38 and 53(b) and that this ruling would moot Plaintiff's appeal.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/17/2020 .

Mary Roe
John Doe

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Maybank 2754 Llc VS Eugene J Zurlo , defendant, et al
Case Number: 2020CP1000209
Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2020-08-17 11:23:04 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1000209

Maybank 2754 Llc
PLAINTIFF(S)

Eugene J Zurlo et al
DEFENDANT(S)

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.
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☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
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- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Defendant Eugene Zurlo's Motion for Summary Judgment is GRANTED. Defendant The Beach Company's Motion for Summary Judgment is GRANTED. Plaintiff's Motion to Amend Complaint is DENIED. Defendant Seamon Whiteside and Associates Inc.'s Motion to Supplement/Motion to Dismiss is GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/05/2020 .

Mary Roe
John Doe

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Maybank 2754 Llc VS Eugene J Zurlo , defendant, et al

Case Number: 2020CP1000209

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-10-05 10:05:35 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1000209

Maybank 2754 Llc
PLAINTIFF(S)

John Doe et al
DEFENDANT(S)

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.
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☐ 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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 Order is a supplement to the Form 4 filed on October 7, 2020.

Defendant 1776, LLC's Motion for Summary Judgment is GRANTED. Defendants The Beach Company and Beach Fenwick's Motion for Summary Judgment is GRANTED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/08/2020 .

Mary Roe
John Doe

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Maybank 2754 Llc VS Eugene J Zurlo , defendant, et al

Case Number: 2020CP1000209

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-10-08 11:50:57 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MAYBANK 2754, LLC,

Plaintiff,

v.

**EUGENE J. ZURLO, Individually and as
Co-Trustee of the Eugene J. Zurlo Living
Trust Dated December 11, 1997; 1776, LLC;
BEACH FENWICK, LLC; THE BEACH
COMPANY; SEAMON, WHITESIDE &
ASSOCIATES, INC.; PENNY CREEK
ASSOCIATES, LLC; JOHN DOE AND
MARY ROE,**

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020-CP-10-00209

**ORDER GRANTING ALL DEFENDANTS
SUMMARY JUDGMENT**

This case was filed by the Plaintiff on January 13, 2020. The five Defendants all filed Responsive Pleadings in a timely fashion to include Motions to Dismiss, Answers and Motions for Summary Judgment

On June 30, 2020, I referred the entire case to the Master in Equity, who by Order Dated 17, 2020, referred the entire case back to me.

These pending dispositive Motions were heard by me at a Hearing on September 24, 2020.

- Beach Motion to Dismiss filed on February 17, 2020;
- Seamon Whiteside Motion to Dismiss filed on February 20, 2020;
- Zurlo Parties Motion for Summary Judgment filed on August 14, 2020;
- Beach Motion for Summary Judgment filed on August 19, 2020;
- Seamon Whiteside Supplemental Motion to Dismiss/Motion for Summary Judgment filed on August 26, 2020; and

- 1776 Motion for Summary Judgment filed on September 3, 2020.

Plaintiff filed a Motion to Amend its Original Complaint, which was filed after all the pending Motions, except for 1776's Motion for Summary Judgment, which merely incorporated by reference the legal arguments made by all the other Defendants in their filings. Seamon Whiteside also filed its Motion for Summary Judgment after Plaintiff filed its Motion to Amend its Complaint.

The Zurlo Parties requested that the Court hear the Motions to Dismiss and for Summary Judgment based on the original Complaint filed on January 13, 2020. That makes perfect sense to hear the Motions in the order they were filed, and if the Court decides these should be denied, the Court may allow the Amendment to the original Complaint and refiling of Motions to Dismiss and Motions for Summary Judgment.

The Zurlo Parties also requested that the Court rule on the pending Motions in order of filing before the Motion to Amend, which ruling will not affect the currently pending appeal.

The Court takes judicial notice of the fact that the most significant addition to the proposed Amended Complaint is the addition of the City of Charleston as a named Defendant, but no relief is sought from the City. The Plaintiff just wants the City to be bound by whatever final judgment is rendered in this case.

1. FINDINGS OF FACT:

The factual history involving the Plaintiff's claim to a future easement is not in dispute. In summary, based on the Plaintiff's Complaint, the Responsive Pleadings of all Defendants, and the Exhibits attached to the various Motions, in 1999 Mitch Laplante ("Laplante") and the Eugene J. Zurlo Living Trust Dated December 11, 1997 ("Zurlo Trust"), created Penny Creek Associates, LLC ("PCA") to purchase and develop approximately 60 acres of property along Maybank

Highway on Johns Island, South Carolina. Laplante was a 50% voting member, he and his family were 50% members of PCA, and the Zurlo Trust was the other 50% member.

In December of 2013, Zurlo initiated an action, individually and derivatively, on behalf of PCA against Laplante and others seeking several remedies to include an accounting, appointment of a new manager, and judicial dissolution of PCA. That matter ultimately was resolved, with the terms of the settlement placed on the record before Judge Markley Dennis on February 29, 2016. PCA was to wind up its business, sell its real estate, and ultimately terminate its LLC status.

In 2014, Wells Fargo commenced a foreclosure action against PCA and its members based on two mortgages that it had placed on the property in 2000 and 2006. (See, Case No.: 2014-CP-10-04946, filed with the Charleston County Clerk of Court and Order of Foreclosure and Judgment filed in that case on June 23, 2017.) Based upon various allegations and matters set forth in that action, which was referred to the Master-in-Equity for disposition, the Master-in-Equity issued its Order of Judgment of Foreclosure and Sale which was filed June 23, 2017. The question of the 30-foot future easement never was raised in the PCA litigation nor the Foreclosure litigation.

The alleged future springing easement never was recorded, nor was it ever subordinated to the two Wells Fargo mortgages, which were recorded well before the date of the Resolution Plaintiff relies on to establish its easement in October 2013.

The Foreclosure Order notes that “all persons whosoever claiming under the defendants be forever barred and foreclosed of all right, title, interest, and equity of redemption in the Subject Property” and specifically retained jurisdiction “to do all necessary acts incident to this foreclosure and to hear any post-judgment matters.”

Pursuant to this Order, certain properties of PCA were sold in August 2017 to 1776, LLC. In December of 2019, Beach Fenwick, LLC purchased a certain 22-acre tract of the referenced

property from 1776, LLC. Laplante, individually was a named party to the foreclosure action, and at the relevant time, was the managing partner of PCA. Laplante's knowledge and conduct is, therefore, imputed to Maybank. See *In re Infinity Bus. Grp., Inc.*, 497 B.R. 794, 813 (Bankr. D.S.C. 2013); S.C. Code § 33-44-120.

Maybank 2754 is a limited liability company organized pursuant to the laws of the State of South Carolina. Laplante is its managing member. Maybank relies upon a document entitled Resolution of the Sole Shareholder of Penny Creek Associates, LLC, dated October 7, 2013, for its claim of a future easement across the former PCA property purchased by Beach Fenwick, LLC from 1776, LLC ("Subject Property"). The referenced resolution provides, inter alia:

...the Company [PCA] has agreed to grant transfer, sell and convey to Purchasers [Laplante, John H. Laplante, Peter F. Laplante, Marianne Laplante-Scarlata], their successors and assigns, an access easement for pedestrian and vehicular ingress, egress and access to, from and over that portion of the lands of Seller [PCA] known as "Residual Tract B-2-2"...the location and condition of which shall be mutually agreed upon at the completion of that certain roadway known as Pitch Fork Road ("Pitch Fork Road"). Upon the completion of Pitch Fork Road, the Parties hereto shall execute and record an Easement Agreement to memorialize the 30' Private R/W. ("Future Easement")

Plaintiff avers in its Complaint that Pitch Fork Road has not been completed and admits the "Future Easement" never was recorded.

It is the claim of that future easement, and matters attendant thereto, that give rise to this action.

2. SUMMARY JUDGMENT STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as

a matter of law.”¹ With respect to an issue upon which the non-moving party bears the burden of proof, the moving party may discharge his initial responsibility by pointing out to the Court the absence of evidence to support the non-moving party’s case.² After the moving party has met his initial burden, Rule 56(e) requires the opposing party to “do more than simply show that there is some metaphysical doubt as to the material facts.”³ In response to a properly supported motion for summary judgment, the opposing party “must come forward with specific facts showing there is a genuine issue of material fact.”⁴ In 2015, a unanimous South Carolina Supreme Court explained (in an opinion reversing the appellate court’s reversal of summary judgment and reinstating the trial court’s summary judgment ruling):

““In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, L.L.C. v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (emphasis added) (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). Even though courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) (citing *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct.App.2006)).⁵

Courts are reluctant to dismiss cases at the Summary Judgment stage, even if there is no legal or factual basis for the case to proceed. However, reviewing just the Plaintiff’s Complaint and Responses to the Zurlo Parties’ Request to Admit in this case, there is no genuine issue as to the very material fact that the Wells Fargo foreclosure action voided any recorded or unrecorded

¹ Rule 56, *SCRCP*.

² *Baughman v. American Tel & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

³ *Id.*

⁴ *Id.*; see also Rule 56(e), *SCRCP*.

⁵ *Grimsley v. S.C. Law Enft Div.*, 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015).

easement not subordinated to the Wells Fargo mortgages, and Plaintiff admits there is no written, recorded easement so all the parties are entitled to summary judgment as a matter of law.

With no facts to support a claim, and no law on Plaintiff's side, then the court should dismiss the case to avoid prolonged futile time and expenses to all the parties. See D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC, 422 S.C. 144, 150, 810 S.E.2d 41, 45 (Ct. App. 2018), Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) (citing Evans v. Stewart, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct.App.2006)).

"Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper." Evans v. Stewart, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006)

3. THE COURT HAS THE JURISDICTION AND DISCRETION TO HEAR THE DISPOSITIVE MOTIONS NOW

The Court has the discretion, jurisdiction and ability to address all dispositive Motions filed to date before addressing the Plaintiff's Motion to Amend its Complaint for the following reasons:

- A. The Appeal does not stay matters not affected by the appeal and the lower Court retains jurisdiction over matters not affected by the appeal. SCACR 225 and SCACR 241 (a).

See also Judge Scarborough's bench rulings: Transcript of 8/10 Hearing, Pages 13-14. "Filing an Appeal does not stay the Court's jurisdiction to hear Motions to Dismiss and Motions for Summary Judgment." TRANSCRIPT attached as Exhibit A to Zurlo parties supplemental Memorandum of Law

- B. All parties except PCA have filed Motions to Dismiss or Motions for Summary Judgment. The issue of the existence of an easement or not is legal -also possibly a jury- matter. The court agrees with Judge Scarborough who says the threshold

issue of whether there is legally enough evidence for an easement to exist is a matter of law threshold question. See: Transcript of 8/10 Hearing, Page 14.

- C. The court also takes judicial notice that the Plaintiff alleges that his former lawyer and law firm failed to legally prefect the easement by putting it in written form and failing to record the easement in the ROD office for Charleston County so as to provide actual and or constructive notice to the public and these Defendants of the alleged 30 foot private right of way easement. See Complaint: Maybank 2754, LLC v Buist, Byars & Taylor, LLC; Custis M. Byars (2020-CP-10-02180) and Affidavit of Lisa Brown averring the agreement to create an easement should have been recorded in October 2013 "...to put all future buyers and lenders on notice that Tract -B-2-2 is subject to an easement." See: Complaint and Affidavit attached as EXHIBIT B to the Zurlo parties Supplemental Memo.
- D. The threshold legal issue is whether there is a legally enforceable easement. This legal issue will have to be heard by the Court before trial - so waiting for the Court of Appeals to decide to send the case back to Circuit Court for a jury trial only will prolong this question.

4. CONCLUSIONS OF LAW

The Court finds as a matter of law there is no legal right to an easement based on the pleadings, the Motions for Summary Judgment, the affidavits submitted and the able arguments of counsel at the September 24, 2020 hearing, for the following reason:

- A. Assuming for the sake of argument the October 2013 Resolution created some form of an easement, it never was subordinated to the Wells Fargo Mortgage and was therefore foreclosed upon in 2017, rendering the easement void and of no effect.

See S.C. Code Ann. § 30-7-20 (“The recordation of any contract in the nature of a subordination, waiver or extension of any lien on real property, created by law or by agreement of the parties, shall be upon the record of the recorded mortgage or other written instrument...”). Even if there was an easement, it did not survive the recent foreclosure of first-in-time, prior-recorded, bank-owned mortgages arising in 2000 and 2006 that never were subordinated by the bank to the later-in-time, unrecorded purported easement, alleged by the Plaintiff to have arisen in 2013 by way of a Resolution referencing the grant of a future easement. See S.C. Code Ann. § 30-7-20 (“The recordation of any contract in the nature of a subordination, waiver or extension of any lien on real property, created by law or by agreement of the parties, shall be upon the record of the recorded mortgage or other written instrument...”) (emphasis added).

These facts are all matters of record over which there can be no factual or legal dispute. See Complaint at ¶14; Wells Fargo v. Penny Creek Associates, et al., Civil Action No. 2014-CP-10-4946 (Charleston County, Filed May 26, 2014); Mortgage recorded in the Register of Deeds in Charleston County on August 8, 2000, in Book P-532, at Page 613; Mortgage recorded in the Register of Deeds in Charleston County on April 7, 2006, in Book G-579, at Page 249.

Further, the Plaintiff already had judicially admitted that its alleged easement was extinguished in the bank’s foreclosure action.

While A above is reason enough to grant Summary Judgment to all Defendants, ending the case, the Court notes but does not rely on the following Additional Sustaining Grounds for granting Summary Judgment to all defendants.

- B. The October 7, 2013, Resolution on which Plaintiff relies (The Resolution) never was recorded, nor was there any recording of the intention to place a future easement on the property PCA owned which is now owned by Beach Fenwick, LLC. This prevented actual or constructive Notice of the future easement's alleged existence.

If the instrument under which rights are claimed is not recorded within a specific time, a subsequent creditor, or purchaser for value without actual notice, will not be affected. *Epps v. McCallum Realty Co.* 139 S.C. 481, 138 S.E. 297, 302 (1927);

- C. The Resolution fails to meet the essential elements required in order to create a property right.

The description of the alleged future springing easement lacks any identifiable location or condition, the duration of the easement or its scope. "A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001) (citing 28A C.J.S. Easements §57, at 235 (1996));

- D. Assuming for the sake of argument the Resolution created an easement, the easement is one in gross and therefore is not transferrable to the Plaintiff.

An easement is either appurtenant or in gross. *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965). An appurtenant easement inheres in the land,

concerns the premises, has one terminus on the land of the party claiming it, *and* is essentially necessary to the enjoyment thereof. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997); *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578, (2009) (citations omitted) (emphasis added). It also passes with the dominant estate upon conveyance. *Id.* (citing *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975)). Unless an easement has all the elements necessary to establish an appurtenant easement, it will be characterized as an easement in gross. *Id.* (citing 12 S.C. Juris. *Easements* § 3(c)). “An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer.” *Id.* 381 S.C. at 201-02, 672 S.E.2d at 583. Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted. *Hamilton v. CCM, Inc.*, 274 S.C. 152, 263 S.E.2d 378 (1980);

- E. At best, the Resolution creates “an agreement to agree”, which does not amount to a contract in South Carolina.

An “agreement to agree” does not amount to a contract under South Carolina law. *BCD LLC v. BMW Mfg. Co., LLC*, 360 F. App'x 428, 435 (4th Cir. 2010) (citing *Trident Constr. Co., Inc. v. Austin Co.*, 272 F.Supp.2d 566, 575 (D.S.C.2003)). “The parties merely agreed to enter into negotiations to reach an agreement, but subsequently failed to reach an actual agreement on essential terms pertaining to land allocations, divisions of parcels, and restrictive covenants for the property.” *Id.* This is precisely what happened here, and Plaintiff admits as much. See June 25, 2020 Tr., 47:20 – 48:1 (Exhibit 1). The unrecorded Resolution, or more

precisely, the unrecorded contract referenced therein but not provided until after the filing of this action, purportedly is a contractual right for the Seller (PCA) and Buyer (Laplante Family) to agree in the future to create an easement. In South Carolina, this agreement to agree does not amount to a contract and cannot detrimentally impact future purchases of the property because the parties “subsequently failed to reach an actual agreement on essential terms pertaining to land allocations ... and restrictive covenants for the property.” *BCD LLC*, at 435; *see also Burbach Broadcasting Co. of Delaware v. Elkins Radio Corp.*, 278 F.3d 401, 407 (4th Cir.2002) ;

F. The Court takes judicial Notice that in a separate legal malpractice action that the Plaintiff filed against its own former attorney, the Plaintiff alleged:

21. BBT and Byars were careless and negligent failing to record the Resolution, or failing to prepare and record a document, in the office of the Register of Deeds (formerly, Register of Mesne Conveyance) of Charleston County, South Carolina so as to provide constructive knowledge to the public of the existence of the thirty (30) foot private right of way easement.

22. As a direct and proximate result of the Defendants’ breach of the above-described duty owed to Maybank, Maybank has suffered, and continues to suffer, damage.

23. Additionally, Maybank has suffered special damages in that its adjacent lot has lost the value of a (30) foot private right of way easement across the Property.

Maybank 2754, LLC v. Buist, Byars & Taylor, LLC et al., Civil Action No.

2020-CP 1001811 (Charleston County, Filed April 13, 2020).

The affidavit that the Plaintiff filed in support of its legal malpractice claim stated:

“...the agreement should have been recorded at the time of closing to put all future buyers and lenders on notice that [the property] is subject to an easement.” Id. (Affidavit of Lisa Brown, Filed May 14, 2020).

The Plaintiff cannot take a contrary position in this litigation, rendering its lengthy affidavit and numerous exhibits irrelevant. See *Elrod v. All*, 243 S.C. 425, 134 S.E.2d 410, 416 (1964) (“[A]llegations, statements or admissions contained in a pleading are conclusive as against the pleader.”); *Quinn v. Sharon Corp.*, 540 S.E.2d 474, 480, 343 S.C. 411, 423 (Ct. App. 2000) (“[T]he fact a litigant is using the court as a forum for his inconsistent statements injures the judicial system; therefore, such abuse must be avoided under all circumstances.”); see also *Schott Motorcycle Supply, Inc. v. Am. Honda Motor Co., Inc.*, 976 F.2d 58, 61 (1st Cir. 1992) (“plaintiff should not be allowed to contradict its express factual assertion in an attempt to avoid summary judgment”).

To conclude, it is well established that “courts should be particularly jealous of the integrity of judicial sales” and should not “rewrite the terms of sale after the sale.” *Ex Parte Johnson*, 640 S.E.2d 887 (Ct. App. 2006) (quoting *In re Wilson*, 141 S.C. 60, 63, 139 S.E. 171, 172 (1927));

- G. Mitch Laplante, as the manager of PCA and controlling member, now manager, of Maybank 2754, is estopped from having Maybank 2754 raise the issue of an

easement because he failed to ever raise its existence in neither the PCA Judicial Dissolution lawsuit of the Wells Fargo foreclosure action.

Wells Fargo commenced a foreclosure action in 2014 against PCA and its members, pursuant to which it foreclosed its lien upon the Original Tract. (*See*, Case No.: 2014-CP-10-04946, filed with the Charleston County Clerk of Court). The Master-in-Equity's Foreclosure Order dated June 23, 2017, foreclosed and barred all future claims related to the property or any interest in the property in question.

Laplante was a named defendant in the foreclosure action; was Manager of PCA; was the controlling member of Maybank; was represented by counsel; filed cross claims in the foreclosure action; and was present at the June 19, 2017, hearing when testimony and exhibits concerning the foreclosure were presented to the Court. The June 23, 2017, Foreclosure Order made no exception or mention for an easement and there was no easement noted on any plat. Indeed, the Master-In-Equity further entered a Consent Order amending the property description of the Original Tract because the parties identified a mistake in the legal description. (Exhibit 2). Laplante, as the manager of PCA and controlling member of Maybank and a self-touted real estate developer, failed to mention the existence of the "easement" and now, years later, attempts to relitigate the issue. "Collateral estoppel will bar the relitigation of an issue which was actually litigated and necessary to the outcome of a prior lawsuit." *McNaughton-McKay Elec. Co. of N.C. v. Andrich*, 324 S.C. 275, 279, 482 S.E.2d 564, 566 (Ct. App. 1997).⁶ Maybank's "absence from the

⁶ "Laches is an equitable doctrine defined as 'neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.'" *Strickland v. Strickland*, 375 S.C. 76, 83, 650 S.E.2d 465, 469

previous ... lawsuit does not insulate it from issue preclusion.” *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 555, 684 S.E.2d 779, 782 (Ct. App. 2009).

Here, Laplante’s knowledge is imputed to Plaintiff. S.C. Code Ann. § 33-44-102. Maybank, through its manager, Laplante, had a “full and fair opportunity to previously litigate the issue” in the foreclosure action. *See Carolina Renewal, Inc.*, at 555, 684 S.E.2d at 782. Maybank was not a party to the foreclosure action because it did not possess a real property interest in the Original Tract, including the Subject Property. The record of the foreclosure action reveals that Laplante actively participated in that proceeding, making no mention in any of his pleadings or at the foreclosure hearing of any alleged property interest of Maybank.

This issue of a description of property rights and existing easements on the Original Tract, including the Subject Property, was actually litigated in the foreclosure; the Master-In-Equity fully determined the property rights to be sold, leaving no question what the buyer was acquiring. The breadth of the property rights was further solidified upon the revision of the original Order to amend the property description. Lastly, estopping Plaintiff is necessary to support the prior judgment/foreclosure order because the sale of the subject property could be revisited if the rights acquired/sold through the foreclosure subsequently changed. Moreover, “it is a well-established principle in South Carolina that estoppel by silence arises when one party observes another dealing with his property in a

(2007) (citation omitted). Plaintiff’s unreasonable delay in asserting its rights has resulted and continues to result in prejudice to the Beach Entities and other defendants.

manner inconsistent with his rights and makes no objection while the other party changes his position based on the party's silence.” *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 358, 628 S.E.2d 902, 911 (Ct. App. 2006) (citing *Seabrook Island Property Owners Association v. Pelzer*, 292 S.C. 343, 356 S.E.2d 411 (Ct.App.1987)). Maybank’s silence, through its controlling member and current manager, Laplante, constitutes estoppel by silence. Laplante maintained silence through the Dissolution Action as to any purported right of Maybank to an easement, and likewise maintained silence through the Foreclosure Action, thus constituting estoppel by silence, preventing Maybank from making claims at this point, in this action, as to an easement.

The June 23, 2017, Foreclosure Order is now the law of the case because it involves the same parties and the same property. By bringing this action, Maybank seeks to have a circuit court judge collaterally attack the Master’s Foreclosure Order. It is a cardinal rule in South Carolina that one Circuit Court should not overrule another, especially when the other circuit court judge has retained jurisdiction. *See Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156 (2003) (holding that a family court judge could not overrule the prior unappealed order of another family court judge because it had become law of the case); *In re Morrison*, 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1996) (noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal); *Cooper Tire & Rubber Co. v. Perry et al.*, 261 S.C. 538, 201 S.E.2d 245 (1973) (holding that where a ruling on a demurrer to complaint is not appealed from, it becomes the law of the case); *Watkins v. Hodge*, 232 S.C. 245, 247–48, 101 S.E.2d 657, 658 (1958) (refusing to

consider jurisdictional matter of underlying case where issue had been ruled upon and not challenged on appeal). *Judy v. Martin*, 381 S.C. 455, 458–59, 674 S.E.2d 151, 153 (2009).

ORDER

No genuine issue of material fact exists to prolong this litigation; therefore, it is Ordered that the Defendants’ Motions for Summary Judgment are hereby granted, and this matter is dismissed in its entirety.

AND IT IS SO ORDERED.

Bentley Price
Presiding Judge-Ninth Judicial Circuit

Charleston, S.C.

October _____, 2020



Charleston Common Pleas

Case Caption: Maybank 2754 Llc VS Eugene J Zurlo , defendant, et al

Case Number: 2020CP1000209

Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-10-09 11:43:22 page 17 of 17

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1000209

Maybank 2754 Llc
PLAINTIFF(S)

Eugene J Zurlo et al
DEFENDANT(S)

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), 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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Alter or Amend Order entered October 7, 2020 is Denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/05/2020 .

Mary Roe
John Doe

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Maybank 2754 Llc VS Eugene J Zurlo , defendant, et al

Case Number: 2020CP1000209

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-11-05 15:13:19 page 3 of 3

The South Carolina Court of Appeals

Maybank 2754, LLC, Appellant,

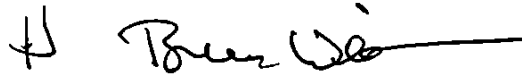
v.

Eugene J. Zurlo, Individually and as Co-Trustee of the
Eugene J. Zurlo Living Trust Dated December 11, 1997;
1776, LLC; Beach Fenwick, LLC; The Beach Company;
Seamon, Whiteside & Associates, Inc.; Penny Creek
Associates, LLC; John Doe and Mary Roe, Respondents.

Appellate Case No. 2020-001030

ORDER

The motion to dismiss is denied. *See* Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with *matters not affected by the appeal.*" (emphasis added)).



FOR THE COURT

Columbia, South Carolina

cc:

Jason M. Tarokh, Esquire
Cheryl D. Shoun, Esquire
Alexandra Harrington Austin, Esquire
John Patrick Turner Norris, Esquire
Kent Taylor Stair, Esquire
Jordan N. Teich, Esquire

FILED
Nov 12 2020

Jason S. Smith, Esquire
Brian A Hellman, Esquire
J. Rutledge Young, Jr., Esquire
Blake Abernethy McKie, Esquire
Thomas Bacot Pritchard, Esquire
Scarlet Bell Moore, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

EUGENE J. ZURLO as Trustee of the EUGENE J. ZURLO LIVING TRUST, dated December 11, 1997, individually and derivatively on behalf of PENNY CREEK ASSOCIATES, LLC, and THE GROVE AT FENWICK PLANTATION, LLC,

Plaintiff(s)

vs.

PENNY CREEK ASSOCIATES, LLC, THE GROVE AT FENWICK PLANTATION, LLC, and MICHEL LAPLANTE,

Defendant(s)

CIVIL ACTION COVERSHEET

2013-CP - 10- 7280

Submitted By: J. Rutledge Young, Jr.
Address: Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401

SC Bar #: 5737
Telephone #: 843-720-2044
Fax #: 843-720-2047
Other:
E-mail: jry@duffyandyoung.com

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

DOCKETING INFORMATION (Check all that apply)

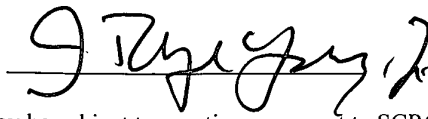
*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440)* ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:



Date:

Dec-16, 2013

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10- 7280

EUGENE J. ZURLO as Trustee of the
EUGENE J. ZURLO LIVING TRUST,
dated December 11, 1997, individually and
derivatively on behalf of PENNY CREEK
ASSOCIATES, LLC, and THE GROVE AT
FENWICK PLANTATION, LLC

Plaintiff,

v.

PENNY CREEK ASSOCIATES, LLC, THE
GROVE AT FENWICK PLANTATION,
LLC, and MICHEL LAPLANTE,

Defendants.

WRIT OF SUMMONS

(JURY TRIAL DEMANDED)

FILED
2013 DEC 16 PM 4:17
JULIE J. ARMSTRONG
CLERK OF COURT

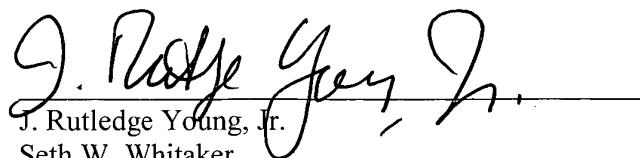
TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you herewith, and to serve a copy of your answer to said Complaint on the subscribers at their offices, DUFFY & YOUNG, LLC, 96 Broad Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default to be rendered against you for the relief demanded in the Complaint.

D:Y
/

[signature on following page]

This th16 day of December, 2013 at Charleston, South Carolina.



J. Rutledge Young, Jr.

Seth W. Whitaker

DUFFY & YOUNG, LLC

96 Broad Street

Charleston, South Carolina 29401

(843) 720-2044 (telephone)

(843) 720-2047 (facsimile)

Attorneys for Plaintiff

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-7280

EUGENE J. ZURLO as Trustee of the
EUGENE J. ZURLO LIVING TRUST,
dated December 11, 1997, individually and
derivatively on behalf of PENNY CREEK
ASSOCIATES, LLC, and THE GROVE AT
FENWICK PLANTATION, LLC

Plaintiff,

v.

PENNY CREEK ASSOCIATES, LLC, THE
GROVE AT FENWICK PLANTATION,
LLC, and MICHEL LAPLANTE,

Defendants.

VERIFIED COMPLAINT
[JURY TRIAL REQUESTED]

2013 DEC 16 PM 4:17
JULIE K. HASTRONG
CLERK OF COURT
BY

COMES NOW Plaintiff, Eugene J. Zurlo, individually and as Trustee of the Eugene J. Zurlo Living Trust dated December 11, 1997, being first duly sworn, by and through counsel complains and says as to the Defendants:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Eugene J. Zurlo, together with his wife Charlotte Zurlo, is the Trustee of the Eugene J. Zurlo Living Trust dated December 11, 1997 (the "Trust"). Eugene Zurlo and his wife Charlotte are citizens and residents of Charleston County, South Carolina. The Trust is formed under the laws of the State of South Carolina and administered in Charleston County, South Carolina.

2. Defendant Penny Creek Associates, LLC ("Penny Creek") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston, South Carolina.

3. Defendant The Grove at Fenwick Plantation, LLC ("Grove") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston, South Carolina.

4. Defendant Michel "Mitch" Laplante is a citizen and resident of Charleston County, South Carolina.

5. At all times relevant to this action, Plaintiff Trust and Defendant Laplante have been the only Class A members of Penny Creek.

6. At all times relevant to this action, Plaintiff Trust and Defendant Laplante have been the only members of Grove.

7. At all times relevant to this action, Defendant Laplante has been the sole manager of Penny Creek and Grove.

8. Prior to commencing this action, Plaintiff Trust, through Eugene Zurlo and its attorneys, have conferred with Defendant Laplante and his attorneys, both orally and in writing, over a period of several months. The parties met, together with their attorneys, to discuss these matters on November 20, 2013, at which time Plaintiff Trust formally presented its demands for certain company actions on Defendant Laplante.

9. On November 22, 2013, Plaintiff Trust sent a letter to Defendant Laplante outlining the breaches of Penny Creek's and Grove's operating agreements, fiduciary duties, and South Carolina law pleaded herein, demanding his resignation as Manager of Penny Creek and Grove and his consent to the dissolution and liquidation of Penny Creek and Grove. A true and complete copy of such letter is attached hereto as Exhibit A. Laplante has refused to tender his resignation and his consent.

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10. Plaintiff Trust fairly and adequately represents the interests of all members similarly situated in enforcing the rights of Penny Creek and Grove.

11. Plaintiff Trust is therefore entitled to pursue this action as a derivative action pursuant to Rule 23(b) (1) of the South Carolina Rules of Civil Procedure.

12. This Court has subject-matter jurisdiction of this action.

13. Venue is proper in Charleston County under S.C. Code § 15-7-30.

FACTS

14. Plaintiff Trust and Defendant Laplante are parties to the Operating Agreements of Penny Creek and Grove. Attached hereto as Exhibit B is a true and complete copy of the Third Amended and Restated Operating Agreement of Penny Creek, dated October 15, 2005 (the "Penny Creek OA"). The Penny Creek OA was in effect at all times relevant to this action.

15. The Penny Creek OA requires Laplante, as Manager, to prepare and present progress reports, including financial statements, status reports on benchmarks, cash flow analyses, and monthly comparisons of sales goals and actual sales.

16. The Penny Creek OA requires a 100% vote or written consent of the Class A members of Penny Creek for the Manager to engage in certain types of self-interested transactions, including without limitation the sale or transfer of Penny Creek property for less than fair market value to the Manager or member of his family and the payment of the personal debts of the Manager or members of his family from Penny Creek funds.

17. Without the required vote or consent of the Class A Members, including Plaintiff Trust, Laplante sold or transferred lots owned by Penny Creek to his daughter, Marianne Laplante Scarlata, and his son, John Laplante, for \$5.00 each. As a result of these transactions,

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Plaintiffs suffered damages in an amount to be determined a trial but believed to be approximately \$300,000.

18. Without the required vote or consent of the Class A Members, including Plaintiff Trust, Laplante paid homeowners' dues to the Preserve at Fenwick Hall on behalf of his daughter, Marianne Laplante Scarlata, and his son, John Laplante, from Penny Creek funds. As a result of these transactions, Plaintiffs suffered damages in an amount to be determined at trial.

19. After Penny Creek was formed, Defendant Laplante and his son, John Laplante, purchased a 12.25 acre parcel from Faison Capital Development, LLC (the "Faison Parcel").

20. The opportunity to purchase the Faison Parcel was a company opportunity of Penny Creek, which was financially able to effect such purchase; was in the line of Penny Creek's business; and was of practical advantage to Penny Creek. As a result of this transaction, Plaintiffs suffered damages in the amount of all benefits which Defendant Laplante and John Laplante received from the Faison Parcel transaction.

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21. Laplante has repeatedly acted as Manager in a manner inconsistent with his fiduciary duties to Zurlo and to Penny Creek, including without limitation the following:

- (a) failing to prepare and present the progress reports required by the Penny Creek QA;
- (b) acting in an unprofessional, crass, abusive, bullying, and belittling manner to Penny Creek's consultants, real estate brokers, prospective investors, homeowners, and to Eugene Zurlo;
- (c) acting without authority from the Class A members of Penny Creek to fire or change the authority of Penny Creek's attorneys, accountants, and other advisors;

- (d) refusing unreasonably to take action to market the property of Penny Creek, including without limitation refusing to consent to the re-listing of such property with a reputable commercial real estate broker; and
- (e) acting or failing to act in such other ways as shall be proven at trial.

22. Without the knowledge or consent of Plaintiff Trust, Defendant Laplante transferred funds in the amount of \$347,500 constituting a distribution to Plaintiff Trust from Cypress Point, LLC, another entity of which Laplante is manager, directly to Penny Creek in the name of Plaintiff Trust.

23. As stated above, Plaintiff Trust and Defendant Laplante are parties to the Operating Agreements of Penny Creek and Grove. Attached hereto as Exhibit C is a true and complete copy of the Operating Agreement of Grove dated June 3, 2004 (the "Grove OA"). The Grove OA was in effect at all times relevant to this action.

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24. The Grove OA requires Laplante, as Manager, to prepare and present progress reports, including financial statements, status reports on benchmarks, cash flow analyses, and monthly comparisons of sales goals and actual sales.

25. The Grove OA requires a 100% vote or written consent of the Class A members of Penny Creek for the Manager to engage in certain types of self-interested transactions.

26. Upon information and belief, Defendant Laplante has opened a bank account for Grove at BB&T without the consent of the members of Grove, in violation of its operating agreement, for purposes unknown.

FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty—Laplante)

27. Plaintiff incorporates by reference the allegations in paragraphs 1 through 26 as if fully set forth herein.

28. As manager of Penny Creek, Laplante owes fiduciary duties of loyalty and care to Penny Creek and to the Trust as provided by S.C. Code § 33-44-409.

29. As manager of Grove, Laplante owes fiduciary duties of loyalty and care to Grove and to the Trust as provided by S.C. Code § 33-44-409.

30. Laplante's acts and omissions as pleaded herein constitute breaches of their fiduciary duties to Penny Creek, Grove, and the Trust.

31. Laplante's acts and omissions as pleaded herein constitute intentional misconduct or, in the alternative, grossly negligent or reckless conduct.

32. As a direct and proximate result of Laplante's violations of his fiduciary duties and of Penny Creek's, Grove's and the Trust's rights as pleaded herein, Penny Creek, Grove, and the Trust have suffered actual damages as pleaded herein in an amount to be proven at trial.

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33. Laplante's willful, wanton, and reckless acts and omissions as pleaded herein entitle Penny Creek, Grove, and the Trust to punitive damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Conversion—Laplante)

34. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 33 as if fully set forth herein.

35. Defendant Laplante's transfer of funds constituting a distribution to Plaintiff Trust from Cypress Point, LLC directly to Penny Creek in the name of Plaintiff Trust constitutes conversion of property in which Plaintiffs have an ownership interest to Laplante's use without the Trust's permission.

36. As a direct and proximate result of Laplante's conversion of the Trust's personal property as pleaded herein, the Trust suffered actual damages in an amount to be determined at trial.

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

THIRD CAUSE OF ACTION

(Accounting and Repayment of loans and advances—Penny Creek and Grove)

38. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 37 as if fully set forth herein.

39. As a member of Penny Creek and Grove, Plaintiff Trust is entitled to demand an accounting as to its companies' business in an action brought to enforce its rights under their operating agreements, under the South Carolina Limited Liability Company Act, S.C. Code § 33-44-101 et seq., or under any other rights that protect the Trust's interests.

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40. Plaintiff Trust and Plaintiff individually has advanced funds and loaned monies to Penny Creek and Grove in the approximate amount of Three Million twenty three thousand six hundred sixty three (\$3,023,663.00) dollars, which due to the mismanagement by Laplante and Laplante's breach of his fiduciary and other legal duties to Plaintiff may be lost and not recovered.

41. Plaintiff Trust furthermore has a right to an accounting upon the dissolution and winding up of Penny Creek and Grove, as prayed for in this Complaint.

42. Plaintiff Trust hereby demands of Laplante, as Manager of Penny Creek and Grove, an accounting of Penny Creek's and of Grove's business and the repayment of the Three

Million twenty three thousand six hundred sixty three (\$3,023,663.00) dollars advanced to Penny Creek and Grove, with interest calculated form the date of each advance.

FOURTH CAUSE OF ACTION
(Judicial Dissolution and Winding Up—Penny Creek)

43. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 42 as if fully set forth herein.

44. The Trust has standing as a member of Penny Creek to bring suit for its judicial dissolution pursuant to S.C. Code § 33-44-801(4).

45. The acts and omissions of Laplante as pleaded herein

(a) unreasonably frustrate the economic purpose of Penny Creek;

(b) make it not reasonably practicable to carry on the business of Penny Creek in accordance with its Articles of Organization and Operating Agreement; and

(c) are illegal, oppressive, fraudulent, and unfairly prejudicial to the other members of Penny Creek.

46. The Trust is therefore entitled to a judicial decree dissolving Penny Creek.

47. For good cause shown by the acts and omissions pleaded herein and to be shown at the trial or hearing of this matter, the Trust respectfully prays this Court to order judicial supervision of the winding up of Penny Creek pursuant to S.C. Code § 33-44-803(a).

FIFTH CAUSE OF ACTION
(Judicial Dissolution and Winding Up—Grove)

48. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 47 as if fully set forth herein.

49. The Trust has standing as a member of Grove to bring suit for its judicial dissolution pursuant to S.C. Code § 33-44-801(4).

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50. The acts and omissions of Laplante as pleaded herein
- (a) unreasonably frustrate the economic purpose of Grove;
 - (b) make it not reasonably practicable to carry on the business of Grove in accordance with its Articles of Organization and Operating Agreement; and
 - (c) are illegal, oppressive, fraudulent, and unfairly prejudicial to the other members of Grove.

51. The Trust is therefore entitled to a judicial decree dissolving Grove.

52. For good cause shown by the acts and omissions pleaded herein and to be shown at the trial or hearing of this matter, the Trust respectfully prays this Court to order judicial supervision of the winding up of Grove pursuant to S.C. Code § 33-44-803(a).

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SIXTH CAUSE OF ACTION
(Unjust Enrichment—Laplante)

53. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 52 as if fully set forth herein.

54. Defendant Laplante's acts and omissions as pleaded herein have conferred on him a non-gratuitous benefit at the expense of Plaintiff without compensation.

55. It would be inequitable to permit Laplante to retain the benefits pleaded herein without compensation to Plaintiff.

56. As a direct and proximate result of Laplante's conversion of the Trust's personal property as pleaded herein, the Trust suffered actual damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
(Appointment of Receiver—Penny Creek and Grove)

57. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 56 as if fully set forth herein.

58. S.C. Code § 15-65-10 allows the Court to appoint a receiver before judgment when a party establishes a right to property which is the subject of the action and the property's rents and profits are in danger of being lost or materially injured or impaired, or when a corporation is in imminent danger of becoming insolvent.

59. Under S.C. Code § 15-65-20, at least four (4) days notice must be given to the party whose property is being sought to be put in the hands of a receiver.

60. Plaintiff alleges that the property of both Penny Creek and Grove is in imminent danger of foreclosure, extensions on debt payments having been obtained only until January 16, 2014, and moreover, Plaintiff believes Defendant Laplante will continue to disregard his fiduciary and other legal duties to Penny Creek, Grove and Plaintiff.

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61. Plaintiff will move this Court for the Appointment of a Receiver to act as Manager of both Penny Creek and Grove no later than December 31, 2014, with the filing and service of this Complaint giving Defendant Laplante ample notice thereof.

PRAYER FOR RELIEF

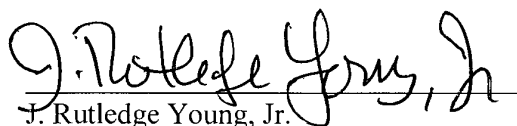
WHEREFORE, Plaintiffs respectfully pray this Court to:

- i. Enter judgment for actual damages for Plaintiffs as pleaded herein;
- ii. Enter judgment for punitive damages under applicable law;
- iii. Enter an order judicially dissolving Penny Creek and Grove and providing for the judicial supervision of their winding-up;
- iv. Tax the costs of this action against Defendants;

- v. Award the Plaintiff its attorneys fees if Plaintiff prevails ;
- vi. Award interest and pre judgment interest on Plaintiffs loans and advances to the two LLC's and
- vii. Provide such other relief in this action as may be just and proper.

This 16th day of December, 2013 at Charleston, South Carolina.

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J. Rutledge Young, Jr.
Seth W. Whitaker
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (telephone)
(843) 720-2047 (facsimile)
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

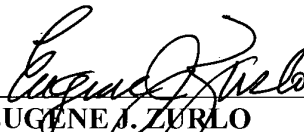
COUNTY OF CHARLESTON

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VERIFICATION

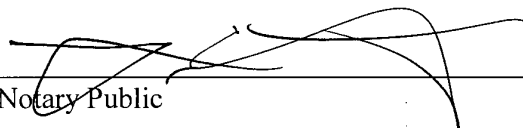
I, Eugene J. Zurlo, individually and as Trustee of the Eugene J. Zurlo Living Trust dated December 11, 1997, the Plaintiff in this action, hereby verify that I know the facts stated in this Verified Complaint to be true of my own knowledge, except as to those matters stated on information and belief, as to which I verify that I believe them to be true.

This 16th day of December, 2013.

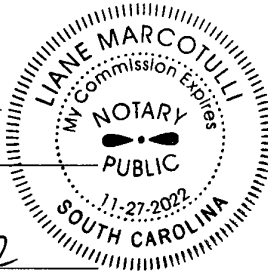

EUGENE J. ZURLO

SWORN AND SUBSCRIBED before me,

This 16th day of December, 2013.


Notary Public

My Commission Expires: 11/27/2022



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EXHIBIT A

Eugene J. Zurlo
4 Nicklaus Lane
Kiawah Island, SC 29455



Mitch Laplante
151 Treeduck Court
Kiawah Island, SC 29455

EUGENE J. ZURLO
Zurlo Investment Trust
4 Nicklaus Lane
Kiawah Island, SC 29455

November 21, 2013

Mitch Laplante
151 Treeduck Court
Kiawah Island, SC 29455

Re: Manager Mitch Laplante's Violations of the Penny Creek Associates, LLC
Operating Agreements, Breaching Fiduciary Duties, and Violating South
Carolina Law

Dear Mitch:

I have reviewed all of the Penny Creek Associates, LLC operating agreements, especially the October 15, 2005 Third Amended and Restated Operating Agreement. Based on recent information I have received, and based upon personal knowledge, it is my opinion that you, as Manager and Class A Penny Creek Associates, LLC Member, have violated the Agreement and your legal and fiduciary obligations as Manager, by:

1. Failing as Manager to prepare and present annual progress reports, which were required to include a financial statement for the month and year-to-date and status report on benchmarks, a cash flow analysis and a monthly comparison of sales goals and actual sales;

2. Without 100% vote or written consent of Class A members, selling or transferring a lot to your daughter Marianne and your son John, and not at fair market value — each for \$5.00, depriving Penny Creek Associates of about \$400,000 in benefits;

3. Without 100% vote or written consent of Class A members, paying Preserve at Fenwick Hall dues for your children John Laplante and Marianne (Laplante) Scarlata from Penny Creek Associates ("Penny Creek") assets;

4. As the Manager of Penny Creek, frequently acting unprofessionally (e.g. crass, abusive, bullying, belittling) to me, Penny Creek's consultants, real estate brokers, prospective investors, and to The Preserve POA members;

5. I understand that you, and your son, John, and daughter-in-law, Lauren, acting together with you, and at your discretion, have mismanaged The Preserve POA, and have engaged in suspect financial transactions which are being investigated by POA members;

6. Without my knowledge, consent or approval, transferring funds in the amount of \$347,500 in my name from Cypress Point to Penny Creek;

7. Without 100% vote or written consent of Class A members, attempting to fire or changing the authority of Penny Creek's attorneys, CPA's, and other advisers;

8. Purchasing with your son John 12.25 acres of former lands of Penny Creek from Faison when that property was a Penny Creek opportunity and should have been purchased by Penny Creek Associates, LLC as a corporate opportunity asset;

9. Refusing to take reasonable actions as Manager to market the property of Penny Creek, including, without limitation, refusing to consent to the re-listing of such property with a reputable commercial real estate broker;

10. Frustrating the economic purpose of the company unreasonably;

11. As a Class A member and manager, engaging in conduct relating to Penny Creek's business that makes it no longer reasonably practicable to carry on the Penny Creek's business with you;

12. Making it not reasonably practicable to carry on the Penny Creek's business in accordance with the Articles of Organization and the Operating Agreement;

13. As the Manager and Member in control of Penny Creek, acting (and I foresee that you will continue to act in the future) in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial to other Members of Penny Creek Associates, especially as to the Gene J. Zurlo Living Trust as the other Class A Member.

This list is not all inclusive and based on information we have been given by others, there may be other than civil violations that you need to be concerned about.

In closing, your actions have made it impossible for the purposes of the Company to be advanced, and you continue to act in an illegal and improper fashion.

Since you have violated the Penny Creek Associates LLC Agreements and South Carolina law, and have frustrated the economic purposes of the Company and acted, and you continue to act, in an illegal, oppressive and unfairly prejudicial manner toward the Zurlo Trust Class A Members, I demand that you resign your position as Managing Member immediately so that Penny Creek Associates can be dissolved and its assets liquidated.

Enclosed please find documents in which you resign as manager of Penny Creek Associates as well as The Grove at Fenwick LLC's and consent to the dissolution and liquidation of those two LLC's.

If I do not receive all four of these documents properly signed by you no later than November 27, 2013, Charlotte and I will have no alternative but to take appropriate action to protect our interests.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eugene J. Zurlo".

Eugene J. Zurlo, Co-Trustee

Eugene J. Zurlo Living Trust

Class A Member, Penny Creek Associates LLC

RESIGNATION

I, Michel F. Laplante, hereby resign as the Manager and Designated Agent of The Grove at Fenwick Plantation, LLC effective the ____ day of November, 2013.

Michel F. Laplante

Date: November ____, 2013

**WRITTEN CONSENT IN LIEU OF A SPECIAL MEETING
OF THE MEMBER AND MANAGER OF
THE GROVE AT FENWICK PLANTATION, LLC**

Pursuant to Section 3.6 of THE GROVE AT FENWICK PLANTATION, LLC Operating Agreement, the Member and Manager of THE GROVE AT FENWICK PLANTATION, LLC (the "Company") adopted by unanimous Written Consent the following resolutions:

RESOLVED, that Michel F. Laplante's resignation as Manager and Designated Agent of the Company effective November ____, 2013 is hereby accepted;

FURTHER RESOLVED, that pursuant to Section 5.7 of the Company's Operating Agreement, Eugene J. Zurlo shall be the Company's Manager and Designated Agent;

FURTHER RESOLVED, that the Company's Articles of Organization and Third Amended and Restated Operating Agreement be amended to reflect the resignation of Michel F. Laplante as Manager and Designated Agent, and Eugene J. Zurlo as the replacement Manager and Designated Agent;

FURTHER RESOLVED, that pursuant to Section 7.1A of the Company's Third Amended and Restated Operating Agreement, the Company shall dissolve and wind up its affairs;

FURTHER RESOLVED, that Eugene J. Zurlo, as Manager, act as Liquidator of the Company;

FURTHER RESOLVED, that in conjunction with the dissolution of the Company, the Company shall sell all of its assets and the assets of the Grove at Fenwick Plantation, LLC;

FUTHER RESOLVED, that the Company discharge from Company funds all of the debts, liabilities and obligations of the Company and distribute the remaining funds, if any, to the Member in accordance with the Member's positive capital account balance pursuant to Section 10.2(D) of the Third Amended and Restated Operating Agreement, and to execute and deliver in the name of and on behalf of the Company all documents necessary or appropriate to dissolve the Company and wind up its affairs;

FURTHER RESOLVED, that the Manager, Eugene J. Zurlo, as Liquidator, is authorized in the name of and on behalf of the Company to sell all of the Company's assets, pay all outstanding Company debts, including the costs associated with dissolution and winding up the affairs of the Company, and if funds are available, making distributions to the Member in accordance with the Member's Capital account balance.

The Member by signing this Written Consent, waives notice of the time, place, and purpose of a meeting of the Member and Manager, and agrees to the transaction of the business of this meeting by unanimous Written Consent of the Member and Manager. This Consent may be executed in two or more counterparts and when executed by each Member and Manager shall become effective.

APPROVED:

MEMBER:

Penny Creek Associates, L.L.C.

By: _____
Michel F. Laplante
Its: Manager

Dated: November ____, 2013

MANAGER:

Michel F. Laplante

Dated: November ____, 2013

RESIGNATION

I, Michel F. Laplante, hereby resign as the Manager and Designated Agent of Penny Creek Associates, LLC effective the ____ day of November, 2013.

Michel F. Laplante

Date: November ____, 2013

**WRITTEN CONSENT IN LIEU OF A SPECIAL MEETING
OF THE CLASS A MEMBERS AND MANAGER
OF PENNY CREEK ASSOCIATES, L.L.C.**

Pursuant to Section 3.19 of PENNY CREEK ASSOCIATES, L.L.C. Operating Agreement, the Class A Members and Manager of PENNY CREEK ASSOCIATES, L.L.C. (the "Company") adopted by unanimous Written Consent the following resolutions:

RESOLVED, that Michel F. Laplante's resignation as Manager and Designated Agent of the Company effective November ____, 2013 is hereby accepted;

FURTHER RESOLVED, that pursuant to Section 6.7 of the Company's Operating Agreement, Eugene J. Zurlo shall be the Company's Manager and Designated Agent;

FURTHER RESOLVED, that the Company's Articles of Organization and Third Amended and Restated Operating Agreement be amended to reflect the resignation of Michel F. Laplante as Manager and Designated Agent, and Eugene J. Zurlo as the replacement Manager and Designated Agent;

FURTHER RESOLVED, that pursuant to Section 10.1A of the Company's Third Amended and Restated Operating Agreement, the Company shall dissolve and wind up its affairs;

FURTHER RESOLVED, that Eugene J. Zurlo, as Manager, act as Liquidator of the Company;

FURTHER RESOLVED, that in conjunction with the dissolution of the Company, the Company shall sell all of its assets and the assets of the Grove at Fenwick Plantation, LLC;

FUTHER RESOLVED, that the Company discharge from Company funds all of the debts, liabilities and obligations of the Company and distribute the remaining funds, if any, to the Members in accordance with the Member's positive capital account balances pursuant to Section 10.2(D) of the Third Amended and Restated Operating Agreement, and to execute and deliver in the name of and on behalf of the Company all documents necessary or appropriate to dissolve the Company and wind up its affairs;

FURTHER RESOLVED, that the Manager, Eugene J. Zurlo, as Liquidator, is authorized in the name of and on behalf of the Company to sell all of the Company's assets, pay all outstanding Company debts, including the costs associated with dissolution and winding up the affairs of the Company, and if funds are available, making distributions to the Members in accordance with the Members' Capital account balances.

The Class A Members by signing this Written Consent, waive notice of the time, place, and purpose of a meeting of the Class A Members and Manager, and agree to the transaction of the business of this meeting by unanimous Written Consent of the Class A Members and Manager. This Consent may be executed in two or more counterparts and when executed by each Class A Member and Manager shall become effective.

APPROVED:

CLASS A MEMBERS:

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

By: Eugene J. Zurlo
Eugene J. Zurlo
Its: Co-Trustee

Dated: November 20, 2013

By: Charlotte R. Zurlo
Charlotte R. Zurlo
Its: Co-Trustee

Dated: November 20, 2013

Michel F. Laplante

Dated: November ____, 2013

MANAGER:

Michel F. Laplante

Dated: November ____, 2013

EXHIBIT B

**THIRD AMENDED AND RESTATED
OPERATING AGREEMENT
OF
PENNY CREEK ASSOCIATES, L.L.C.**

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THIRD AMENDED AND RESTATED

OPERATING AGREEMENT

OF

PENNY CREEK ASSOCIATES, L.L.C.

This Third Amended and Restated Operating Agreement of PENNY CREEK ASSOCIATES, L.L.C. (the "Company") dated as of October 15, 2005 amends and restates the Operating Agreement of the Company dated as of June 1, 2005 which amended and restated the Operating Agreement of the Company dated July _____, 2001 which amended and restated the Operating Agreement of the Company dated March 23, 1999, and is (a) adopted by the Managers (as defined below) and (b) executed and agreed to, for good and valuable consideration, by the Members (as defined below).

**ARTICLE I
DEFINITIONS**

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

A. "Act" means the Uniform Limited Liability Company Act of 1996 and any successor statute as amended from time to time.

B. "Adjusted Invested Capital" means as of any time, all capital contributions of a Member, less all amounts previously distributed to that Member by the Company as a return of Adjusted Invested Capital, provided that Adjusted Invested Capital shall not be reduced below zero.

C. "Articles" means the Articles of Organization filed with the Secretary of State of South Carolina by which PENNY CREEK ASSOCIATES, L.L.C. was organized as a South Carolina Limited Liability Company under and pursuant to the Act.

D. "Bankrupt Member" means a Member who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state, or foreign law governing insolvency and has the same meaning as the term "Debtor in Bankruptcy" defined in § 33-44-101(4) of the Act.

E. "Business Day" means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of South Carolina are closed.

F. "Capital Contribution" means any contribution by a Member to the capital of the Company.

G. "Cash Flow" means for any fiscal year, all cash receipts of the Company (other than capital contributions and proceeds from borrowing) plus excess reserves less all cash expenditures and such reasonable reserves as the Manager shall determine from time to time.

H. "Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

I. "Company" means PENNY CREEK ASSOCIATES, L.L.C., a South Carolina Limited Liability Company.

J. "Company Liability" means any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

K. "Company Minimum Gain" means an amount determined by first computing for each Company Nonrecourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any taxable year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding taxable year with the Minimum Gain on the last day of the current taxable year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with § 704 of the Code and the Regulations issued thereunder, as the same may be issued and interpreted from time to time. A Member's share of Company Minimum Gain at the end of any taxable year equals the sum of Nonrecourse Deductions allocated to that Member (and to that Member's predecessors in interest) up to that time and the distributions made to that Member (and to that Member's predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable to an increase in Company Minimum Gain minus the sum of that Member's (and that Member's predecessors' in interest) aggregate share of the net decreases in Company Minimum Gain plus their aggregate share of decreases resulting from revaluations of Company Property subject to one or more Company Nonrecourse Liabilities.

L. "Company Nonrecourse Liability" means a Company Liability to the extent that no Member or related person bears the economic risk of loss (as defined in § 1.752-2 of the Regulations) with respect to the liability.

M. "Cumulative Preferred Return" means the cumulative non-compounded annual return equal to the product of a Member's Adjusted Invested Capital multiplied by 5% per annum.

N. "Default Interest Rate" means a rate per annum equal to the lesser of (a) five percent (5.0%) plus a varying rate per annum that is equal to the *Wall Street Journal* prime rate as quoted in the money rates section of the *Wall Street Journal* which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

O. "Delinquent Member" means a Member who does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement.

P. "Distributional Interest" means all of a Member's interest in distributions by the Company.

Q. "Dispose," "Disposing," or "Disposition" means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, by operation of law), or the acts thereof.

R. "General Interest Rate" means a rate per annum equal to the lesser of (a) the *Wall Street Journal* prime rate as quoted in the money rates section of the *Wall Street Journal* which is also the base rate on corporate loans at large United States Money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

S. "Lending Member" means those Members, whether one or more, who advance the portion of the Delinquent Member's Capital Contribution that is in default.

T. "Majority in Interest" means the majority vote of both these Class A Members owning a majority of the capital and those Class A Members owning a majority of the Net Profits and Net Losses of the Company.

U. "Manager or Managers" means Michel Laplante or any Person hereafter elected as a Manager of the Company as provided in this Operating Agreement, but does not include any Person who has ceased to be a Manager of the Company.

V. "Member" means any Person executing this Operating Agreement, or hereafter admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member in the Company. There shall be two classes of Members: Class "A" Members and Class "B" Members. Class "B" Members shall have all of the rights, powers, and duties of a Class "A" Member except that Class "B" Members shall have no right to vote on or consent (in writing or otherwise) to any matter except as provided in S.C. Code Ann. § 33-44-103(b). The provisions of this Agreement which require Member or Membership consent, written or otherwise, or a vote of the Members or Membership shall require only the consent or a vote of the Class "A" Members or Membership.

W. "Member Minimum Gain" means an amount determined by first computing for each Member Nonrecourse Liability any gain the Company would realize if it disposed of the Company property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any taxable year, the net increase or decrease in Member Minimum Gain is determined by comparing the Member Minimum Gain on the last day of the immediately preceding taxable year with the Minimum Gain on the last day of the current taxable year. Notwithstanding any provision to the contrary contained herein, Member Minimum Gain and increases and decreases in Member Minimum Gain are intended to be computed in accordance with § 704 of the Code or the Regulations issued thereunder, as the same may be issued and interpreted from time to time.

X. "Member Nonrecourse Liability" means any Company Liability to the extent of liability is nonrecourse under state law, and on which a Member or related person bears the economic risk of loss under § 1.752-2 of the Regulations because, for example, the Member or related person is the creditor or a guarantor.

Y. "Membership" means any Member's interest in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and in the case of Class A Members to consent or approve.

Z. "Net Losses" means the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

AA. "Net Profits" means the income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate as appropriate on the tax return of the Company filed for federal income tax purposes.

BB. "Nonrecourse Liabilities" means Company Nonrecourse Liabilities and Member Nonrecourse Liabilities.

CC. "Offsettable Decrease" means any allocation that unexpectedly causes or increases a deficit in the Member's Capital Account as of the end of the taxable year to which the allocation relates attributable to depletion allowances under § 1.704-1(b)(2)(iv)(k) of the Regulations, allocations of loss and deductions under §§ 704(e)(2) or 706 of the Code or under § 1.751-1 of the Regulations, or distributions that, as of the end of the year are reasonably expected to be made to the extent they exceed the offsetting increases to such Member's Capital Account that reasonably are expected to occur during or (prior to) the taxable years in which such distributions are expected to be made (other than increases pursuant to a Minimum Gain Chargeback).

DD. "Operating Agreement" has the meaning given that term in the introductory paragraph.

EE. "Person" includes an individual, partnership, limited partnership, limited liability company, foreign limited liability company, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity.

FF. "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative.

GG. "Property" means the property described in Exhibit B attached hereto.

HH. "Required Interest" means one hundred percent (100 %) of the Class A Members.

Other terms defined herein have the meanings so given them.

ARTICLE II ORGANIZATION

2.1 FORMATION.

The Company has been organized as a South Carolina Limited Liability Company by the filing of Articles pursuant to the Act and the issuance of a certificate of organization for the Company by the Secretary of State of South Carolina.

2.2 NAME.

The name of the Company is PENNY CREEK ASSOCIATES, L.L.C. and all Company business must be conducted in that name or such other names that comply with applicable law as the Manager may select from time to time.

2.3 DESIGNATED OFFICE.

The registered office of the Company required by the Act to be maintained in the State of South Carolina shall be the office of the initial registered agent named in the Articles or such other office (which need not be a place of business of the Company) as the Manager, or Members if there is no Manager, may designate from time to time in the manner provided by law.

2.4 REGISTERED AGENT.

The registered agent of the Company in the State of South Carolina shall be the initial registered agent named in the Articles or such other Person or Persons as the Manager, or Members if there is no Manager, may designate from time to time in the manner provided by law.

2.5 PRINCIPAL OFFICE IN THE UNITED STATES OTHER OFFICES.

The principal office of the Company in the United States shall be at such place as the Manager, or Members if there is no Manager or the management of the Company is reserved to the Members, may designate from time to time; which need not be in the State of South Carolina. The Company may have such other offices as the Manager, or Members if there is no Manager, may designate from time to time.

2.6 PURPOSES.

The purposes of the Company are initially to acquire and hold the Property for a long term capital appreciation. In managing the Property as an investment the Company may hold, lease, sell, rent, develop, operate, transfer, exchange, or otherwise dispose of all or a portion of the Property, and to engage in any and all lawful business activities related or incidental thereto.

2.7 FOREIGN QUALIFICATION.

Prior to the Company's conducting business in any jurisdiction other than South Carolina, the Managers shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Manager or Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Manager or

Members, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Operating Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.8 TERM.

The Company commenced on the date the Articles were filed with the Secretary of State of South Carolina for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

2.9 MERGERS.

The Company may merge with another business entity subject to the requirements of Sections 33-44-904 through 33-44-907 of the Act.

2.10 NO STATE-LAW PARTNERSHIP.

The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member or Manager be a partner or joint venturer of any other Member or Manager, for any purposes other than federal and state tax purposes, and this Operating Agreement may not be construed to suggest otherwise.

ARTICLE III MEMBERS

3.1 ADMISSION OF MEMBERS.

A. After the formation of this Company, a person becomes a new Member:

(1) in the case of a person acquiring a Membership directly from this Company, on compliance with the provisions of Section 3.2 and 3.4 of this Agreement governing admission of new Members or, if this Operating Agreement contains no relevant admission provisions, on the written consent of a Required Interest; and

(2) in the case of an assignee of a Membership on compliance with the provisions of Section 3.2 and 3.3 of this Agreement.

B. Any person may be a Member unless the person lacks capacity.

3.2 REPRESENTATIONS AND WARRANTIES.

Each Member hereby represents and warrants to the Company and each other Member that (a) if that Member is a corporation, it is duly organized, validly existing and in good standing under the law of the state of its incorporation and is duly qualified and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated therein); (b) if that Member is a limited liability company, it is duly organized, validly existing, and (if applicable) in good standing under the law of the state of its organization and is duly qualified and (if applicable) in good standing as a foreign

limited liability company in the jurisdiction of its principal place of business (if not organized therein); (c) if that Member is a partnership, trust, or other entity, it is duly formed, validly existing, and (if applicable) in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein), and the representations and warranties in clause (a), (b), or (c), as applicable, are true and correct with respect to each partner (other than limited partners), trustee, or other Member thereof; (d) that Member has full corporate, limited liability company, partnership, trust, or other applicable power and authority to execute and agree to this Operating Agreement and to perform obligations hereunder and all necessary actions by the board of directors, shareholders, manager, members, partners, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery, and performance of this Operating Agreement by that Member have been duly taken; (e) that Member has duly executed and delivered this Operating Agreement; and (f) that Member's authorization, execution, delivery, and performance of this Operating Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

3.3 RESTRICTIONS ON THE DISPOSITION OF A MEMBERSHIP.

A. Membership and transferability of Memberships in the Company are substantially restricted. An unauthorized transfer of a Membership could create a substantial hardship to the Company, jeopardize its capital base, and adversely affect its tax structure. These restrictions upon ownership and transfer are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Company's capital and its financial ability to continue. A Disposition of a Membership in the Company may be effective only with the consent of a Required Interest.

An assignee who becomes a Member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a Member under this Operating Agreement and the Act. Unless otherwise provided by this Operating Agreement, an assignee who becomes a Member also is liable for the obligations of the assignor to make contributions but is not obligated for liabilities unknown to the assignee at the time the assignee became a Member and which could not be ascertained from this Operating Agreement. Whether or not an assignee of a Membership becomes a Member, the assignor is not released from the assignor's liability to this Company.

B. Subject to the provisions of the following section, (i) a Person to whom a Membership in the Company is transferred has the right to be admitted to the Company as a Member with the interest in Net Profits, Net Losses, and capital so transferred to such Person, if (A) the Member making such transfer grants the transferee the right to be so admitted, and (B) such transfer is consented to in accordance with this section.

C. The Company may not recognize for any purpose any purported Disposition of a Membership unless and until the other applicable provisions of this section have been satisfied and the Manager has received, on behalf of the Company, a document (i) executed by both the Member effecting the Disposition (or if the transfer is on account of the death, incapacity, or liquidation of the transferor, his representative) and the Person to which the Membership is Disposed, (ii) including the notice address of any Person to be admitted to the Company as a Member and its agreement to be bound by this Operating Agreement in respect of the Membership being obtained, (iii) setting forth the Person's interest in Net Profits, Net Losses and capital after the Disposition of the Member affecting the

Disposition and the Person to which the Membership is Disposed (which together must total the Person's interest in Net Profits, Net Losses and capital of the Member affecting the Disposition before the Disposition), and (iv) containing a representation and warranty that the Disposition was made in accordance with all applicable laws and regulations (including securities laws) and, if the Person to which the Membership is Disposed is to be admitted to the Company, its representation and warranty that the representations and warranties in this Operation Agreement are true and correct with respect to that Person.

D. For the right of a Member to Dispose of a Membership or of any Person to be admitted to the Company in connection therewith to exist or be exercised, (i) either (A) the Membership subject to the Disposition or admission must be registered under the Securities Act of 1933, as amended, and any applicable state securities laws or (B) the Company must receive a favorable opinion of the Company's legal counsel or other legal counsel acceptable to the Manager to the effect that the Disposition or admission is exempt from registration under those laws and (ii) the Company must receive a favorable opinion of the Company's legal counsel or of other legal counsel acceptable to the Manager to the effect that the Disposition or admission, when added to the total of all other sales, assignments, or other Dispositions within the preceding 12 months, would not result in the Company's being considered to have terminated within the meaning of the Code. The Manager, however, may waive the requirements of this sub-part of this section.

E. The Member effecting a Disposition and any Person admitted to the Company in connection therewith shall pay, or reimburse the Company for, all costs incurred by the Company in connection with the Disposition or admission (including, without limitation, the legal fees incurred in connection with the legal opinions referred above) on or before the tenth day after the receipt by that Person of the Company's invoice for the amount due. If payment is not made by the date due, the Person owing that amount shall pay interest on the unpaid amount from the date due until paid at a rate per annum equal to the Default Interest Rate.

F. Each Member shall be entitled, without the consent of the Manager or other Members, to Dispose of all or less than all of his or its Distributional Interest to a family member or family trust of such Member, or a beneficiary of such Member, provided that, contemporaneously with the Disposition, the affiliate, family member or family trust to whom such Distributional Interest is Disposed shall execute an agreement pursuant to which such affiliate, family member or family trust agrees to be bound by the provisions of this Agreement; provided, further, that following any such Disposition, the assigning Member shall continue to be bound to perform and discharge such member's obligations and liabilities under this Agreement or any other agreement with a third party, such as loan guaranties, as long as any affiliate, family member or family trust of such assigning Member owns a Distributional Interest. For purposes of this Section 3.3, if part or all of a Membership is held by more than one affiliate, family member or family trust of such Member ("Permitted Transferee"), the Permitted Transferees shall appoint one person as sole representative with full power and authority to bind them to act on their behalf with respect to all matters in connection with the Company and this Agreement and shall send notice of such appointment to the Manager.

3.4 ADDITIONAL MEMBERS.

Additional Persons may be admitted to the Company as Members and Memberships may be created and issued to those Persons and to existing Members with the consent of all of the Members. The terms of admission or issuance must specify the percentage of Net Profit, Net Loss, allocable to

such person and the Capital Contribution applicable thereto and may provide for the creation of different classes or groups of Members and having different rights, powers, and duties. The Manager shall reflect the creation of any new class or group in an amendment to this Operating Agreement indicating the different rights, powers, and duties, and such an amendment need be executed only by the Manager. Any such admission also must comply with the requirements described elsewhere in this Operating Agreement and is effective only after the new Member has executed and delivered to the Manager or a Required Interest, as appropriate, a document including the new Member's notice address, its agreement to be bound by this Operating Agreement, and its representation and warranty that the representation and warranties required of new Members are true and correct with respect to the new Member. The provisions of this section shall not apply to Dispositions of a Membership.

Notwithstanding the foregoing, the Members of the Company shall have a preemptive right to acquire additional, newly created Memberships of the Company, or securities of the Company convertible into or carrying a right to subscribe to or acquire Memberships, except to the extent limited or denied by this Operating Agreement or the Articles.

3.5 INTERESTS IN A MEMBER.

A Member that is not a natural person may not cause or permit an interest, direct or indirect, in itself to be Disposed of such that after the Disposition, (a) the Company would be considered to have terminated within the meaning of section 708 of the Code or (b) without the consent of a Required Interest that Member shall cease to be controlled by substantially the same Persons who control it as of the date of its admission to the Company. On any breach of the provisions of clause (b) of the immediately preceding sentence, the Company shall have the option to buy, and on exercise of that option the breaching Member shall sell, the breaching Member's Membership. The date of payment and the fair market value of the Membership shall be determined by the Company.

3.6 INFORMATION.

A. The Manager shall prepare and present to the Members, annually, a progress report which will include a financial statement for the month, and year to date, a comparison of the benchmarks established by the Manager with the actual performance to date, a cash flow analysis and a comparison of the monthly and project to date sales goals with actual sales.

B. In addition to the other rights specifically set forth in this Operating Agreement, each Member is entitled to all information to which that Member is entitled to have access pursuant to Section 33-44-408 of the Act under the circumstances and subject to the conditions therein stated.

C. The Members and Manager acknowledge that from time to time, they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or Persons with which it does business. Each Member and Manager shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Member or the Managers, except for disclosures (i) compelled by law (but the Manager must notify the Members promptly of any request for that information, before disclosing it, if practicable), (ii) to advisers or representatives of the Member or Persons to which that Member's Membership may be Disposed as permitted by this Operating Agreement, but only if the recipients have agreed to be bound by the

provisions of this section or (iii) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality. The Members acknowledge that breach of the provisions of this section may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Members agree that the provisions of this section may be enforced by specific performance.

3.7 LIABILITIES TO THIRD PARTIES.

Except as otherwise expressly agreed in writing, no Member or Manager shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

3.8 WITHDRAWAL.

A. At any time prior to the death of a Class A Member, a Class A Member may notify the remaining Member of the first Class A Member's desire to withdraw. The notice shall contain the buyout price, terms of payment, and such other commercially reasonable terms as the first Class A Member shall desire ("First Notice"). Upon receipt of the First Notice, the remaining Class A Member shall have sixty (60) days to notify the first Class A Member ("Second Notice") either: (i) that the remaining Class A Member desires to purchase the Membership owned by the first Class A Member for the price and upon such terms established by the first Class A Member; or (ii) that the remaining Class A Member desires to sell its Membership for such price (as adjusted by the Company C.P.A. to reflect capital account differences and percentage interests in Net Profits and Net Losses) and upon such terms. The decision of the remaining Class A Member, set out in the Second Notice, shall be binding upon all Class A Members.

B. In the event that the remaining Class A Member does not deliver the Second Notice to the first Class A Member within said 60 days, the first Class A Member may, within 30 days thereafter, notify the remaining Class A Member ("Third Notice") either (i) that the first Class A Member desires to purchase the Membership owned by the remaining Class A Member for such adjusted price and upon such terms; or (ii) that the first Class A Member desires to sell his Class A Membership for such price and upon such terms to the remaining Class A Member. The decision of the first Class A Member set out in the Third Notice, delivered in accordance with the requirements for notice set out in this Agreement, shall be binding upon the first Class A Member and the remaining Class A Members.

C. If neither the first nor the remaining Class A Member has so notified the other Member(s) of an election to buy, sell, or liquidate within the periods set forth herein, the rights created by the First Notice shall lapse. This procedure can be initiated, however, by any Class A Member again at any time.

D. No Class B Member may withdraw from the Company prior to the date specified in the Articles of Organization for dissolution and any such attempted withdrawal shall be wrongful.

3.9 CLASSES AND VOTING.

Unless otherwise provided by this Operating Agreement, there shall be two classes of Members. The Class "A" Members shall be Eugene Z. Zurlo and Charlotte R. Zurlo, Co-Trustees of the Eugene Z. Zurlo Living Trust dated December 11, 1997 and Michel Laplante. The Class "B" Members shall be

Kenneth E. Fowler, Trustee of the Patricia C. Laplante Trust dated September 1, 2000, Kenneth E. Fowler, Trustee of the John H. Laplante Trust dated September 1, 2000, Kenneth E. Fowler, Trustee of the Marianne E. Laplante Trust dated September 1, 2000, and Kenneth E. Fowler, Trustee of the Peter F. Laplante Trust dated September 1, 2000.

The Class A Members, at a duly authorized annual or special meeting, may elect to establish different classes or group of Members. The following provisions shall apply to each class or group:

A. The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of Members.

B. Prompt notice of the taking of an action under this Operating Agreement that require less than unanimous written consent of the Members and that may be taken without a meeting shall be given to the Members who have not consented in writing to the taking of the action.

C. For the purposes of this section, the taking of an action includes amending this Operating Agreement or creating, under provisions of this Operating Agreement, a class of Membership that was not previously outstanding.

3.10 PLACE AND MANNER OF MEETING.

All meetings of the Members shall be held at such time and place, within or without the State of South Carolina, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof. Members may participate in such meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

3.11 CONDUCT OF MEETINGS.

All meetings of the Members shall be presided over by the chairman of the meeting, who shall be a Manager (or representative thereof). The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

3.12 ANNUAL MEETING.

The annual meeting of the Members for the transaction of all other business which may come before the meeting shall be held on the last week in April in each year (if not a legal holiday and, if a legal holiday, then on the next business day following) at the hour specified in the notice of the meeting. If the annual meeting is not held on the date above specified, the Manager shall cause a special meeting of the Members in lieu thereof to be held as soon thereafter as convenient, and any business transacted or election held at the meeting shall be as valid as if held at the annual meeting. Failure to hold the annual meeting at the designated time shall not work a dissolution of the Company.

3.13 VOTING LISTS.

The Manager, officer, or agent having charge of the records reflecting the Membership of each Member of each class, if more than one class, shall make, at least ten (10) days before each meeting of Members, a complete list of the Members, entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order with the address of and percentage of Membership of each Member of each class, if more than one class, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office of the Company and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting. The original records reflecting the Membership of each Member of each class, if more than one class, shall be prima-facie evidence as to who are the Members entitled to examine such list or records or to vote at any meeting of Members.

Failure to comply with the requirements of this Article shall not affect the validity of any action taken at such meeting.

3.14 SPECIAL MEETINGS.

Special meetings of the Members may be called at any time by a Class A Member. Special meetings of Members may also be called by the Manager. Such request shall state the purpose or purposes of such meeting and the matters proposed to be acted on thereat.

3.15 NOTICE.

Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting either personally or by mail, or at the direction of the officer or person calling the meeting, to each Member entitled to vote at the meeting, provided that such notice may be waived as provided in this Operation Agreement. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Company, with postage thereon prepaid. Any notice required to be given to any Member hereunder or under the Articles of Organization need not be given to the Member if (A) notice of two consecutive annual meetings of the Company and all notices of meetings held during the period between those annual meetings, if any, or (B) all (but in no event less than two) payments (if sent by first class mail) of distributions during a twelve-month period have been mailed to that person, addressed at his address as shown on the records of the Company, and have been returned undeliverable. Any action or meeting taken or held without notice to such person shall have the same force and effect as if the notice had been duly given.

3.16 QUORUM OF MEMBERS.

Unless otherwise provided in the Articles, one hundred (100%) percent of the Class A Members entitled to vote, represented in person or proxy, shall constitute a quorum at a meeting of Members.

3.17 MAJORITY VOTE; WITHDRAWAL OF QUORUM.

With respect to any matter when a quorum is present at any meeting, the vote of the holders of a Required Interest, present in person or represented by proxy, having voting power with respect to that matter, shall decide such matter brought before such meeting, unless the matter is one upon which, by

express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which is applicable to such vote, a different vote is required, in which case the Operating Agreement shall govern and control the decision of such matter. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Memberships to leave less than a quorum.

3.18 VOTING OF MEMBERSHIP.

On each matter submitted to a vote of the Membership (as opposed to a vote of the Members) each outstanding Class A Membership shall be entitled to vote its percentage interest in the Company as follows:

Eugene J. Zurlo and Charlotte R. Zurlo, Co-Trustees of	
The Eugene J. Zurlo Living Trust dated December 11, 1997	50%
Michel Laplante	50%

Class A Memberships owned by another limited liability company or corporation, the majority of the Memberships or voting stock of which is owned or controlled by this Company, and Class A Memberships held by this Company in a fiduciary capacity shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total Class A Memberships at any given time.

A Class A Member may vote either in person or by proxy executed in writing by the Class A Member or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

3.19 ACTION WITHOUT MEETING.

Any action required by the Act to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the holder or holders of all the Class A Memberships, if more than one class, entitled to vote with respect to the action that is the subject matter of the consent, and such consent shall have the same force and effect as a unanimous vote of the Class A Members. Every written consent pursuant to this section shall be signed, dated and delivered in the manner required by, and shall become effective at the time and remain effective for the period specified by, the Act. A telegram, telex, cablegram, or similar transmission by a Class A Member, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Class A Member, shall be regarded as signed by the Class A Member for purposes of this section.

For purposes of this section, the taking of the action includes amending this Operating Agreement or creating, under provisions of this Operating Agreement, a class of Memberships that was not previously outstanding.

3.20 ASSIGNMENT OF DISTRIBUTIONAL INTEREST.

A. Unless otherwise provided by this Operating Agreement:

- (1) a Distributional Interest is assignable in whole or in part;
- (2) an assignment of a Distributional Interest does not entitle the assignee to become, or to exercise rights or powers of, a Member;
- (3) an assignment entitles the assignee to receive distributions, to which the assignor was entitled, to the extent those items are assigned and allocates to the assignee the assignors allocable share of Net Profit and Net Loss; and
- (4) until the assignee becomes a Member, the assignor Member continues to be a Member and to have the power to exercise any rights or powers of a Member.

3.21 DISTRIBUTION IN KIND.

Except as provided by the Articles or this Operating Agreement, a Member, regardless of the nature of the Member's contribution, may not demand a distribution from this Company in any form other than cash. A Member at his option may agree to receive a distribution in kind.

3.22 RIGHT TO DISTRIBUTION.

Subject to the Act, at the time that a Member becomes entitled to receive a distribution, with respect to a distribution, that Member has the status of and is entitled to all remedies available to a creditor of the Company.

3.23 LIMITATION ON DISTRIBUTION.

No distribution may be made if, after giving effect to the distribution:

A. the Company would not be able to pay its debts as they become due in the ordinary course of business; or

B. the Company's total assets would be less than the sum of its liabilities plus, the amount that would be needed, if the Company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to their receiving the distribution. The Company may base a determination that a distribution is not prohibited upon the provisions of Section 33-44-406(b) and (c) of the Act.

3.24 BUYOUT OF DISSOCIATING MEMBER.

Except as otherwise provided in Section 3.8, if, following the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any event which terminates the continued Membership of a Member in the Company, the dissociating Member shall be entitled to receive any distribution which the dissociating Member was entitled to receive prior to the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any event which terminates the continued Membership of a Member in the Company. The Company shall have no obligation to purchase a dissociating Member's Membership until the date of the expiration of the

specified term of the Company that existed on the date of the dissociation. The date of payment and fair market value, if any, of the Dissociating Members Membership shall be determined by the Company. The death of a Member or the appointment of a guardian or general conservator shall not constitute an event of dissociation and the Member's Membership shall (i) in the case of death, pass to and may be voted by the Member's estate and subsequent beneficiary under the terms of the Member's will, or (ii) in the case of disability, be voted by such Member's guardian or general conservator.

3.25 PERSONAL GUARANTIES.

Eugene J. Zurlo, on behalf of The Eugene J. Zurlo Living Trust dated December 11, 1997, shall, if required by a financial institution extending credit to the Company or by any vendor to the Company, personally guaranty up to \$2,000,000 of the Company's obligation. Michel Laplante shall have no obligation to personally guarantee any obligation of the Company.

3.26 OTHER BUSINESS OR ACTIVITIES.

Nothing in this Operating Agreement shall be deemed to restrict in any way the freedom of any Member or Manager to conduct any other business or activity whatsoever, including, but not limited to, the acquisition, investment in, development, leasing, sale and exploitation of real property, without any accounting to the Company or any party hereto.

ARTICLE IV CAPITAL CONTRIBUTIONS

4.1 INITIAL CONTRIBUTIONS.

The Eugene J. Zurlo Living Trust dated December 11, 1997, shall make or has made the Capital Contribution described for it on Exhibit A and shall make such additional Capital Contributions as may be required from time to time. The value of the Capital Contributions shall be as set forth on Exhibit A. No interest shall accrue on any Capital Contribution and no Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in this Operation Agreement.

4.2 SUBSEQUENT CONTRIBUTIONS.

Without creating any rights in favor of any third party, The Eugene J. Zurlo Living Trust dated December 11, 1997, shall make subsequent cumulative contributions to the Company, in cash, up to \$700,000. Michel Laplante and all the Class B Members shall not be required to make, at any time, a capital contribution to the Company.

4.3 FAILURE TO CONTRIBUTE.

A. If The Eugene J. Zurlo Living Trust dated December 11, 1997, does not contribute by the time required all or any portion of a Capital Contribution that Member is required to

make as provided in this Operating Agreement, the Company may exercise, on notice to that Member (the "Delinquent Member"), one or more of the following remedies:

(1) taking such action (including, without limitation, court proceedings) as the Manager may deem appropriate to obtain payment by the Delinquent Member of the portion of the Delinquent Member's Capital Contribution that is in default together with interest thereon at the Default Interest Rate from the date that the Capital Contribution was due until the date that it is made, all at the cost and expense of the Delinquent Member;

(2) permitting the other Members on a pro rata basis or in such other percentages as they may agree (the "Lending Member," whether one or more), to advance the portion of the Delinquent Member's Capital Contribution that is in default, with the following results:

(a) the sum advanced constitutes a loan from the Lending Member to the Delinquent Member and a Capital Contribution of that sum to the Company by the Delinquent Member pursuant to the applicable provisions of this Operating Agreement;

(b) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth day after written demand therefor by the Lending Member to the Delinquent Member;

(c) the amount loaned bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member;

(d) all distributions from the Company that otherwise would be made to the Delinquent Member (whether before or after dissolution of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal);

(e) the payment of the loan and interest accrued on it is secured by a security interest in the Delinquent Member's Membership, as more fully set forth in this section, and

(f) the Lending Member has the right, in addition to the other rights and remedies granted to it pursuant to this Operating Agreement or available to it at law or in equity, to take any action (including without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Delinquent Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Delinquent Member;

(3) exercising the rights of a secured party under the Uniform Commercial Code of the State of South Carolina, as more fully set forth in this Section; or

(4) exercising any other rights and remedies available at law or in equity.

B. Each Member grants to the Company, and to each Lending Member with respect to any loans made by the Lending Member to that Member as a Delinquent Member pursuant to this section, as security, equally and ratably, for the payment of all Capital Contributions that Member

has agreed to make and the payment of all loans and interest accrued on them made by Lending Members to that Member as a Delinquent Member pursuant to this section, a security interest in and a general lien on its Membership and the proceeds thereof, all under the Uniform Commercial Code of the State of South Carolina. On any default in the payment of a Capital Contribution or in the payment of such a loan or interest accrued on it, the Company or the Lending Member, as applicable, is entitled to all the rights and remedies of a secured party under the Uniform Commercial Code of the State of South Carolina with respect to the security interest granted in this section. Each Member shall execute and deliver to the Company and the other Members all financing statements and other instruments that the Manager or the Lending Member, as applicable, may request to effectuate and carry out the preceding provisions of this section. At the option of the Manager or a Required Interest, as appropriate, or a Lending Member, this Operating Agreement or a carbon, photographic, or other copy hereof may serve as a financing statement.

C. The trustee(s) of a trust shall be liable only to the extent of such trusts assets for any default in the payment of a Capital Contribution.

4.4 RETURN OF CONTRIBUTIONS.

A Member is not entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its capital account, or its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member. A Member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any Member's Capital Contributions.

4.5 ADVANCED BY MEMBERS.

If the Company does not have sufficient cash to pay its obligations, one or more Members with the consent of all other Members may advance all or part of the needed funds to or on behalf of the Company. An advance described in this section constitutes a loan from the Member to the Company, bears interest at the General Interest Rate from the date of the advance until the day of payment, and is not a Capital Contribution.

4.6 MAINTENANCE OF CAPITAL ACCOUNTS.

The Company shall establish and maintain Capital Accounts for each Member. Each Member's Capital Accounts shall be increased by (1) the amount of any money actually contributed by the Member to the capital of the Company, (2) the fair market value of any property contributed, as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the Company takes such property, within the meaning of § 752 of the Code), and (3) the Member's share of Net Profits and of any separately allocated items of income or gain except adjustments required by the Code. Each Member's Capital Account shall be decreased by (1) the amount of Money actually distributed by the Company to the Member, (2) the fair market value of any property distributed to the Member, as determined by the Company and the Member at arm's length at the time of distribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such property within the meaning of § 752 of the Code), and (3) the Member's share of Net Losses and of any separately allocated items of deduction or loss.

4.7 DISTRIBUTION OF ASSETS.

If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted in accordance with Section 704(c) of the Code to account for that Member's allocable share of the Net Profits or Net Losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market value immediately prior to their distribution.

4.8 SALE OR EXCHANGE OF INTEREST.

In the event of a sale or exchange of some or all of the Member's Interest in the Company, the Capital Account of the transferring Member shall become the Capital Account of the assignee, to the extent it relates to the portion of the interest transferred.

4.9 COMPLIANCE WITH SECTION 704(b) OF THE CODE.

The provisions of this Article IV as they related to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of profits, losses, income, gain and credit pursuant to Article V to have substantial economic effect under the Regulations promulgated under § 704(b) of the Code, in light of the distributions made pursuant to Articles V and XI and the Capital Contributions made pursuant to this Article IV. In cases where § 704(c) and § 1.704-3 of the Regulations apply to Company property, Members' Capital Accounts shall be adjusted in accordance with § 1.704-1(b)(2)(iv)(g) of the Regulations for allocations to them of income, gain, loss, and deduction (including depreciation), depletion, amortization, or other cost recovery) as computed for book purposes, with respect to property. Notwithstanding anything herein to the contrary, this Operation Agreement shall not be construed as creating a deficit restoration obligation.

ARTICLE V ALLOCATIONS AND DISTRIBUTIONS

5.1 ALLOCATIONS OF NET PROFITS AND NET LOSSES.

Except as may be required by § 704(c) of the Code, and Sections 5.2, 5.3, and 5.4 of this Article V, Net Profits, Net Losses, and other items of income, gain, loss, deduction and credit shall be allocated among the Members as follows:

Net Losses with respect to any fiscal year shall be allocated among the Members as follows:

A. First, to the Members in proportion to their respective positive capital account balances, until they have been reduced to zero.

B. The balance, if any, 50% to Eugene J. Zurlo and Charlotte R. Zurlo, Co-Trustees of the Eugene J. Zurlo Living Trust dated December 11, 1997, 25% to Michel Laplante, 10% to Kenneth E. Fowler, Trustee of the Patricia C. Laplante Trust dated September 1, 2000, 5% to Kenneth E. Fowler, Trustee of the John H. Laplante Trust, dated September 1, 2000, 5% to Kenneth E. Fowler, Trustee of the Marianne E. Laplante Trust dated September 1, 2000 and 5% to Kenneth E. Fowler, Trustee of the Peter F. Laplante Trust dated September 1, 2000.

Net Profits with respect to any fiscal year shall be allocated among the Members as follows:

A. First, to the Members until the cumulative Net Profits allocated pursuant to this Section are equal to the cumulative Net Losses allocated to the Members for all prior fiscal years.

B. Second, to Eugene J. Zurlo and Charlotte R. Zurlo, Co-Trustees of the Eugene J. Zurlo Living Trust dated December 11, 1997, an amount equal to his accrued Cumulative Preferred Return, reduced by prior allocations pursuant to this subsection B.

C. The balance, if any, 50% to Eugene J. Zurlo and Charlotte R. Zurlo, Co-Trustees of the Eugene J. Zurlo Living Trust dated December 11, 1997, and 25% to Michel Laplante, 10% to Kenneth E. Fowler, Trustee of the Patricia C. Laplante Trust dated September 1, 2000, 5% to Kenneth E. Fowler, Trustee of the John H. Laplante Trust, dated September 1, 2000, 5% to Kenneth E. Fowler, Trustee of the Marianne E. Laplante Trust dated September 1, 2000 and 5% to Kenneth E. Fowler, Trustee of the Peter F. Laplante Trust dated September 1, 2000.

The initial interest of Michel Laplante in Net Profits and Net Losses was an interest received in exchange for services to be rendered to or for the benefit of the Company (with such interest in Net Profits and Net Losses having no current predictable distributions).

5.2 COMPANY MINIMUM GAIN CHARGEBACK.

If there is a net decrease in Company Minimum Gain for a taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of the Company Minimum Gain at the end of the immediately preceding taxable year.

is not subject to this Member Minimum Gain Chargeback, however, to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Liability due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a Company Nonrecourse Liability. The amount that would otherwise be subject to the Member

Minimum Gain Chargeback is added to the Member's share of Company Minimum Gain. In addition, rules consistent with those applicable to Company Minimum Gain shall be applied to determine the shares of Member Minimum Gain and Member Minimum Gain Chargeback to the extent provided under the Regulations issued pursuant to § 704(b) of the Code.

5.4 QUALIFIED INCOME OFFSET.

In the event any Member, in such capacity, unexpectedly received an Offsettable Decrease, such Member will be allocated items of income and gain (consisting of a pro rata portion of each item of partnership income and gain for such year) in an amount and manner sufficient to offset such Offsettable Decrease as quickly as possible.

5.5 INTERIM DISTRIBUTIONS.

Cash Flow shall be distributed among the Member with respect to each fiscal year of the Company as soon as practicable after the end of the year, in the following order of priority:

A. First, to Eugene J. Zurlo and Charlotte R. Zurlo, Co-Trustees of the Eugene J. Zurlo Living Trust dated December 11, 1997, to the extent of his Cumulative Preferred Return.

B. Second, to the Members in an amount, as determined by the Company's certified public accountant, sufficient to pay state and federal income taxes on Net Profits allocated to the Members pursuant to Section 5.1.

C. Third, to Eugene J. Zurlo and Charlotte R. Zurlo, Co-Trustees of the Eugene J. Zurlo Living Trust dated December 11, 1997, to the extent of his Adjusted Invested Capital.

D. The balance of any Cash Flow shall be distributed 50% to Eugene J. Zurlo and Charlotte R. Zurlo, Co-Trustees of the Eugene J. Zurlo Living Trust dated December 11, 1997, and 25% to Michel Laplante, 10% to Kenneth E. Fowler, Trustee of the Patricia C. Laplante Trust dated September 1, 2000, 5% to Kenneth E. Fowler, Trustee of the John H. Laplante Trust, dated September 1, 2000, 5% to Kenneth E. Fowler, Trustee of the Marianne E. Laplante Trust dated September 1, 2000, and 5% to Kenneth E. Fowler, Trustee of the Peter F. Laplante Trust dated September 1, 2000.

ARTICLE VI MANAGERS

6.1 MANAGEMENT BY MANAGERS.

A. Except for situations in which the approval of the Class A Members is required by this Operating Agreement or by nonwaivable provisions of applicable law or as otherwise provided in this Operating Agreement, and subject to the provisions of Section 6.2, (i) the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Manager; and (ii) the Manager may make all decisions and take all actions for the Company not otherwise provided for in this Operating Agreement, including without limitation, the following:

1. entering into, making, and performing contracts, agreements, leases, management contract and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and making all decisions and waivers thereunder;
2. maintaining the assets of the Company in good order;
3. collecting sums due the Company;
4. to the extent that funds of the Company are available therefore, paying debts and obligations of the Company;
5. obtaining insurance for the Company.

B. The Manager may not make any decision or take any action for the Company without the prior written consent of the Class A Members on any of the following matters:

1. selling and marketing the Property in accordance with a business plan established by the Members;
2. Establishing a loan with a banking institution acceptable to the Members and draw upon such loan at any time and from time to time, borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;
3. opening and maintaining bank and investment accounts and arrangements;
4. acquiring, utilizing for Company purposes, and disposing of any asset of the Company; and
5. Selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants; and

6.2 ACTIONS BY MANAGERS; COMMITTEES; DELEGATION OF AUTHORITY AND DUTIES.

A. In Managing the business and affairs of the Company and exercising its powers, the Manager shall act (i) through meetings and written consents as may be provided or limited in other provisions of this Operating Agreement; and (ii) through committees pursuant to Section 6.2 B.

B. The Manager may, from time to time, designate one or more Persons to be officers of the Company who is not a Manager. No officer need be a resident of the State of South Carolina or a Member. Any officers so designated shall have such authority and perform such duties as the Manager may, from time to time, delegate to them. The Manager may assign titles to particular officers. Unless the Manager decides otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such officer by the Manager. Each officer shall hold office until his

successor shall be duly designated and shall qualify or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Manager with the approval of all of the Members.

C. Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Manager. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Manager whenever in its judgment the best interests of the Company will be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the Person so removed. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Manager.

D. Any Person dealing with the Company, other than a Member, may rely on the authority of any one Manager or officer in taking any action in the name of the Company without inquiry into the provisions of this Operating Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Operating Agreement.

6.3 POWERS OF MANAGERS.

The Manager is an agent of this Company for the purpose of its business or affairs and the act of a Manager, including, but not limited to, the execution in the name of the Company of any instrument for apparently carrying on in the usual way the Company business or businesses of the kind carried on by the Company, binds the Company, unless the Manager so acting have, in fact, no authority to act for this Company in the particular matter, and, except as provided in Section 33-44-301(c) of the Act, the person with whom the Manager is dealing has knowledge of the fact that the Manager has no such authority.

6.4 NUMBER AND TERM OF OFFICE.

The Manager of the Company shall be Michel Laplante. He shall serve as Manager of the Company until removal as provided in Section 6.5 of this Agreement or upon resignation as provided in Section 6.6 of this Agreement. Unless otherwise provided in the Articles, the Manager need not be a Member or resident of the State of South Carolina.

6.5 REMOVAL.

Any and all Managers may be removed, either for or without cause by vote of a Required Interest

6.6 RESIGNATIONS.

Any Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified then at the time of its receipt by the other Managers, if any. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

6.7 VACANCIES.

Any vacancy occurring in the Manager may be filled by vote of a Required Interest. A Manager named to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any Manager position to be filled by reason of an increase in the number of Managers shall be filled by vote of a Required Interest.

6.8 PLACE AND MANNER OF MEETINGS.

Meeting of the Manager, regular or special, may be held either within or without the State of South Carolina. Manager may participate in such meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

6.9 FIRST MEETINGS.

The first meeting of the newly elected Managers shall be held without further notice immediately following the annual meeting of Members, and at the same place, unless by unanimous consent of the Managers then elected and serving, such time or place shall be changed.

6.10 REGULAR MEETING OF MANAGERS.

A regular meeting of the Managers may be held at such time as shall be determined from time to time by resolution of the Managers.

6.11 SPECIAL MEETING OF MANAGERS.

A Manager may call a special meeting of the Managers at any time. Such special meeting shall be held at the time specified in the notice of meeting. Except as otherwise expressly provided by statute, or by the Articles, or by this Operating Agreement, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice.

6.12 NOTICE OF MANAGER'S MEETINGS.

All meeting of the Managers (annual, regular or special) shall be held upon two (2) days written notice stating the date, place and hour of meeting delivered to each Manager either personally or by mail or at the direction of the President or the Secretary or the officer or person calling the meeting.

In any case where all of the Managers execute a waiver of notice of the time and place of the meeting, no notice thereof shall be required, and any such meeting (whether annual, regular or special) shall be held at the time and at the place (either within or without the state of South Carolina) specified in the waiver of notice. Attendance of Managers at any meeting shall constitute a waiver of notice of such meeting, except where the Managers attend a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

6.13 ACTION WITHOUT MEETING.

Any action required by statute to be taken at a meeting of the Managers, or any action which may be taken at a meeting of the Managers, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Managers. Such consent shall have the same force and effect as a unanimous vote at a meeting.

6.14 QUORUM; MAJORITY VOTE.

At all meetings of the Managers a majority of the number of Managers fixed by the Operating Agreement shall constitute a quorum for the transaction of business unless a greater number is required by law or by the Articles. The act of a majority of the Managers present at any meeting at which a quorum is present shall be the act of the Managers unless the act of a greater number is required by the statute, by the Articles or by this Operating Agreement. If a quorum shall not be present at any meeting of the Managers, the Managers present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

6.15 APPROVAL OR RATIFICATION OF ACTS OR CONTRACTS BY MEMBERS.

The Managers in their discretion may submit any act or contract for approval or ratification at any annual meeting of the Members or at any special meeting of the Members called for the purpose of considering any such act or contract, and any act or contract that shall be approved or be ratified by a Required Interest shall be as valid and as binding upon the Company and upon all the Members as if it shall have been approved or ratified by every Class A Member of the Company.

6.16 INTERESTED MANAGERS, OFFICERS AND MEMBERS.

A. INTERESTED MANAGERS. No contract or transaction between this Company and one or more of its Managers or officers, or between this Company and any other limited liability company, corporation, partnership, association, or other organization in which one or more of its Managers or officers are managers or officers or have a financial interest, shall be void or voidable solely for this reason, solely, because the Manager or officer is present at or participates in the meeting of Managers or of a committee of Managers which authorizes the contract or transaction, or solely because such Manager's or Managers' votes are counted for such purpose, if:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Managers or the committee, and the Managers or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Managers, even though the disinterested Managers be less than a quorum; or

(2) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Members; or

(3) The contract or transaction is fair as to this Company as of the time it is authorized, approved, or ratified by the Managers, a committee thereof, or the Members.

B. Common or interested Managers may be counted in determining the presence of a quorum at a meeting of the Managers or of a committee which authorizes the contract or transaction.

C. This provision shall not be construed to invalidate any contract or transaction which would be valid in the absence of this provision.

6.17 COMPENSATION.

The Managers with the express written consent of all Members may be paid their expenses and may be paid a fixed sum for attendance at each meeting of the Managers or a stated salary as Manager. No such payment shall preclude any Manager from serving the Company in any other capacity and receiving compensation therefor.

ARTICLE VII INDEMNIFICATION

7.1 INDEMNIFICATION.

The Company shall indemnify the Members, Managers, and agents for all costs, losses, liabilities, and damages paid or accrued by such Members, Managers or agents in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the state; provided, however, the Company shall not indemnify a Member or Manager for any costs, losses, liabilities or damages paid or accrued by such Member or Manager as a result of any Member or Manager's violation of his duty of care or loyalty to the Company or another Member or willful dishonesty towards, fraud upon, or deliberate injury or attempted injury to the Company and/or a Member.

ARTICLE VIII TAXES

8.1 "TAX MATTERS PARTNER".

Michel Laplante is designated as the "tax matters partner" of the Company pursuant to § 6231(a)(7) of the Code.

ARTICLE IX NOTICE

9.1 NOTICE.

Any notice or communication required or permitted to be given by any provision of this Operating Agreement shall be in writing and shall be deemed to have been given and received by the Person to whom directed (a) when delivered personally to such Person or to a Member or Manager of the Company to which directed, or (b) when posted in the United States mails if sent by registered or

certified mail, postage and charges prepaid, addressed to the Person to which directed at the address of which such Person has notified the Company and all of the Members or Managers.

ARTICLE X DISSOLUTION, LIQUIDATION, AND TERMINATION

10.1 DISSOLUTION.

The Company shall dissolve and its affairs shall be wound up only upon the first to occur of the following:

- A. the written consent of 100% of the Class A Memberships;
- B. the expiration of the period fixed for the duration of the Company set forth in the Articles;
- C. upon an event that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event;
- D. upon entry of a judicial decree that:
 - (1) the economic purpose of the Company is likely to be unreasonably frustrated;
 - (2) another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;
 - (3) it is not otherwise reasonably practicable to carry on the Company's business in conformity with the Articles of Organization and the Operating Agreement;
 - (4) the Company failed to purchase the Member's Distributional interest as required by § 33-44-701 of the Act; or
 - (5) the Manager or Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to a Member, and
- E. entry of a decree of judicial dissolution of the Company under Section 33-44-801 (b) of the Act or administrative dissolution as provided in Section 33-44-809 of the Act.

10.2 WINDING UP AND TERMINATION.

On dissolution of the Company as a result of an event described in Section 10.1 A. or the Manager shall act as liquidator. In all other cases, the Manager shall act as liquidators or may appoint one or more Members as liquidators. If there is no Manager, then a Required Interest of the Members will appoint one or more Members as Liquidator. The liquidator shall proceed diligently to wind up the

affairs of the Company and make final distributions as provided herein. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Managers. The steps to be accomplished by the liquidator are as follows:

A. as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed as applicable.

B. the liquidator shall cause the notice described in Section 33-44-807 of the Act to be mailed to each known creditor of and claimant against the Company in the manner described in such Section 33-44-808 of the Act;

C. the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation and any advances described in Section 4.5) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

D. all remaining assets of the Company shall be distributed to Members as follows:

(1) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the capital accounts of the Members;

(2) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the capital accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the capital accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and

(3) Company property shall be distributed among the Members in accordance with the positive capital account balances of the Members, as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the Company occurs (other than those made by reason of this clause (3)); and those distributions shall be made, if possible, by the end of the taxable year of the Company during which the liquidation of the Company occurs.

All distributions in kind to the Members shall be made subject to the Liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 10.2. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

10.3 DEFICIT CAPITAL ACCOUNTS.

Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation) or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective interests in the Company, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

10.4 ARTICLES OF DISSOLUTION.

After the dissolution of the limited liability company pursuant to Section 33-44-801 of the Act, the Manager or the authorized Member shall file Articles of Dissolution with the Secretary of State of South Carolina and take such other actions as may be necessary to terminate the Company. An "Authorized Member" will be a Member or Members appointed by the Manager.

ARTICLE XI GENERAL PROVISIONS

11.1 BOOKS AND RECORDS.

A. The Company shall maintain those books and records as it may deem necessary or desirable. All books and records shall be open to inspection of the Members from time to time. The Manager may examine all such books and records at all reasonable times. The Company shall keep and maintain such records as the Manager deems appropriate.

B. The Company shall maintain its records, if any, in written form or in another form capable of conversion into written form within a reasonable time.

C. The Company shall keep in its registered office in South Carolina and make available to Members on reasonable request the street address of its principal United States Office in which the records, if any, are maintained or will be available.

D. The Company shall keep its books on the cash method of accounting.

11.2 AMENDMENT OR MODIFICATION.

The Operating Agreement may be amended and modified from time to time only by a written instrument adopted and executed by all of the Class A Members. No Member or Manager shall have any vested rights in the Operating Agreement.

11.3 CHECKS, NOTES, DRAFTS, ETC.

The Company's checkbook shall be maintained by Eugene J. Zurlo. All checks, drafts, or other orders for payment of money, notes, or other evidences of indebtedness issued in the name of or payable

to the Company shall be signed or endorsed by Eugene J. Zurlo or by another designated person which may be appointed from time to time by the Members. The Company promptly makes available such funds as are required during the Project for payments to architects, engineers, attorneys, contractors, consultants, and others providing goods and services to the Project. The designated person may be the Manager, Member, or other person(s) as may from time to time be designed.

11.4 HEADINGS.

The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation.

11.5 CONSTRUCTION.

Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All references to Articles and Sections refer to articles and sections of this Operating Agreement, and all references to Exhibits, if any, are to Exhibits attached hereto, if any, each of which is made a part hereof for all purposes. If any portion of this Operating Agreement shall be invalid or inoperative, then, so far as is reasonable and possible:

A. The remainder of this Operating Agreement shall be considered valid and operative; and

B. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

11.6 ENTIRE AGREEMENT; SUPERSEDURE.

This Operating Agreement constitutes the entire agreement of the Members and their Affiliates relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

11.7 EFFECT OF WAIVER OR CONSENT.

A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

11.8 BINDING EFFECT.

Subject to the restrictions on Dispositions set forth in this Operating Agreement, this Operating Agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

11.9 GOVERNING LAW; SEVERABILITY.

THIS OPERATING AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF SOUTH CAROLINA EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS OPERATING AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Operating Agreement and (a) a mandatory provision of the Articles, or (b) any mandatory provision of the Act, the applicable provision of the Operating Agreement shall control. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

11.10 FURTHER ASSURANCES.

In connection with this Operating Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Operating Agreement and those transactions.

11.11 NOTICE TO MEMBERS OF PROVISIONS OF THIS AGREEMENT.

By executing this Operating Agreement, each Member acknowledges that it has actual notice of (a) all of the provisions of this Operating Agreement, including, without limitation, the restrictions on the transfer of Membership set forth in Article III, and (b) all of the provisions of the Articles. Each Member hereby agrees that this Operating Agreement constitute adequate notice of all such provisions, and each Member hereby waives any requirement that any further notice thereunder be given.

11.12 COUNTERPARTS.

This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

11.13 CONFLICTING PROVISIONS.

To the extent that one or more provisions of this Operating Agreement appear to be in conflict with one another, then the Manager shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Manager, in interpreting the provision of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Managers or a Required Interest, if there is no Manager, in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company and consistent with the interpretation given by the Manager.

The undersigned, being all the Members and Managers, hereby certify that the foregoing Third Amended and Restated Operating Agreement was unanimously adopted by the Manager, and the Members, effective as of the 15 day of October, 2005, TO WITNESS WHICH we have hereunto affixed our signatures.

WITNESS:

Justin Felt
Justin Felt
Justin Felt

Justin Felt

Justin Felt

Justin Felt

CLASS A MEMBERS

EUGENE J. ZURLO AND CHARLOTTE R. ZURLO,
TRUSTEES OF THE EUGENE J. ZURLO LIVING
TRUST DATED DECEMBER 11, 1997

By: Eugene J. Zurlo
Eugene J. Zurlo
Its: Co-Trustee

By: Charlotte R. Zurlo
Charlotte R. Zurlo
Its: Co-Trustee

Michel Laplante (SEAL)
Michel Laplante (Member)

CLASS B MEMBERS

Kenneth E. Fowler, Trustee of
The Patricia C. Laplante Trust
Dated September 1, 2000

By: Kenneth E. Fowler
Kenneth E. Fowler
Its: Trustee

Kenneth E. Fowler, Trustee of
The John H. Laplante Trust
Dated September 1, 2000

By: Kenneth E. Fowler
Kenneth E. Fowler
Its: Trustee

Kenneth E. Fowler, Trustee of
The Marianne E. Laplante Trust
Dated September 1, 2000

By: Kenneth E. Fowler
Kenneth E. Fowler
Its: Trustee

Justin Felt

Kenneth E. Fowler, Trustee of
The Peter F. Laplante Trust
Dated September 1, 2000

By: Kenneth E. Fowler
Kenneth E. Fowler
Its: Trustee

Justin Felt

MANAGER
Michel Laplante (SEAL)
Michel Laplante

TSy64y6\Perry Creek Assoc. LLC\LLC Organizational Docs\Third Amended & Restated O.A. clean 101805.doc

EXHIBIT "A"

<u>MEMBER</u>	<u>INITIAL CONTRIBUTION</u>	<u>FAIR MARKET VALUE</u>
Eugene J. Zurlo and Charlotte R. Zurlo Co- Trustees The Eugene J. Zurlo Living Trust dated December 11, 1997	Cash	\$400,000
Michel Laplante	None	- \$ 0 -

EXHIBIT "B"

[PROPERTY DESCRIPTION]

Tract B-2

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

And Tract 'A':

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

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

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

ALSO:

Parcel A, River Road:

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

ALSO:

Tract C:

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

SAVING AND EXCEPTING that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, described as 0.97 acres of land as conveyed to the South Carolina Department of Transportation in that certain deed of conveyance from Fenwick Acres dated April 16, 1998, and recorded July 28, 1998, in Book R307, page 246, in the RMC Office.

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

EXHIBIT C

OPERATING AGREEMENT
OF
THE GROVE AT FENWICK PLANTATION, LLC

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OPERATING AGREEMENT
OF
THE GROVE AT FENWICK PLANTATION, LLC

This Operating Agreement of THE GROVE AT FENWICK PLANTATION, LLC ("Company") dated ~~January 2~~^{JUNE}, 2004, is (a) adopted by the Manager (as defined below) and (b) executed and agreed to, for good and valuable consideration, by the Member (as defined below).

ARTICLE I
DEFINITIONS

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

A. "Act" means the South Carolina Uniform Limited Liability Company Act of 1996 and any successor statute as amended from time to time.

B. "Articles" means the Articles of Organization filed with the Secretary of State of South Carolina by which THE GROVE AT FENWICK PLANTATION, LLC was organized as a South Carolina Limited Liability Company under and pursuant to the Act.

C. "Business Day" means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of South Carolina are closed.

D. "Capital Contribution" means any contribution by the Member to the capital of the Company.

E. "Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

F. "Company" means THE GROVE AT FENWICK PLANTATION, LLC, a South Carolina Limited Liability Company.

G. "Company Liability" means any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

H. "Distributional Interest" means all of a Member's interest in distributions by the Company.

I. "Dispose," "Disposing," or "Disposition" means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, by operation of law), or the acts thereof.

J. "Manager or Managers" means Michel Laplante or any Person hereafter elected as a Manager of the Company as provided in this Operating Agreement, but does not include any Person who has ceased to be a Manager of the Company.

K. "Member" means Penny Creek Associates, L.L.C.

L. "Net Losses" means the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

M. "Net Profits" means the income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate as appropriate on the tax return of the Company filed for federal income tax purposes.

N. "Operating Agreement" has the meaning given that term in the introductory paragraph.

O. "Person" includes an individual, partnership, limited partnership, limited liability company, foreign limited liability company, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity.

P. "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative.

Q. "Property" means the property described in Exhibit "B" attached hereto.

Other terms defined herein have the meanings so given them.

ARTICLE II ORGANIZATION

2.1 Formation.

The Company has been organized as a South Carolina Limited Liability Company by the filing of Articles pursuant to the Act and the issuance of a certificate of organization for the Company by the Secretary of State of South Carolina.

2.2 Name.

The name of the Company is THE GROVE AT FENWICK PLANTATION, LLC and all Company business must be conducted in that name or such other names that comply with applicable law as the Manager may select from time to time.

2.3 Designated Office.

The designated office of the Company required by the Act to be maintained in the State of South Carolina shall be the office of the initial registered agent named in the Articles or such other office (which need not be a place of business of the Company) as the Manager, or Member if there is no Manager, may designate from time to time in the manner provided by law.

2.4 Registered Agent.

The registered agent of the Company in the State of South Carolina shall be Michel Laplante or such other Person or Persons as the Manager, or Member if there is no Manager, may designate from time to time in the manner provided by law.

2.5 Principal Office In The United States Other Offices.

The principal office of the Company in the United States shall be at such place as the Manager, or Member if there is no Manager or the management of the Company is reserved to the Member, may designate from time to time, which need not be in the State of South Carolina. The Company may have such other offices as the Manager, or Member if there is no Manager, may designate from time to time.

2.6 Purposes.

The Company's business and purpose shall consist of the following:

A. To (i) acquire and hold the Property for investment; (ii) to lease, sell, rent, improve, operate, exchange, or otherwise dispose of the Property; and (iii) to engage in such other lawful activities permitted to limited liability companies by the South Carolina Uniform Limited Liability Company Act of 1996.

2.7 Foreign Qualification.

Prior to the Company's conducting business in any jurisdiction other than South Carolina, the Manager shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Manager or Member, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Manager or Member, the Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Operating Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.8 Term.

The Company commenced on the date the Articles were filed with the Secretary of State of South Carolina for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

2.9 Mergers:

The Company shall not, without the consent of the Member consolidate or merge with or into any other entity or convey or transfer or lease its property and assets substantially as an entirety to any entity.

**ARTICLE III
MEMBERS**

3.1 Additional Members.

Additional Persons may be admitted to the Company as a Member, and Memberships may be created and issued to those Persons and to the Member at the direction of the Member, on such terms and conditions as the Member may determine at the time of admission. The terms of admission or issuance must specify the percentage of Net Profit, Net Loss, allocable to such Person and the Capital Contribution applicable thereto and may provide for the creation of different classes or groups of Members and having different rights, powers, and duties. The Member shall reflect the creation of any new class or group in an amendment to this Operating Agreement indicating the different rights, powers, and duties. Any such admission also must comply with the requirements described elsewhere in this Operating Agreement and is effective only after the new Member has executed and delivered to the Company, as appropriate, a document including the new Member's notice address, its agreement to be bound by the terms of an Operating Agreement which reflects the existence of at least two Members, and its representation and warranty that the representation and warranties required of new Members are true and correct with respect to the new Member.

3.2 Liabilities to third parties.

Except as otherwise expressly agreed in writing, no Member shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

3.3 Withdrawal.

No Member may withdraw from the Company as a Member prior to the date specified in the Articles of Organization for dissolution of the Company.

3.4 Place and manner of meeting.

All meetings of the Member shall be held at such time and place, within or without of the State of South Carolina, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

3.5 Special meetings.

Special meetings of the Member may be called at any time by the Member.

3.6 Action without meeting.

Any action required by the Act to be taken at a meeting of the Member, or any action which may be taken at a meeting of the Member, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the Member.

3.7 Assignment of distributional interest.

Unless otherwise provided by this Operating Agreement:

- A. a Distributional Interest is assignable in whole or in part;
- B. an assignment of a Distributional Interest does not entitle the assignee to become, or to exercise rights or powers of, a Member;
- C. an assignment entitles the assignee to receive distributions, to which the assignor was entitled; and
- D. until the assignee becomes a Member, the assignor Member continues to be a Member and to have the power to exercise any rights or powers of a Member.

3.8 Right to distribution.

Subject to the Act, at the time that a Member becomes entitled to receive a distribution, with respect to a distribution, that Member has the status of and is entitled to all remedies available to a creditor of the Company.

3.9 Limitation on distribution.

No distribution may be made if, after giving effect to the distribution:

- A. the Company would not be able to pay its debts as they become due in the usual course of business; or

B. the Company's assets would be less than the sum of its liabilities. The Company may base a determination that a distribution is not prohibited upon the provisions of Section 33-44-406(b) and (c) of the Act.

3.10 Events of Dissociation.

The death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any event which terminates the continued Membership of a Member under the Act, shall not constitute an event of dissociation.

ARTICLE IV CAPITAL CONTRIBUTIONS

4.1 Initial Contributions.

The Member's initial Capital Contribution is described in Exhibit A. The value of the Capital Contributions is set forth on Exhibit A. No interest shall accrue on any Capital Contribution and the Member shall have no right to withdraw or be repaid any Capital Contribution except as provided in this Operating Agreement.

4.2 Return Of Contributions.

The Member is not entitled to the return of any part of his Capital Contributions or to be paid interest in respect of either his capital account, or his Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company. The Member is not required to contribute or to lend any cash or property to the Company.

4.3 Advanced By Members.

If the Company does not have sufficient cash to pay its obligations, the Member may advance all or part of the needed funds to or on behalf of the Company. An advance described in this section constitutes a loan from the Member to the Company from the date of the advance until the day of payment, and is not a Capital Contribution.

ARTICLE V MANAGER

5.1 Management By Manager.

A. Except for situations in which the approval of the Member is required by this Operating Agreement or by nonwaivable provisions of applicable law or as otherwise provided in this Operating Agreement, (i) the provisions of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of,

the Manager; and (ii) the Manager may make all decisions and take all actions for the Company not otherwise provided for in this Operating Agreement, including without limitation, the following:

1. entering into, making, and performing contracts, agreements, leases, management contract and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and making all decisions and waivers thereunder;
2. borrow money and secure such loan with Company Property;
3. opening and maintaining bank and investment accounts and arrangements;
4. maintaining the assets of the Company in good order;
5. collecting sums due the Company;
6. to the extent that funds of the Company are available therefor, paying debts and obligations of the Company;
7. acquiring, utilizing for Company purposes, and disposing of any asset of the Company;
8. obtaining insurance for the Company; and
9. making distributions of cash or property to the Member.

5.2 Actions By Manager; Delegation Of Authority And Duties.

A. In Managing the business and affairs of the Company and exercising its powers, the Manager shall act (i) through meetings and written consents as may be provided or limited in other provisions of this Operating Agreement.

B. Any Person dealing with the Company, other than a Member, may rely on the authority of any Manager in taking any action in the name of the Company without inquiry into the provisions of this Operating Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Operating Agreement.

5.3 Powers Of Manager.

The Manager is an agent of this Company for the purpose of its business or affairs and the act of the Manager, including, but not limited to, the execution in the name of the Company of any instrument for apparently carrying on in the usual way the Company business or businesses of the kind carried on by the Company, binds the Company, unless the Manager so acting has, in fact, no

authority to act for this Company in the particular matter, and the person with whom the Manager is dealing has knowledge of the fact that the Manager has no such authority.

5.4 Number And Term Of Office

The Manager of the Company shall be Michel Laplante. He shall serve as Manager of the Company until removal or upon resignation. Unless otherwise provided in the Articles, the Manager need not be a Member or resident of the State of South Carolina.

5.5 Removal.

Any and all Managers may be removed, with or without cause, at any time by the Member.

5.6 Resignations.

Any Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified then at the time of its receipt by the other Managers, if any. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

5.7 Vacancies.

Any vacancy occurring in the Manager shall be filled by the Member. If the Member is incapable of filling the vacancy Eugene Zurlo shall fill the vacancy. A Manager elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any Manager position to be filled by reason of an increase in the number of Managers shall be filled by the Member.

5.8 Place And Manner Of Meetings.

Meeting of the Manager, regular or special, may be held either within or without the State of South Carolina. The Manager may participate in such meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

5.9 First Meetings.

The first meeting of the newly elected Manager shall be held without further notice immediately following the annual meeting of Member, and at the same place, unless by unanimous consent of the Manager then elected and serving, such time or place shall be changed.

5.10 Regular Meeting Of Manager.

A regular meeting of the Manager may be held at such time as shall be determined from time to time by resolution of the Manager.

5.11 Special Meeting Of Manager.

The Manager may call a special meeting of the Manager at any time.

5.12 Action Without Meeting.

Any action required by statute to be taken at a meeting of the Manager, or any action which may be taken at a meeting of the Manager, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by the Manager. Such consent shall have the same force and effect as a unanimous vote at a meeting.

5.13 Approval Or Ratification Or Acts Or Contracts By Members.

The Manager in its discretion may submit any act or contract for approval or ratification to the Member.

5.14 Interested Managers, Officers And Members.

A. INTERESTED MANAGERS. No contract or transaction between this Company and one or more of its Managers or officers, or between this Company and any other limited liability company, corporation, partnership, association, or other organization in which one or more of its Managers or officers are managers or officers or have a financial interest, shall be void or voidable solely for this reason, solely, because the Manager is present at or participates in the meeting of Managers or of a committee of Managers which authorizes the contract or transaction, or solely because such Manager's or Managers' votes are counted for such purpose, if:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Managers, and the Managers in good faith authorizes the contract or transaction by the affirmative vote of a majority of the Managers; or

(2) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Member; or

(3) The contract or transaction is fair as to this Company as of the time it is authorized, approved, or ratified by the Managers or the Member.

B. This provision shall not be construed to invalidate any contract or transaction which would be valid in the absence of this provision.

5.15 Compensation.

By resolution of the Member, the Manager may be paid its expenses, if any, and may be paid a fixed sum for attendance at each meeting of the Manager or a stated salary as Manager. No such payment shall preclude any Manager from serving the Company in any other capacity and receiving compensation therefor.

**ARTICLE VI
INDEMNIFICATION**

6.1 Indemnification.

The Company shall indemnify the Members, Managers, and agents for all costs, losses, liabilities, and damages paid or accrued by such Members, Managers or agents in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State; provided, however, the Company shall not indemnify a Member or Manager as a result of any Member or Manager's violation of his duty of care or loyalty to the Company or another Member or willful dishonesty towards, fraud upon, or deliberate injury or attempted injury to the Company and/or a Member.

**ARTICLE VII
DISSOLUTION, LIQUIDATION, AND TERMINATION**

7.1 Dissolution.

The Company shall dissolve and its affairs shall be wound upon the first to occur of the following:

- A. the written consent of the Member;
- B. the expiration of the period fixed for the duration of the Company set forth in the Articles; or
- C. administrative dissolution as provided in Section 33-44-809 of the Act.

7.2 Winding Up And Termination.

On dissolution of the Company, the Manager shall act as liquidator. If there is no Manager, then the Member will act as Liquidator. The Liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the Liquidator shall continue to operate the Company properties with all of the power and authority of the Manager. The steps to be accomplished by the liquidator are as follows:

A. as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed as applicable.

B. the liquidator shall cause the notice described in Section 33-44-807 of the Act to be mailed to each known creditor of and claimant against the Company in the manner described in such Section 33-44-808 of the Act;

C. the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation and any advances) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

D. all remaining assets of the Company shall be distributed to the Member.

7.3 Articles Of Termination

After the dissolution of the limited liability company pursuant to Section 33-44-801 of the Act, the Manager or the Member shall file Articles of Termination with the Secretary of State of South Carolina and take such other actions as may be necessary to terminate the Company.

ARTICLE VIII GENERAL PROVISIONS

8.1 Books And Records.

A. The Company shall maintain those books and records as it may deem necessary or desirable.

B. The Company shall keep its books on the cash method of accounting.

8.2 Amendment Or Modification.

The Operating Agreement may be amended and modified from time to time by the Member with the written consent of the holder of the first mortgage on the Property. No Member or Manager shall have any vested rights in the Operating Agreement.

8.3 Checks, Notes, Drafts, Etc.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the Company shall be signed or endorsed by a

designated person which may be appointed by the Manager. The designated person may be a Manager(s) or other person(s) as may from time be designated.

8.4 Headings.

The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation.

8.5 Construction.

Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All references to Articles and Sections refer to articles and sections of this Operating Agreement, and all references to Exhibits, if any, are to Exhibits attached hereto, if any, each of which is made a part hereof for all purposes. If any portion of this Operating Agreement shall be invalid or inoperative, then, so far as is reasonable and possible:

- A. The remainder of this Operating Agreement shall be considered valid and operative; and
- B. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

8.6 Entire Agreement; Supersedure.

This Operating Agreement constitutes the entire agreement of the Member and the Manager relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

8.7 Effect Of Waiver Or Consent

A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

8.8 Binding Effect.

This Operating Agreement is binding on and inures to the benefit of the Member and its successors, and assigns.

8.9 Governing Law; Severability

THIS OPERATING AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF SOUTH CAROLINA EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS OPERATING AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Operating Agreement and (a) a mandatory provision of the Articles, or (b) any mandatory provision of the Act, the applicable provision of the Operating Agreement shall control. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

8.10 Further Assurances.

In connection with this Operating Agreement and the transactions contemplated hereby, the Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Operating Agreement and those transactions.

8.11 Counterparts.

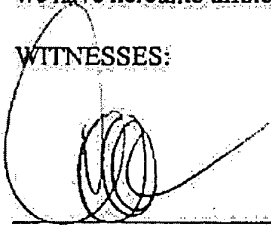
This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

8.12 Conflicting Provisions

To the extent that one or more provisions of this Operating Agreement appear to be in conflict with one another, then the Manager shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Manager, in interpreting the provision of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Manager, in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, may apply this Operating Agreement in such a manner as to be in the best interest of the Company, in its sole discretion, even if such interpretation or choice of conflicting provisions to enforce is detrimental to the Member or Manager.

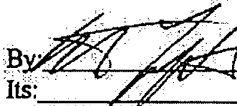
The undersigned Member and Manager, hereby certify that the foregoing Operating Agreement was unanimously adopted by the Manager, and the Member, TO WITNESS WHICH we have hereunto affixed our signatures this 3 day of JUNE, 2004.

WITNESSES:

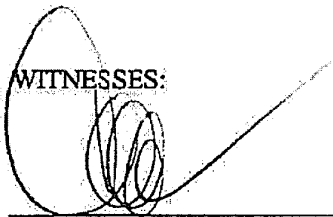


MEMBER

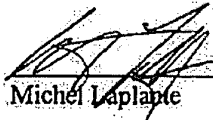
Penny Creek Associates, L.L.C.

By:  (SEAL)
Its: _____

WITNESSES:



MANAGER

 (SEAL)
Michel Laplante

\\Wyb\Grove of Farwick\Operating Agreement.doc

EXHIBIT A.
Initial Capital Contribution

MEMBER

CONTRIBUTION VALUE

Penny Creek Associates, L.L.C.

EXHIBIT B
Property Description

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

TMS #312-00-00-138

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiff,

vs.

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

Defendants.

IN THE CIRCUIT COURT

Case No. 2014-CP-10- 4946

SUMMONS

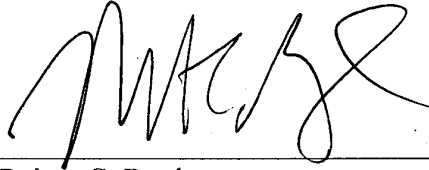
(Non-Jury)
(Mortgage Foreclosure; Guaranty)

FILED
2014 AUG 14 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE DEFENDANTS ABOVE NAMED:

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

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



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

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

August 14, 2014

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiff,

vs.

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

Defendants.

IN THE CIRCUIT COURT

Case No. 2014-CP-10-

4946

COMPLAINT

(Non-Jury)
(Mortgage Foreclosure; Guaranty)

FILED
2014 AUG 14 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

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

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

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

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

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

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

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

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

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

The \$5,300,000.00 Loan

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

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

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

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

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

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

The \$2,200,000.00 Loan

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

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

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

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

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

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

2009 Modification and Consolidation

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

2012 and 2013 Modifications

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

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

MB
pg. 5
21. Under the express terms of the aforesaid Mortgage Modification, Penny Creek Mortgage 1 and Penny Creek Mortgage 2 (collectively, the "Penny Creek Mortgages") secure the Penny Creek Note in its entirety.

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

Loan Defaults

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

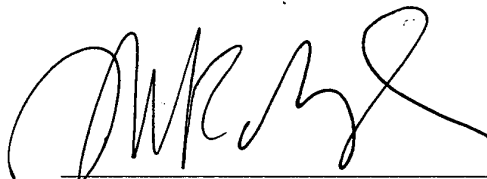
54. There is now due and owing to the Plaintiff under the subject loan as evidenced by the Fenwick Note, as amended and/or modified, as of July 1, 2014, exclusive of costs and attorneys' fees, the sum of \$3,205,533.86.

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

WHEREFORE, the Plaintiff prays:

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

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



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

August 14, 2014

Charleston, South Carolina

EXHIBIT A-1Tract B-2:

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

And Tract A:

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

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

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

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

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

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

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

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

THE ABOVE REFERENCED PROPERTY IS ALSO KNOWN AS

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

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

TMS#: 346-00-00-004

AND

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

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

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

TMS#: 346-00-00-076

ALSO

Tract C:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT "A-2"

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

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

TMS#: 346-00-00-004

ALSO

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

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

TMS#: 346-00-00-076

ALSO

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

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

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

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

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

ALSO

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

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

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

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

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

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

EXHIBIT "A-3"

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

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

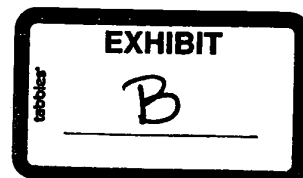
<u>Unit</u>	<u>TMS#</u>
1A	312-00-00-399
1B	312-00-00-400
1C	312-00-00-401
1D	312-00-00-402
2F	312-00-00-408
3A	312-00-00-409
3B	312-00-00-410
3C	312-00-00-411
3D	312-00-00-412
3E	312-00-00-413
3F	312-00-00-414

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

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



BK P 352PG613



PREPARED BY: Jean Dooley
RETURN TO: Quality Control
First Union National Bank
P.O. Box 13327
Roanoke, Virginia 24040-7391

MORTGAGE AND ABSOLUTE ASSIGNMENT OF LEASES

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Waiver of Appraisal Rights. Mortgagor understands that upon the occurrence of an Event of Default hereunder, among the other remedies set out herein or in the other Loan Documents, Mortgagee may foreclose upon the Property and proceed for a deficiency judgment pursuant to South Carolina law. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **MORTGAGOR HEREBY EXPRESSLY WAIVES AND RELINQUISHES ANY APPRAISAL**

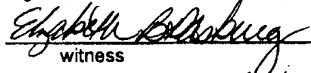
RIGHTS WHICH MORTGAGOR MAY HAVE UNDER SECTION 29-3-680 THROUGH SECTION 29-3-770 OF THE SOUTH CAROLINA CODE OF LAWS (1976), AS SUCH MAY BE AMENDED, AND UNDERSTANDS AND AGREES THAT A DEFICIENCY JUDGMENT, IF PURSUED BY MORTGAGEE, SHALL BE DETERMINED BY THE HIGHEST PRICE BID AT THE JUDICIAL SALE OF THE PROPERTY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

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

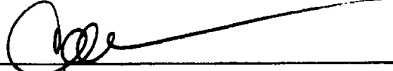
Mortgagor
PENNY CREEK ASSOCIATES, L.L.C.

By:  (SEAL)
Michel Laplante, Manager

Signed, sealed and delivered in presence of:


witness

1208 Oakcrest Dr. Charleston SC 29412
address


witness

10 NASHMORE ROAD, CHARLESTON, SC 29407
address

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

State of South Carolina
County of Charleston

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

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

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

My commission expires:
7-17-08

Elizabeth B. Dasburg
Notary Public

36307

EXHIBIT A

BK P 352PG621

Tract B-2

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

And Tract 'A':

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

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

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

This conveyance is subject, however, to the following:

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

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

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

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

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

ALSO:

Parcel A, River Road:

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

This conveyance is subject, however, to the following:

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

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

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

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

ALSO:

Tract C:

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

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

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

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

This conveyance is subject, however, to the following:

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

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

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

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

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Handwritten initials

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

FILED

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2000 AUG -8 AM 11:37

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

20.00
A

PROMISSORY NOTE

\$2,200,000.00

April 5, 2006

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Penny Creek Associates, L.L.C.

Members:

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

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

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

Michel Laplante (SEAL)
Michel Laplante, Manager/Member

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

BKG 579PG249

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

MORTGAGE AND ASSIGNMENT OF RENTS

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

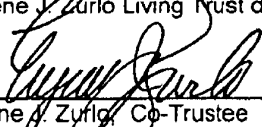
IN WITNESS WHEREOF, Mortgagor has signed and sealed this instrument as of the day and year first above written.

Mortgagor

Penny Creek Associates, L.L.C.

Members:

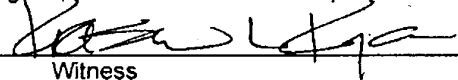
The Eugene J. Zurlo Living Trust dated December 11, 1997

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

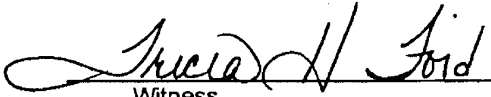
By:  (SEAL)
Charlotte R. Zurlo, Co-Trustee

 (SEAL)
Michel Laplante, Manager/Member

Signed, sealed and delivered in presence of:


Witness

John's Island, SC 29455
Address


Witness

John's Island, SC 29455
Address

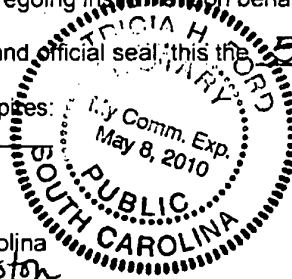
State of South Carolina
County of Charleston

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

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

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

My commission expires:



Tricia H. Ford
Notary Public

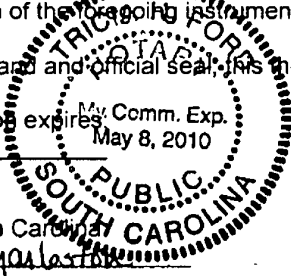
State of South Carolina
County of Charleston

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

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

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

My commission expires:



Tricia H. Ford
Notary Public

State of South Carolina
County of Charleston

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

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

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

My commission expires:



Tricia H. Ford
Notary Public

Tracking #: 67529rke
CAT - Deal # 642716 Facility: 1747808

PARCEL 1 (Tract B-2-1):

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

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

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

TMS # 346-00-00-004

ALSO

PARCEL 2 (Tract B-2-2):

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

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

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

TMS # 346-00-00-076

ALSO

PARCEL 3 (Lot 2):

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

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

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

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

TMS # 346-00-00-258

ALSO

PARCEL 4 (Lot 3):

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

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

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

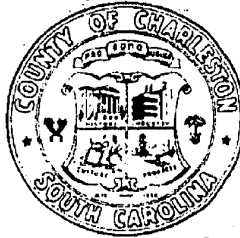
TMS # 346-00-00-259

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

BKG 579PG261

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



SAI

Filed By:

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

[Handwritten signature]

FILED

April 7, 2006

4:16:23 PM

BKG

579PG249

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION	AMOUNT
	\$ 18.00
Postage	

TOTAL	\$ 18.00

DRAWER:

	A - bmm

DO NOT STAMP BELOW THIS LINE

PROMISSORY NOTE

\$4,450,000.00

July
June 5, 2007

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

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

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

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

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

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

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

SECURITY. Borrower has granted Bank a security interest in the collateral described in the Loan Documents, including, but not limited to, real and personal property collateral described in that certain security instrument dated April 5, 2006.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the LIBOR Market Index Rate plus 1.75%, as that rate may change from day to day in accordance with changes in the LIBOR Market Index Rate ("Interest Rate"). "LIBOR Market Index Rate", for any day, means the rate for 1 month U.S. dollar deposits as reported on Telerate Successor Page 3750 as of 11:00 a.m., London time, on such day, or if such day is not a London business day, then the immediately preceding London business day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

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DEFAULT RATE. In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and as long as a Default continues, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective interest yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective rate exceeding the nominal rate.

REPAYMENT TERMS. This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on July 13, 2007, and continuing on the same day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on March 13, 2008.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. If a Default occurs, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. Loan Documents. The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof, unless such late payment is in an amount not greater than the highest periodic payment due hereunder.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

If this Note is secured by owner-occupied residential real property located outside the state in which the office of Bank first shown above is located, the late charge laws of the state where the real property is located shall apply to this Note and the late charge shall be the highest amount allowable under such

laws. If no amount is stated thereunder, the late charge shall be 5% of each payment past due for 10 or more days.

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEFAULT. If any of the following occurs, a default ("Default") under this Note shall exist: **Nonpayment; Nonperformance.** The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents. **False Warranty.** A warranty or representation made or deemed made in the Loan Documents or furnished Bank in connection with the loan evidenced by this Note proves materially false, or if of a continuing nature, becomes materially false. **Cross Default.** At Bank's option, any default in payment or performance of any obligation under any other loans, contracts or agreements of Borrower, any Subsidiary or Affiliate of Borrower, any general partner of or the holder(s) of the majority ownership interests of Borrower with Bank or its affiliates ("Affiliate" shall have the meaning as defined in 11 U.S.C. § 101, as in effect from time to time, except that the term "Borrower" shall be substituted for the term "Debtor" therein; "Subsidiary" shall mean any business in which Borrower holds, directly or indirectly, a controlling interest). **Cessation; Bankruptcy.** The death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or commencement of any bankruptcy or insolvency proceeding by or against Borrower, its Subsidiaries or Affiliates, if any, or any general partner of or the holder(s) of the majority ownership interests of Borrower, or any party to the Loan Documents. **Material Capital Structure or Business Alteration.** Without prior written consent of Bank, (i) a material alteration in the kind or type of Borrower's business or that of Borrower's Subsidiaries or Affiliates, if any; (ii) the sale of substantially all of the business or assets of Borrower, any of Borrower's Subsidiaries or Affiliates or any guarantor, or a material portion (10% or more) of such business or assets if such a sale is outside the ordinary course of business of Borrower, or any of Borrower's Subsidiaries or Affiliates or any guarantor, or more than 50% of the outstanding stock or voting power of or in any such entity in a single transaction or a series of transactions; (iii) the acquisition of substantially all of the business or assets or more than 50% of the outstanding stock or voting power of any other entity; or (iv) should any Borrower or any of Borrower's Subsidiaries or Affiliates or any guarantor enter into any merger or consolidation. **Material Adverse Change.** Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Obligations are impaired or there has occurred a material adverse change in the business or prospects of Borrower, financial or otherwise.

REMEDIES UPON DEFAULT. If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: **Bank Lien.** Foreclose its security interest or lien against Borrower's deposit accounts and investment property without notice. **Acceleration Upon Default.** Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable. **Cumulative.** Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

TAX RETURNS. Borrower shall deliver to Bank, within 30 days of filing, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Borrower to be true and complete copies of such returns. In the event an extension is filed, Borrower shall deliver a copy of the extension within 30 days of filing.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. Assignment. This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Organization; Powers.** Borrower represents that Borrower (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Compliance with Laws.** Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, any federal or state laws relating to liquor (including 18 U.S.C. § 3617, et seq.) or narcotics (including 21 U.S.C. § 801, et seq.) and/or any commercial crimes; all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic

sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/sanctions/>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and interpreted the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's deposit accounts and investment property with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state identified as the Jurisdiction above. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or other such document. **Payments.** All payments shall be mailed to Bank at Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or other such address as provided by Bank in writing. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the office of Bank first shown above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated together with all other parties obligated for the Obligations. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR

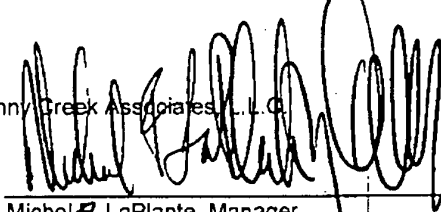
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CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **Final Agreement.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

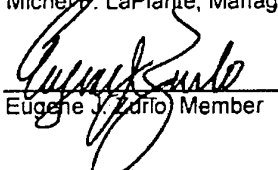
WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

IN WITNESS WHEREOF, Borrower, on the day and year first above written, has caused this Note to be duly executed under seal.

Penny Creek Associates, L.L.C.

By:  (SEAL)
Michel P. LaPlante, Manager

**By Curtis M. Byars
Attorney in Fact**

By:  (SEAL)
Eugene J. Lario, Member

Tracking #: 288544
CAT - Deal # 831238 Facility ID 639888

**MODIFICATION NUMBER ONE
TO PROMISSORY NOTE**

Penny Creek Associates, L.L.C.
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

THIS AGREEMENT is entered into as of April 28, 2008 by and between Bank and Borrower.

RECITALS

Bank is the holder of a Promissory Note, as modified from time to time, executed and delivered by Borrower, dated July 5, 2007, in the original principal amount of \$4,450,000.00 (the "Note");

Borrower and Bank have agreed to modify the terms of the Note.

In consideration of Bank's continued extension of credit and the agreements contained herein, the parties agree as follows:

AGREEMENT

ACKNOWLEDGMENT OF BALANCE. Borrower acknowledges that the most recent Commercial Loan Invoice sent to Borrower with respect to the Obligations under the Note is correct.

MODIFICATIONS.

The Note is hereby modified by deleting the provisions in the Note establishing the repayment terms and substituting the following in their place and stead:

REPAYMENT TERMS. The Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on May 13, 2008, and continuing on the same day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on March 13, 2009.

ACKNOWLEDGMENTS AND REPRESENTATIONS. Borrower acknowledges and represents that the Note and other Loan Documents, as amended hereby, are in full force and effect without any defense, counterclaim, right or claim of set-off; that, after giving effect to this Agreement, no default or event that with the passage of time or giving of notice would constitute a default under the Loan Documents has occurred, all representations and warranties contained in the Loan Documents are true and correct as of this date, all necessary action to authorize the execution and delivery of this Agreement has been taken; and this Agreement is a modification of an existing obligation and is not a novation.

COLLATERAL. Borrower acknowledges and confirms that there have been no changes in the ownership of any collateral pledged to secure the Obligations (the "Collateral") since the Collateral was originally pledged; Borrower acknowledges and confirms that the Bank has existing, valid first priority security interests and liens in the Collateral; and that such security interests and liens shall secure Borrower's Obligations, including any modification of the Note or Loan Agreement, if any, and all future modifications, extensions, renewals and/or replacements of the Loan Documents.

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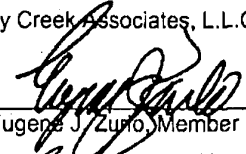
MISCELLANEOUS. This Agreement shall be construed in accordance with and governed by the laws of the applicable state as originally provided in the Loan Documents, without reference to that state's conflicts of law principles. This Agreement and the other Loan Documents constitute the sole agreement of the parties with respect to the subject matter thereof and supersede all oral negotiations and prior writings with respect to the subject matter thereof. No amendment of this Agreement, and no waiver of any one or more of the provisions hereof shall be effective unless set forth in writing and signed by the parties hereto. The illegality, unenforceability or inconsistency of any provision of this Agreement shall not in any way affect or impair the legality, enforceability or consistency of the remaining provisions of this Agreement or the other Loan Documents. This Agreement and the other Loan Documents are intended to be consistent. However, in the event of any inconsistencies among this Agreement and any of the Loan Documents, the terms of this Agreement, and then the Note, shall control. This Agreement may be executed in any number of counterparts and by the different parties on separate counterparts. Each such counterpart shall be deemed an original, but all such counterparts shall together constitute one and the same agreement. Terms used in this Agreement which are capitalized and not otherwise defined herein shall have the meanings ascribed to such terms in the Note. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS AGREEMENT. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS AGREEMENT.

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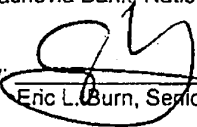
IN WITNESS WHEREOF, the undersigned have duly signed and sealed this Agreement the day and year first above written.

Penny Creek Associates, L.L.C.

By:  (SEAL)
Eugene J. Zurlo, Member

By:  (SEAL)
Michela F. LaPlante, Manager

Wachovia Bank, National Association

By:  (SEAL)
Eric L. Burn, Senior Vice President

Tracking #: 501054
CAT - Deal # 920225 Facility ID 748104

BK V633PG342

PREPARED BY: Nicki Zion
RETURN TO: Collateral Servicing Department, NC6038
Wachovia Bank, National Association
Commercial Loan Services
Collateral Servicing Department
P.O. Box 2705
Winston-Salem, NC 27199-8182

**MODIFICATION OF MORTGAGE
AND NOTICE OF FUTURE ADVANCE**

THIS MODIFICATION OF MORTGAGE is made ~~June~~ ^{July 5}, 2007, by Penny Creek Associates, L.L.C., whose address is C/O Mitch LaPlante, 151 Treeduck Court, Kiawah Island, South Carolina 29455, the Mortgagor under the Mortgage described below ("Mortgagor"), and delivered to Wachovia Bank, National Association, a national banking association as Mortgagee (referred to herein as "Bank"), whose address is Greenville, South Carolina 29601. Bank is the mortgagee hereunder for indexing purposes by the clerk of court.

RECITALS

Bank is owner and holder of a certain Mortgage (the "Mortgage") dated April 5, 2006, recorded in Book No. 6579, Page No. 249, of the public land records of the Town of John's Island, County of Charleston, State of South Carolina together with all extensions and modifications thereof whenever made.

Bank is owner and holder of a certain promissory note (the "Note") in the original amount of \$2,200,000.00, dated April 5, 2006, made by Mortgagor, payment of which is secured by the Mortgage.

Bank, and Mortgagor have modified the Note and accordingly have agreed to modify the Mortgage.

WITNESSETH:

In consideration of the foregoing premises Mortgagor and Bank hereby modify the Mortgage and any prior modifications thereof as follows:

Note Modified. Mortgagor has modified the Note (as modified, the "Modified Note") by modification dated of even date herewith, that modifies the terms of the Note. The stated principal amount due under the Modified Note is \$4,450,000.00.

Modified Note Secured. Mortgagor acknowledge(s) and agree(s) (i) that the Modified Note is a modification of the Note, (ii) that the payment and performance of the Obligations (as the term

"Obligations" is defined in the Modified Note) is secured by the Mortgage, (iii) that there are no defenses or impediments to enforcement of the lien of the Mortgage, and (iv) that the Modified Note evidences the same indebtedness as the Note and is not a novation.

Future Advances. This Mortgage is hereby modified to secure not only existing Obligations, but also future advances to the same extent as if such future advances are made on the date of the execution of this Mortgage. The principal amount (including any swap agreements and future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed the maximum principal amount of \$8,900,000.00, plus all interest, costs, reimbursements, fees and expenses due under this Mortgage and secured hereby. Mortgagor shall not execute any document that impairs or otherwise impacts the priority of any future advances secured by this Mortgage.

Mortgage Confirmed. Mortgagor acknowledge(s) and agree(s) that the Mortgage and any prior modifications thereof, except as expressly modified by this Modification Agreement shall remain in full force and effect as originally executed and the terms of this Modification Agreement shall be part of the Mortgage.

Document Taxes and Other Charges. Mortgagor shall pay the full amount of any documentary stamp tax, intangible tax, interest, filing fees and penalties, if any, charged incident to the loan transaction and modification(s) described in or created by this Modification and the filing of this Agreement. If Mortgagor fails to pay the obligations under this paragraph, Bank may pay such obligations. Any amounts so paid by Bank shall bear interest at the default rate stated in the Modified Note and shall be secured by the Mortgage.

IN WITNESS WHEREOF, Mortgagor and Bank have duly signed and sealed this instrument as of the day and year first above written.

Mortgagor

Penny Creek Associates, LLC

By:

Michel F. LaPlante, Manager

(SEAL)

By Custis M. Byars
Attorney in Fact

Signed, sealed and delivered in presence of:

Chris E. Keeney
Witness

John's Island, SC
Address

Michael H. Ford
Witness

John's Island, SC
Address

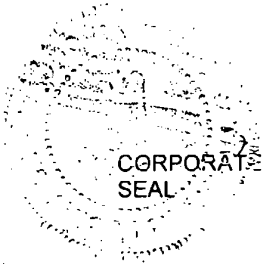
BK V633PG344

By: Eugene J. Zurlo (SEAL)
Eugene J. Zurlo, Member

Signed, sealed and delivered in presence of:

Dale Huntley
Witness
18 Clinton St. Poughkeepsie NY 12601
Address

Dale Huntley
Witness
370 Point on Lee Rd, Champaign, NY
Address



Bank
Wachovia Bank, National Association

By: Eric L. Burn
Eric L. Burn, Senior Vice President

Signed, sealed and delivered in presence of:

Eric L. Burn
Witness
177 Meeting St., Charleston, SC 29401
Address

Patricia H. Becker
Witness
177 Meeting St., Charleston, SC 29401
Address

State of South Carolina
County of Charleston

BK V633PG345

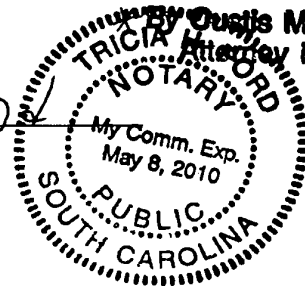
PARTNERSHIP, LIMITED PARTNERSHIP or L.L.C. PROBATE

I, TRICIA H FORD, Notary Public, do hereby certify that Michel F. LaPlante, ^{*}a Manager of Penny Creek Associates, L.L.C., a limited liability company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal, this the 5th day of July, 2005

My commission expires:

Tricia H Ford
Notary Public



NEW YORK
State of ~~South Carolina~~
County of ~~Charleston~~
CLINTON

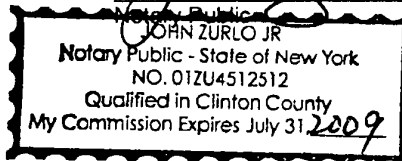
PARTNERSHIP, LIMITED PARTNERSHIP or L.L.C. PROBATE

I, JOHN ZURLO JR., Notary Public, do hereby certify that Eugene J. Zurlo, a Member of Penny Creek Associates, L.L.C., a limited liability company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal, this the 5th day of July, 2007

My commission expires:

7/31/09



State of South Carolina
County of Charleston

BANK PROBATE

I, Patricia H. Becker, Notary Public, do hereby certify that Eric L. Burn, Senior Vice President of Wachovia Bank, National Association, a corporation, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the Wachovia Bank, National Association.

Witness my hand and official seal, this the 11 day of July, 2007

My commission expires:

2-14-2015

Patricia H. Becker
Notary Name

Tracking #: 288544
CAT - Deal # 831238 Facility ID 639888

BK V633PG346
RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



FILED

July 27, 2007

2:36:05 PM

BK V633PG342

Charlie Lybrand, Register
Charleston County, SC

Filed By:

Buist, Byars, & Taylor, LLC
130 Gardener's Circle
Suite 138
Johns Island SC 29455

Number of Pages:

5

DESCRIPTION AMOUNT

MTG/MOD	\$ 9.00
Postage	

TOTAL \$ 9.00

DRAWER:

C - tps

DO NOT STAMP BELOW THIS LINE

PROMISSORY NOTE

\$7,592,781.92

July 28, 2009

Penny Creek Associates, LLC
 C/O Mitch Laplante
 151 Treeduck Court
 Kiawah Island, South Carolina 29455
 (Hereinafter referred to as "Borrower")

Wachovia Bank, National Association
 Greenville, South Carolina 29601
 (Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Seven Million, Five Hundred Ninety-Two Thousand, Seven Hundred Eighty-One and 92/100 Dollars (\$7,592,781.92) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

RENEWAL/CONSOLIDATION. This Promissory Note consolidates, renews, extends, and/or modifies that certain Promissory Note dated July 5, 2007, evidencing an original principal amount of \$4,450,000.00, as renewed, extended, and/or modified from time to time, and that certain Promissory Note dated April 28, 2008, evidencing an original principal amount of \$3,142,781.92, as renewed, extended and/or modified from time to time. This Promissory Note is not a novation.

LINE OF CREDIT. Borrower may borrow, repay and reborrow, and, upon the request of Borrower, Bank shall advance and readvance under this Note from time to time until the maturity hereof (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if Borrower is in Default. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date.

If Borrower subscribes to Bank's cash management services and such services are applicable to this line of credit, the terms of such service shall control the manner in which funds are transferred between the applicable demand deposit account and the line of credit for credit or debit to the line of credit.

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: refinance and consolidation of existing debt.

SECURITY. (a) Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain security instrument, dated August 5, 2000, as modified, restated or replaced from time to time. (b) Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain security instrument, dated August 7, 2000, as modified, restated or replaced from time to time, and (c) Eugene J. Zurlo and Charlotte R. Zurlo, Trustees of the Nicklaus Lane

Realty Trust No. 1, Under Declaration of Trust Dated May 22, 1998 have granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain security instrument, dated August 6, 2007, as modified, restated or replaced from time to time.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the LIBOR Market Index Rate plus 2.49%, as that rate may change from day to day in accordance with changes in the LIBOR Market Index Rate ("Interest Rate"). "LIBOR Market Index Rate", for any day, means the rate for 1 month U.S. dollar deposits as reported on Telerate Successor Page 3750 as of 11:00 a.m., London time, on such day, or if such day is not a London business day, then the immediately preceding London business day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

DEFAULT RATE. In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and as long as a Default continues, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective interest yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective rate exceeding the nominal rate.

REPAYMENT TERMS. The Note shall be due and payable as set forth hereinbelow. From the date of this Note until and including April 13, 2010, the Conversion Date, this Note shall be payable in consecutive monthly payments of accrued interest only, commencing on August 13, 2009, and continuing on the same day of each month thereafter. After the Conversion Date, this Note shall be payable in consecutive monthly payments of principal and interest in an amount equal to \$60,043.24, commencing on May 13, 2010 and continuing on the same day of each month thereafter. In any event, all principal and accrued interest shall be due and payable on June 13, 2012.

Scheduled Payment Adjustment. At Bank's option and with notice to Borrower, the scheduled payment amount will increase as is necessary (i) to pay all accruals of interest for the period and previous periods and (ii) to maintain principal repayment according to the amortization that would have occurred if the Interest Rate in effect on the date of this Note had remained constant. The increased payment amount shall remain in effect for as long as the original scheduled payment amount is insufficient to pay accrued interest and principal and shall be further adjusted upward or downward to reflect changes in the variable interest rate. The scheduled payment amount will not be reduced below the original scheduled payment amount.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. If a Default occurs, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. Loan Documents. The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any

letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

If this Note is secured by owner-occupied residential real property located outside the state in which the office of Bank first shown above is located, the late charge laws of the state where the real property is located shall apply to this Note and the late charge shall be the highest amount allowable under such laws. If no amount is stated thereunder, the late charge shall be 5% of each payment past due for 10 or more days.

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEFAULT. If any of the following occurs, a default ("Default") under this Note shall exist: **Nonpayment; Nonperformance.** The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents. **False Warranty.** A warranty or representation made or deemed made in the Loan Documents or furnished Bank in connection with the loan evidenced by this Note proves materially false, or if of a continuing nature, becomes materially false. **Cross Default.** At Bank's option, any default in payment or performance of any obligation under any other loans, contracts or agreements of Borrower, any Subsidiary or Affiliate of Borrower, any general partner of or the holder(s) of the majority ownership interests of Borrower with Bank or its affiliates ("Affiliate" shall have the meaning as defined in 11 U.S.C. § 101, as in effect from time to time, except that the term "Borrower" shall be substituted for the term "Debtor" therein; "Subsidiary" shall mean any business in which Borrower holds, directly or indirectly, a controlling interest). **Cessation; Bankruptcy.** The death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or commencement of any bankruptcy or insolvency proceeding by or against Borrower, its Subsidiaries or Affiliates, if any, or any general partner of or the holder(s) of the majority ownership interests of Borrower, or any party to the Loan Documents. **Material Capital Structure or Business Alteration.** Without prior written consent of Bank, (i) a material alteration in the kind or type of Borrower's business or that of Borrower's Subsidiaries or Affiliates, if any; (ii) the sale of substantially all of the business or assets of Borrower, any of Borrower's Subsidiaries or Affiliates

or any guarantor, or a material portion (10% or more) of such business or assets if such a sale is outside the ordinary course of business of Borrower, or any of Borrower's Subsidiaries or Affiliates or any guarantor, or more than 50% of the outstanding stock or voting power of or in any such entity in a single transaction or a series of transactions; (iii) the acquisition of substantially all of the business or assets or more than 50% of the outstanding stock or voting power of any other entity; or (iv) should any Borrower or any of Borrower's Subsidiaries or Affiliates or any guarantor enter into any merger or consolidation. **Material Adverse Change.** Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Obligations are impaired or there has occurred a material adverse change in the business or prospects of Borrower, financial or otherwise

REMEDIES UPON DEFAULT. If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: **Bank Lien.** Foreclose its security interest or lien against Borrower's deposit accounts and investment property without notice. **Acceleration Upon Default.** Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable. **Cumulative.** Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

ANNUAL FINANCIAL STATEMENTS. Borrower shall deliver to Bank, no later than April 30th of each year, unaudited management-prepared financial statements reflecting its operations during such fiscal year, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules and in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year. If unaudited statements are required, such statements shall be certified as to their correctness by a principal financial officer of Borrower.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. Assignment. This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Organization; Powers.** Borrower represents that Borrower (i) is (a) an adult individual and is *sui juris*, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Compliance with Laws.** Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's deposit accounts and investment property with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in the Bank's address on the first page hereof. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or other such document. **Payments.** All payments shall be mailed to Bank at Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502, or other such address as provided by Bank in writing. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered

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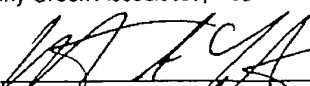
to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the address for payments set forth above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated together with all other parties obligated for the Obligations. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **Telephone Communication Monitoring.** Borrower agrees that Borrower's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

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IN WITNESS WHEREOF, Borrower, on the day and year first above written, has caused this Note to be duly executed under seal.

Penny Creek Associates, LLC

By:  (SEAL)
Michel P. LaPlante, Manager

By:  (SEAL)
Eugene J. Zurlo, Member

Work Request / Tracking # 1397639
CAT - Deal # 1133533 Facility # 951303
Obligor #. 41/6909622159 Obligation # 1644814 & 1324987

#0264268029-26

FIRST MODIFICATION TO PROMISSORY NOTE

THIS MODIFICATION TO PROMISSORY NOTE (this "Modification") is executed this August 14, 2012, by and between Penny Creek Associates, LLC ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, successor-by-merger to Wachovia Bank, National Association ("Bank").

RECITALS

WHEREAS, Borrower is currently indebted to Bank pursuant to the terms and conditions of that certain Promissory Note in the maximum principal amount of \$7,592,781.92, executed by Borrower and payable to the order of Bank, dated as of July 28, 2009 (the "Note").

WHEREAS, Bank and Borrower have agreed to certain changes in the terms and conditions set forth in the Note, and have agreed to modify the Note to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be modified as follows:

1. The maximum principal amount available under the Note is hereby modified to be Six Million Five Hundred Twenty-one Thousand Three Hundred Sixty-eight and 61/100 Dollars (\$6,521,368.61).

2. Paragraph titled "LINE OF CREDIT" is hereby deleted in its entirety, without substitution.

3. Paragraph title "SECURITY" is hereby deleted in its entirety, and the following substituted therefor:

SECURITY. (a) Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain Mortgage and Absolute Assignment of Leases dated August 7, 2000, recorded in Book P352, Page 613 of the of the Register of Deeds Office of the County of Charleston, State of South Carolina. (b) Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain Mortgage and Assignment of Rents dated April 5, 2006, recorded in Book G579, Page 249 of the of the Register of Deeds Office of the County of Charleston, State of South Carolina, as modified by that certain Modification of Mortgage and Notice of Future Advance dated July 5, 2007, recorded in Book V633, Page 342 of the of the Register of Deeds Office of the County of Charleston, State of South Carolina.

4. Paragraph titled "INTEREST RATE" is hereby deleted in its entirety, and the following substituted therefor:

"INTEREST RATE: The outstanding principal balance of this Note shall bear interest at a rate per annum one percent (1.0%) above the Prime Rate in effect from time to time. The term "Prime Rate" means at any time the rate of interest most recently announced within Bank at its principal office as its Prime Rate, with the understanding that the Prime Rate is one of Bank's base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Bank may designate. Each change in the rate of interest hereunder shall become effective on the date each Prime Rate change is announced within Bank."

5. Paragraph titled "REPAYMENT TERMS" is hereby deleted in its entirety, and the following substituted therefor:

"REPAYMENT TERMS. Interest accrued on this Note shall be payable on the 13th day of each month, commencing September 13, 2012. The outstanding principal balance of this Note shall be due and payable in full on January 18, 2013."

6. Paragraph titled "Scheduled Payment Adjustment" is hereby deleted in its entirety, without substitution.

7. Although the Note matured prior to the execution of this Modification, the parties hereby agree that the effective date of the changes set forth herein shall be June 13, 2012, such that the Note shall be deemed to have not matured.

8. Except as expressly set forth herein, all terms and conditions of the Note remain in full force and effect, without waiver or modification. All terms defined in the Note shall have the same meaning when used in this Modification. This Modification and the Note shall be read together, as one document.

9. Borrower certifies that as of the date of this Modification there exists no Event of Default under the Note, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default. Borrower further certifies that, notwithstanding the modifications set forth herein, all of the real property securing the Note shall remain subject to the lien, charge or encumbrance of the deed of trust, mortgage or other document pursuant to which such lien, charge or encumbrance is created, and nothing contained herein or done pursuant hereto shall affect or be construed to affect the priority of the lien, charge or encumbrance of any such deed of trust, mortgage or other document over any other liens, charges or encumbrances.

10. General Release. In consideration of the benefits provided to Borrower under the terms and provisions hereof, Borrower and each guarantor hereunder hereby agree as follows ("General Release"):

(a) Borrower and each guarantor hereunder, for itself and on behalf of its respective successors and assigns, do hereby release, acquit and forever discharge Bank, all of Bank's predecessors in interest, and all of Bank's past and present officers, directors, attorneys, affiliates, employees and agents, of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or of any relationship, acts, omissions, misfeasance, malfeasance, causes of action, defenses, offsets, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses

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and expenses, of every type, kind, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length (each, a "Released Claim" and collectively, the "Released Claims"), that Borrower or any guarantor hereunder now has or may acquire as of the later of: (i) the date this Modification becomes effective through the satisfaction (or waiver by Bank) of all conditions hereto; or (ii) the date that Borrower and each guarantor hereunder have executed and delivered this Modification to Bank (hereafter, the "Release Date"), including without limitation, those Released Claims in any way arising out of, connected with or related to any and all prior credit accommodations, if any, provided by Bank, or any of Bank's predecessors in interest, to Borrower or any guarantor hereunder, and any agreements, notes or documents of any kind related thereto or the transactions contemplated thereby or hereby, or any other agreement or document referred to herein or therein.

(b) Each person signing below on behalf of Borrower or any guarantor hereunder acknowledges that he or she has read each of the provisions of this General Release. Each such person fully understands that this General Release has important legal consequences, and each such person realizes that they are releasing any and all Released Claims that Borrower or any such guarantor may have as of the Release Date. Borrower and each guarantor hereunder hereby acknowledge that each of them has had an opportunity to obtain a lawyer's advice concerning the legal consequences of each of the provisions of this General Release.

(c) Borrower and each guarantor hereunder hereby specifically acknowledge and agree that: (i) none of the provisions of this General Release shall be construed as or constitute an admission of any liability on the part of Bank; (ii) the provisions of this General Release shall constitute an absolute bar to any Released Claim of any kind, whether any such Released Claim is based on contract, tort, warranty, mistake or any other theory, whether legal, statutory or equitable; and (iii) any attempt to assert a Released Claim barred by the provisions of this General Release shall subject Borrower and each guarantor hereunder to the provisions of applicable law setting forth the remedies for the bringing of groundless, frivolous or baseless claims or causes of action.

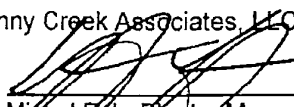
WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS, WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE PROPERTY.

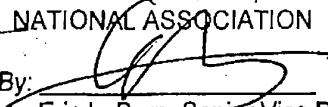
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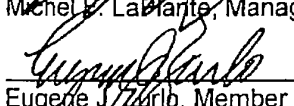
IN WITNESS WHEREOF, the parties hereto have caused this Modification to be executed, with the intention that it constitute an instrument under seal, as of the day and year first written above.

Penny Creek Associates, LLC

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By:  (SEAL)
Michel F. LaPlante, Manager

By:  (SEAL)
Eric L. Burn, Senior Vice President

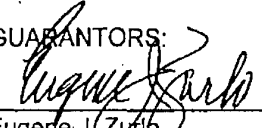
By:  (SEAL)
Eugene J. Zurlo, Member

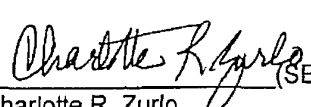
GUARANTORS' CONSENT AND REAFFIRMATION

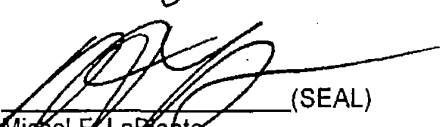
Each of the undersigned guarantors of all indebtedness of Penny Creek Associates, LLC to WELLS FARGO BANK, NATIONAL ASSOCIATION hereby: (i) consents to the foregoing Modification; (ii) reaffirms its obligations under its respective Unconditional Guaranty; (iii) reaffirms its waivers of each and every one of the defenses to such obligations as set forth in its respective Unconditional Guaranty; and (iv) reaffirms that its obligations under its respective Unconditional Guaranty are separate and distinct from the obligations of any other party under said Modification and the other Loan Documents described therein.

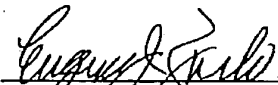
WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS, WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE PROPERTY.

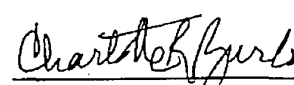
GUARANTORS:

 (SEAL)
Eugene J. Zurlo

 (SEAL)
Charlotte R. Zurlo

 (SEAL)
Michel F. LaPlante

 (SEAL)
Eugene J. Zurlo, Trustee of The
Nicklaus Lane Realty Trust No. 1
under Declaration of Trust
dated May 22, 1998

 (SEAL)
Charlotte R. Zurlo, Trustee of The
Nicklaus Lane Realty Trust No. 1
under Declaration of Trust
dated May 22, 1998

 (SEAL)
Eugene J. Zurlo; Co-Trustee of The
Zurlo Investment Trust No. 1
under trust agreement
dated August 10, 1998

Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo, Co-Trustee of The
Zurlo Investment Trust No. 1
under trust agreement
dated August 10, 1998

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SECOND MODIFICATION TO PROMISSORY NOTE

THIS MODIFICATION TO PROMISSORY NOTE (this "Modification") is entered into as of May 23, 2013, by and between PENNY CREEK ASSOCIATES, LLC ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank").

RECITALS

WHEREAS, Borrower is currently indebted to Bank pursuant to the terms and conditions of that certain Promissory Note in the maximum principal amount of \$7,592,781.92, executed by Borrower and payable to the order of Bank, dated as of July 28, 2009, as modified on August 14, 2012, and extended on January 28, 2013 (the "Note");

WHEREAS, Bank and Borrower have agreed to certain changes in the terms and conditions set forth in the Note, and have agreed to modify the Note to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be modified as follows:

1. Paragraph titled "REPAYMENT TERMS" is hereby deleted in its entirety, and the following substituted therefor:

"REPAYMENT TERMS. Interest accrued on this Note shall be payable on the 13th day of each month, commencing June 13, 2013. The outstanding principal balance of this Note shall be due and payable in full on January 18, 2014."

2. General Release. In consideration of the benefits provided to Borrower under the terms and provisions hereof, Borrower and each guarantor hereunder hereby agree as follows ("General Release"):

(a) Borrower and each guarantor hereunder, for itself and on behalf of its respective successors and assigns, do hereby release, acquit and forever discharge Bank, all of Bank's predecessors in interest, and all of Bank's past and present officers, directors, attorneys, affiliates, employees and agents, of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or of any relationship, acts, omissions, misfeasance, malfeasance, causes of action, defenses, offsets, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length (each, a "Released Claim" and collectively, the "Released Claims"), that Borrower or any guarantor hereunder now has or may acquire as of the later of: (i) the date this Modification becomes effective through the satisfaction (or waiver by Bank) of all conditions hereto; or (ii) the date that Borrower and each guarantor hereunder have executed and delivered this Modification to Bank (hereafter, the "Release Date"), including without limitation, those Released Claims in any way arising out of, connected with or related to any and all prior credit accommodations, if any, provided by Bank, or any of Bank's predecessors in interest, to Borrower or any guarantor hereunder, and any agreements, notes or documents of any kind related thereto or the transactions contemplated thereby or hereby, or any other agreement or document referred to herein or therein.

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Legal reviewed-Haynesworth
Sinkler & Boyd

(b) Each person signing below on behalf of Borrower or any guarantor hereunder acknowledges that he or she has read each of the provisions of this General Release. Each such person fully understands that this General Release has important legal consequences, and each such person realizes that they are releasing any and all Released Claims that Borrower or any such guarantor may have as of the Release Date. Borrower and each guarantor hereunder hereby acknowledge that each of them has had an opportunity to obtain a lawyer's advice concerning the legal consequences of each of the provisions of this General Release.

(c) Borrower and each guarantor hereunder hereby specifically acknowledge and agree that: (i) none of the provisions of this General Release shall be construed as or constitute an admission of any liability on the part of Bank; (ii) the provisions of this General Release shall constitute an absolute bar to any Released Claim of any kind, whether any such Released Claim is based on contract, tort, warranty, mistake or any other theory, whether legal, statutory or equitable; and (iii) any attempt to assert a Released Claim barred by the provisions of this General Release shall subject Borrower and each guarantor hereunder to the provisions of applicable law setting forth the remedies for the bringing of groundless, frivolous or baseless claims or causes of action.

3. The effective date of the changes set forth herein shall be May 23, 2013. ✓

4. Except as expressly set forth herein, all terms and conditions of the Note remain in full force and effect, without waiver or modification. All terms defined in the Note [or the Loan Agreement] shall have the same meaning when used in this Modification. This Modification and the Note shall be read together, as one document.

5. Borrower certifies that as of the date of this Modification there exists no Event of Default under the Note, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default. Borrower further certifies that, notwithstanding the modifications set forth herein, all of the real property securing the Note shall remain subject to the lien, charge or encumbrance of the deed of trust, mortgage or other document pursuant to which such lien, charge or encumbrance is created, and nothing contained herein or done pursuant hereto shall affect or be construed to affect the priority of the lien, charge or encumbrance of any such deed of trust, mortgage or other document over any other liens, charges or encumbrances.

WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS, WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE PROPERTY.

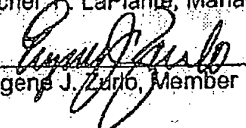
IN WITNESS WHEREOF, the parties hereto have caused this Modification to be executed, with the intention that it constitute an instrument under seal, as of the day and year first written above.

PENNY CREEK ASSOCIATES, LLC

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____ (SEAL)
Michel F. LaPlante, Manager

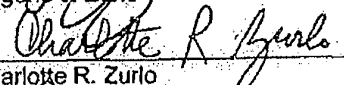
By: _____
Steven A. Jasinski, Private Banker

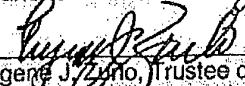
By:  (SEAL)
Eugene J. Zurlo, Member

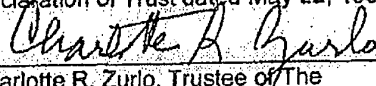
GUARANTORS:

Michel F. LaPlante

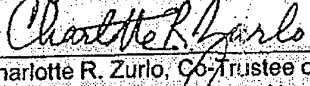

Eugene J. Zurlo


Charlotte R. Zurlo


Eugene J. Zurlo, Trustee of The
Nicklaus Lane Realty Trust No. 1 under
Declaration of Trust dated May 22, 1998


Charlotte R. Zurlo, Trustee of The
Nicklaus Lane Realty Trust No. 1 under
Declaration of Trust dated May 22, 1998


Eugene J. Zurlo, Co-Trustee of
The Zurlo Investment Trust No. 1 under
trust agreement dated August 10, 1998


Charlotte R. Zurlo, Co-Trustee of
The Zurlo Investment Trust No. 1 under
trust agreement dated August 10, 1998

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GUARANTORS' CONSENT AND REAFFIRMATION

Each of the undersigned guarantors of all indebtedness of PENNY CREEK ASSOCIATES, LLC to WELLS FARGO BANK, NATIONAL ASSOCIATION hereby: (i) consents to the foregoing Amended and Restated Commitment Note; (ii) reaffirms its obligations under its respective Continuing Guaranty; (iii) reaffirms its waivers of each and every one of the defenses to such obligations as set forth in its respective Continuing Guaranty; and (iv) reaffirms that its obligations under its respective Continuing Guaranty are separate and distinct from the obligations of any other party under said Amended and Restated Commitment Note and the other Loan Documents described therein.

GUARANTORS:

Michel F. LaPlante

Eugene J. Zurlo

Charlotte R. Zurlo

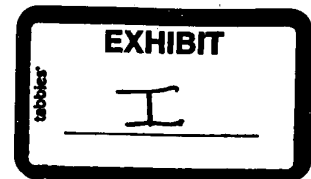
Eugene J. Zurlo, Trustee of The
Nicklaus Lane Realty Trust No. 1 under
Declaration of Trust dated May 22, 1998

Charlotte R. Zurlo, Trustee of The
Nicklaus Lane Realty Trust No. 1 under
Declaration of Trust dated May 22, 1998

Eugene J. Zurlo, Co-Trustee of
The Zurlo Investment Trust No. 1 under
trust agreement dated August 10, 1998

Charlotte R. Zurlo, Co-Trustee of
The Zurlo Investment Trust No. 1 under
trust agreement dated August 10, 1998

13185 M107025



RMC BK 0284 Pg 614 : pg 1 *



BP0284614

RETURN TO: L. Foster Girard
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, South Carolina 29211

MODIFICATION OF MORTGAGES
Book P352, Page 613, and Book G579, Page 249
(CHARLESTON)

THIS MODIFICATION, is made effective Octoberst, 2012, by Penny Creek Associates, LLC, whose address is _____, the Mortgagor under the Mortgages described below ("Mortgagor"), and delivered to Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, National Association, a national banking association, as Mortgagee (referred to herein as "Bank"), whose address is 90 South 7th Street Minneapolis, MN 55402.

RECITALS

Bank is the owner and holder of a certain Mortgage and Absolute Assignment of Leases dated August 7, 2000, recorded in Book P352, Page 613 of the of the Register of Deeds Office of the County of Charleston, State of South Carolina (the "\$5,300,000 Mortgage").

Bank is owner and holder of a certain Mortgage and Assignment of Rents dated April 5, 2006, recorded in Book G579, Page 249 of the aforementioned records, as modified by that certain Modification of Mortgage and Notice of Future Advance dated July 5, 2007, recorded in Book V633, Page 342 of the aforementioned records (as modified, the "\$4,450,000 Mortgage" and, together with the \$5,300,000 Mortgage, the "Mortgages").

The Promissory Note that was originally secured by the \$5,300,000 Mortgage, also dated August 7, 2000 (the "\$5,300,000 Note"), has been amended and extended by the parties a number of times since the \$5,300,000 Mortgage was first given.

The Promissory Note that was originally secured by the \$4,450,000 Mortgage, dated April 5, 2006 (the "\$4,450,000 Note" and together with the \$5,300,000 Note, the "Original Notes"), has been amended and extended by the parties a number of times since the \$4,450,000 Mortgage was first given.

The \$5,300,000 Note and the \$4,450,000 Note were consolidated on July 28, 2009 into a Promissory Note in the amount of Seven Million Five Hundred Ninety-Two Thousand Seven Hundred Eighty-One and 92/100 Dollars (\$7,592,781.92) (the "Consolidated Note").

The Consolidated Note is being amended on equal date herewith; and the parties desire to record this Modification in order to more clearly state that the Consolidated Note is secured by both the \$5,300,000 Mortgage and the \$4,450,000 Mortgage.

Bank and Mortgagor have modified the Note and accordingly have agreed to modify the Mortgage.

WITNESSETH:

In consideration of the foregoing premises Mortgagor and Bank hereby modify the Mortgages and any prior modifications thereof as follows:

Note Modified. Mortgagor has modified the Consolidated Note (as modified, the "Modified Consolidated Note") pursuant to a First Modification of Promissory Note dated of even date herewith, that modifies the terms of the Note by, among other changes, reducing the stated principal of the Note to \$6,521,368.61.

Modified Note Secured. Mortgagor acknowledge(s) and agree(s) (i) that the Modified Consolidated Note is a modification of the Original Notes, (ii) that the payment and performance of the Obligations (as the term "Obligations" is defined in the Modified Consolidated Note) is secured by both Mortgages, (iii) that there are no defenses or impediments to enforcement of the lien of the Mortgages, and (iv) that the Modified Consolidated Note evidences the same indebtedness as the Original Notes and is not a novation.

Mortgages Confirmed. Mortgagor acknowledge(s) and agree(s) that the Mortgages and any prior modifications thereof, except as expressly modified by this Modification shall remain in full force and effect as originally executed and the terms of this Modification shall be part of the Mortgages.

Document Taxes and Other Charges. Mortgagor shall pay the full amount of any documentary stamp tax, intangible tax, interest, filing fees and penalties, if any, charged incident to the loan transaction and modification(s) described in or created by this Modification and the filing thereof. If Mortgagor fails to pay the obligations under this paragraph, Bank may pay such obligations. Any amounts so paid by Bank shall bear interest at the default rate stated in the Modified Consolidated Note and shall be secured by the Mortgage.

IN WITNESS WHEREOF, Mortgagor and Bank have signed and sealed this instrument as of the day and year first above written.

Mortgagor

Penny Creek Associates, LLC

By: _____ (SEAL)

Name: Mitch Laplante

Title: Manager

Signed, sealed and delivered in presence of:

witness

Ramen Raplante
witness

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

The foregoing instrument was acknowledged before me this 1st day of October, 2012 by Mitch Laplante, the Manager of Penny Creek Associates, LLC, on behalf of said entity.

Ramen Bailey
Notary Public for South Carolina
My Commission Expires: 1/15/19

[SEAL]

Bank

Wells Fargo Bank, N.A., as successor by merger to
Wachovia Bank, National Association

By: [Signature] (SEAL)
Name: STEVEN A JARINSKI
Title: VICE PRESIDENT

Signed, sealed and delivered in presence of:

[Signature]
witness
[Signature]
witness

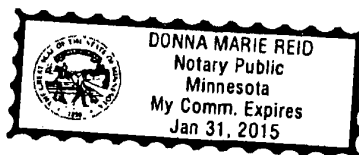
STATE OF SOUTH CAROLINA Minnesota
COUNTY OF RICHLAND Hennepin

The foregoing instrument was acknowledged before me this 9th day of October, 2012 by STEVEN A JARINSKI, a Vice President of Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, National Association, a national association, on behalf of said entity.

Donna Marie Reid

Notary Public for South Carolina-Minnesota
My Commission Expires: 1-31-2015

[SEAL]



RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



Filed By:

HAYNSWORTH SINKLER BOYD, PA

PO BOX 11889
COLUMBIA SC 29211

RECORDED		
Date:	October 15, 2012	
Time:	1:39:30 PM	
Book	Page	DocType
0284	614	Mtg/Mod
Charlie Lybrand, Register Charleston County, SC		

MAKER:

PENNY CREEK ASSOCS LLC

of Sats:

of Pages:

of References:

Note:

RECIPIENT:

WELLS FARGO BANK

Recording Fee	\$ 6.00
Extra Reference Cost	\$ 6.00
Extra Pages	\$ 3.00
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 15.00

Original Book:

P352

Original Page:

613

DRAWER
CLERK

Drawer 1
KLH



0284
Book



614
Page



10/15/2012
Recorded Date



5
Pgs



P352
Original Book



613
Original Page



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Doc Type



13:39:30
Recorded Time

PROMISSORY NOTE

\$3,536,250.00

January 31, 2011

The Grove At Fenwick Plantation, LLC
151 Treeduct Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Wells Fargo Bank, N.A.
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Three Million, Five Hundred Thirty-Six Thousand, Two Hundred Fifty and No/100 Dollars (\$3,536,250.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: to acquire commercial real estate.

SECURITY. Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain security instrument, of even date herewith, as modified, restated or replaced from time to time.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note during each Interest Period from the date hereof at a rate per annum equal to 1-month LIBOR plus 2.75% ("Interest Rate"). Interest for each Interest Period shall accrue each day during such Interest Period, commencing on and including the first day to but excluding the last day. "Interest Period" means each period commencing on the first day of the calendar month and ending on the first day of the next succeeding calendar month; provided (i) the first Interest Period shall commence on the date hereof and (ii) any Interest Period that would otherwise extend past the maturity date of this Note shall end on the maturity date of this Note. "LIBOR" means, with respect to each Interest Period, the rate for U.S. dollar deposits with a maturity equal to the number of months specified above, as reported on Telerate Successor Page 3750 as of 11:00 a.m., London time, on the second London business day before such Interest Period begins, or, in the case of the first Interest Period, the second London business day before the first day of the calendar month during which such Interest Period begins (or if not so reported, then as determined by the Bank from another recognized source or interbank quotation).

DEFAULT RATE. In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and as long as a Default continues, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to

be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective interest rate exceeding the nominal rate.

REPAYMENT TERMS. This Note shall be due and payable as follows: beginning February 15, 2011, monthly principal payments of \$14,734.37 plus interest, based on a commercial style 20-year amortization, then beginning January 15, 2012, interest only monthly with principal reductions of \$175,500 by March 15, 2012, by June 15, 2012, and by September 15, 2012. In any event, all principal and accrued interest shall be due and payable on December 15, 2012.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. If a Default occurs, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. Loan Documents. The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

If this Note is secured by owner-occupied residential real property located outside the state in which the office of Bank first shown above is located, the late charge laws of the state where the real property is located shall apply to this Note and the late charge shall be the highest amount allowable under such laws. If no amount is stated thereunder, the late charge shall be 5% of each payment past due for 10 or more days.

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any

amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEFAULT. If any of the following occurs, a default ("Default") under this Note shall exist: **Nonpayment; Nonperformance.** The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents. **False Warranty.** A warranty or representation made or deemed made in the Loan Documents or furnished Bank in connection with the loan evidenced by this Note proves materially false, or if of a continuing nature, becomes materially false. **Cross Default.** At Bank's option, any default in payment or performance of any obligation under any other loans, contracts or agreements of Borrower, any Subsidiary or Affiliate of Borrower, any general partner of or the holder(s) of the majority ownership interests of Borrower with Bank or its affiliates ("Affiliate" shall have the meaning as defined in 11 U.S.C. § 101, as in effect from time to time, except that the term "Borrower" shall be substituted for the term "Debtor" therein; "Subsidiary" shall mean any business in which Borrower holds, directly or indirectly, a controlling interest). **Cessation; Bankruptcy.** The death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or commencement of any bankruptcy or insolvency proceeding by or against Borrower, its Subsidiaries or Affiliates, if any, or any general partner of or the holder(s) of the majority ownership interests of Borrower, or any party to the Loan Documents. **Material Capital Structure or Business Alteration.** Without prior written consent of Bank, (i) a material alteration in the kind or type of Borrower's business or that of Borrower's Subsidiaries or Affiliates, if any; (ii) the sale of substantially all of the business or assets of Borrower, any of Borrower's Subsidiaries or Affiliates or any guarantor, or a material portion (10% or more) of such business or assets if such a sale is outside the ordinary course of business of Borrower, or any of Borrower's Subsidiaries or Affiliates or any guarantor, or more than 50% of the outstanding stock or voting power of or in any such entity in a single transaction or a series of transactions; (iii) the acquisition of substantially all of the business or assets or more than 50% of the outstanding stock or voting power of any other entity; or (iv) should any Borrower or any of Borrower's Subsidiaries or Affiliates or any guarantor enter into any merger or consolidation. **Material Adverse Change.** Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Obligations are impaired or there has occurred a material adverse change in the business or prospects of Borrower, financial or otherwise.

REMEDIES UPON DEFAULT. If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: **Bank Lien.** Foreclose its security interest or lien against Borrower's deposit accounts and investment property without notice. **Acceleration Upon Default.** Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable. **Cumulative.** Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

PROPERTY REPORTS. Borrower shall deliver to Bank, within 45 days after the close of each fiscal quarter, rent roll financial statements relating to the operation of the Property or Properties as set forth on the Real Estate Owned Schedule, including, without limitation, a balance sheet, income and expense statement and statement of cash flows, with supporting schedules; and summary of leases, as applicable; all in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year. Release price for the units will be 100% of the Bank approved net sale proceeds, but in no case will the release price be less than \$58,500 per unit. Net sales proceeds from unit sales can be applied towards the quarterly principal payments due in year 2.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. Assignment. This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Organization; Powers.** Borrower represents that Borrower (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Compliance with Laws.** Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or

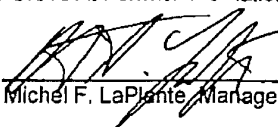
Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's deposit accounts and investment property with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in the Bank's address on the first page hereof. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or other such document. **Payments.** All payments shall be mailed to Bank at Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or other such address as provided by Bank in writing. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, P. O. Box 13327, Roanoke, VA 24040 or Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the address for payments set forth above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated together with all other parties obligated for the Obligations. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering

activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **Telephone Communication Monitoring.** Borrower agrees that Borrower's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

IN WITNESS WHEREOF, Borrower, on the day and year first above written, has caused this Note to be duly executed under seal.

The Grove At Fenwick Plantation, LLC

By:  (SEAL)
Michel F. LaPlante, Manager

Work Request / Tracking #: 2178599
CAT - Deal # 1491535 Facility #: 1230705



BP0169391

EXHIBIT

K

RMC Bk 0169 Pg 391 : pg 1 *

PREPARED BY: Corine Brown
RETURN TO:
Wells Fargo Bank, N.A.
Commercial Loan Services, NC6373 / D4003-010
Commercial New Loan/Renewal Documents
100 N. Main Street
P.O. Box 2705
Winston Salem, NC 27102-2705

MORTGAGE AND ASSIGNMENT OF RENTS

MA This MORTGAGE AND ASSIGNMENT OF RENTS (hereafter referred to as "Mortgage") made January 31, 2011, by and between The Grove At Fenwick Plantation, LLC, whose mailing address is 151 Treeduct Court, Kiawah Island, South Carolina 29455 ("Mortgagor"), and Wells Fargo Bank, N.A., a national banking association, whose address is 7711 Plantation Road, Roanoke, Virginia 24019 ("Bank"). Bank is the mortgagee hereunder for indexing purposes by the clerk of court.

WITNESSETH:

UF To secure payment and performance of obligations under a Promissory Note (the "Note") dated January 31, 2011, in the amount of \$3,536,250.00, made by Mortgagor payable to Bank, any present or future Letters of Credit issued by Bank or its affiliates for the account of Mortgagor, other loan documents as defined in the Note (the "Loan Documents"), and swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Mortgagor and Bank or any of its affiliates as defined in 11 U.S.C §101, as in effect from time to time, all other indebtedness of Mortgagor to Bank whenever borrowed or incurred, whether or not reasonably contemplated by the parties hereto as of the date hereof, and any renewals, extensions, novations, or modifications of the foregoing (collectively the "Obligations"), and in consideration of these premises and for other consideration, Mortgagor does mortgage, grant and convey unto Bank (for itself and its affiliates), its successors and assigns all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "Property"): (i) all those certain tracts of land in the City of Johns Island, County of Charleston, State of South Carolina described in EXHIBIT A attached hereto and made part hereof (the "Land"); (ii) all buildings and improvements now or hereafter erected on the Land; (iii) all fixtures attached to the Land or any buildings or improvements situated thereon; and (iv) all estates, rights, tenements, hereditaments, privileges, rents, issues, profits easements, and appurtenances of any kind benefiting the Land; all means of access to and from the Land, whether public or private; and all water and mineral rights.

In the event that Mortgagor is the owner of a leasehold estate with respect to any portion of the Property and Mortgagor obtains a fee estate in such portions of the Property, then, such fee estate shall automatically, and without further action of any kind on the part of the Mortgagor, be and become subject to the security title and lien of this Agreement.

TO HAVE AND TO HOLD the Property and all the estate, right, title and interest, in law and in equity, of Mortgagor's in and to the Property unto Bank, its successors and assigns, forever.

Mortgagor WARRANTS AND REPRESENTS that Mortgagor is lawfully seized of the Property, in fee simple, absolute, that Mortgagor has the legal right to convey and encumber the same, and that the Property is free and clear of all liens and encumbrances. Mortgagor further warrants and will forever

defend all and singular the Property and title thereto to Bank and Bank's successors and assigns, against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS that if (i) all the Obligations (including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder) are paid in full, (ii) each and every representation, warranty, agreement, covenant and condition of this Mortgage, and the other Loan Documents, are complied with and abided by, and (iii) any and all swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder have matured or been terminated, then this Mortgage and the estate hereby created shall cease and be null, void, and canceled of record.

To protect the security of this Mortgage, Mortgagor further represents and agrees with Bank as follows:

Payment of Obligations. That the Obligations shall be timely paid and performed.

Future Advances. This Mortgage is given to secure not only existing Obligations, but also future advances, including obligations under swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) to the same extent as if such future advances and obligations under swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) are made on the date of the execution of this Mortgage. The principal amount (including any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) and future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed \$7,072,500.00, plus all interest, costs, reimbursements, fees and expenses due under this Mortgage and secured hereby. Mortgagor shall not execute any document that impairs or otherwise impacts the priority of any existing or future Obligations secured by this Mortgage.

Leases, Subleases and Easements. The Bank (as defined in the Mortgage) hereby waives its right to consent to the Mortgagor (as defined in the Mortgage) entering into new leases, or modifying and/or terminating existing leases as it deems appropriate with respect to individual condominium units located at the Property (as defined in the Mortgage).

Required Insurance. Mortgagor shall maintain with respect to the Property: (i) during construction of any improvements on the Property, "all-risk" builders risk insurance which must include windstorm, hail damage, fire and vandalism (non-reporting Completed Value with Special Cause of Loss form), in an amount not less than the completed replacement value of the improvements under construction, naming Bank as mortgagee and loss payee; (ii) upon completion of construction, upon occupancy of any improvements, and at all other times, insurance against loss or damage by fire and other casualties and hazards by insurance written on an "all risks" basis, including malicious mischief coverage, in an amount not less than the replacement cost thereof, including coverage for loss of rents or business interruption if applicable, naming Bank as loss payee and mortgagee; (iii) if the Property is required to be insured pursuant to the National Flood Reform Act of 1994, and the regulations promulgated thereunder, flood insurance is required in the amount equal to the lesser of the loan amount or maximum available under the National Flood Insurance Program, but in no event should the amount of coverage be less than the value of the improved structure, naming Bank as mortgagee and loss payee. If, after closing, the Property (or any part thereof) is remapped and if the vertical improvements are determined to be located in a special flood hazard area, Mortgagor must obtain and maintain a flood insurance policy. If, within forty-five (45) days of receipt of notification from Bank that the Property has been reclassified by FEMA as being located in a special flood hazard area, Mortgagor has not provided sufficient evidence of flood insurance, Bank is mandated under federal law to purchase flood insurance on behalf of Mortgagor, and Bank will add the associated costs to the principal balance of the Note. If the land or any portion thereof is located in a special flood hazard area, this Agreement may be terminated by Bank at its sole option; (iv) as applicable, insurance which complies with the workers' compensation and employers' liability laws of all states in which Mortgagor shall be required to maintain such insurance; and (v) liability insurance providing coverage in such amount as Bank may require but in no event less than

\$1,000,000.00 combined single limit, naming Bank as an additional insured; and (vi) such other insurance as Bank may require from time to time.

All property insurance policies shall contain an endorsement or agreement by the insurer in form satisfactory to Bank that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor and the further agreement (within both the property and liability policies) of the insurer waiving rights of subrogation against Bank, and rights of set-off, counterclaim or deductions against Mortgagor.

All insurance policies shall be in form, provide coverages, be issued by companies and be in amounts satisfactory to Bank. At least 30 days prior to the expiration of each such policy, Mortgagor shall furnish Bank with evidence satisfactory to Bank that such policy has been renewed or replaced or is no longer required hereunder. All such policies shall provide that the policy will not be canceled or materially amended without at least 30 days prior written notice to Bank. In the event Mortgagor fails to provide, maintain, keep in force, and furnish to Bank the policies of insurance required by this paragraph, Bank may procure such insurance or single-interest insurance in such amounts, at such premium, for such risks and by such means as Bank chooses, at Mortgagor's expense; provided however, Bank shall have no responsibility to obtain any insurance, but if Bank does obtain insurance, Bank shall have no responsibility to assure that the insurance obtained shall be adequate or provide any protection to Mortgagor.

Insurance Proceeds. After occurrence of any loss to any of the Property, Mortgagor shall give prompt written notice thereof to Bank.

In the event of such loss all insurance proceeds, including unearned premiums, shall be payable to Bank, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Bank and not to Bank and Mortgagor jointly. Bank is hereby authorized by Mortgagor to make proof of loss if not promptly made by Mortgagor, settle, adjust or compromise any claims for loss or damage under any policy or policies of insurance and Mortgagor appoints Bank as its attorney-in-fact to receive and endorse any insurance proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied. Mortgagor shall pay the costs of collection, including attorneys' fees, of insurance proceeds payable on account of such damage or destruction. Mortgagor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Bank as security for payment of the Obligations.

In the event of any damage to or destruction of the Property, Bank shall have the option of applying or paying all or part of the insurance proceeds to (i) the Obligations in such order as Bank may determine, (ii) restoration, replacement or repair of the Property in accordance with Bank's standard construction loan disbursement conditions and requirements, or (iii) Mortgagor. Nothing herein shall be deemed to excuse Mortgagor from restoring, repairing and maintaining the Property as required herein.

Impositions; Escrow Deposit. Mortgagor will pay all taxes, levies, assessments and other fees and charges imposed upon or which may become a lien upon the Property under any law or ordinance (all of the foregoing collectively "Impositions") before they become delinquent and in any event in the same calendar year in which they first become due. Upon request of Bank, Mortgagor shall add to each periodic payment required under the Note the amount estimated by Bank to be sufficient to enable Bank to pay, as they come due, all Impositions and insurance premiums which Mortgagor is required to pay hereunder. Payments requested under this provision shall be supplemented or adjusted as required by Bank from time to time. Such funds may be commingled with the general funds of Bank and shall not earn interest. Upon the occurrence of a Default, Bank may apply such funds to pay any of the Obligations.

Use of Property. Mortgagor shall use and operate, and require its lessees or licensees to use and operate, the Property in compliance with all applicable laws (including, for example, the Americans with Disabilities Act and the Fair Housing Act) and ordinances, covenants, and restrictions, and with all

applicable requirements of any lease or sublease now or hereafter affecting the Property. Mortgagor shall not permit any unlawful use of the Property or any use that may give rise to a claim of forfeiture of any of the Property. Mortgagor shall not allow changes in the stated use of Property from that disclosed to Bank at the time of execution hereof. Mortgagor shall not initiate or acquiesce to a zoning change of the Property without prior notice to, and written consent of, Bank.

Maintenance, Repairs and Alterations. Mortgagor shall keep and maintain the Property in good condition and repair and fully protected from the elements to the satisfaction of Bank. Mortgagor will not remove, demolish or structurally alter any of the buildings or other improvements on the Property (except such alterations as may be required by laws, ordinances or regulations) without the prior written consent of Bank. Mortgagor shall promptly notify Bank in writing of any material loss, damage or adverse condition affecting the Property.

Eminent Domain. Should the Property or any interest therein be taken or damaged by reason of any public use or improvement or condemnation proceeding ("Condemnation"), or should Mortgagor receive any notice or other information regarding such Condemnation, Mortgagor shall give prompt written notice thereof to Bank. Bank shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation and, at its option, may commence, appear in and prosecute in its own name any action or proceedings relating thereto. Bank shall be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, and damages awarded to Mortgagor related to any Condemnation (the "Proceeds") are hereby assigned to Bank and Mortgagor agrees to execute such further assignments of the Proceeds as Bank may require. Bank shall have the option of applying or paying the Proceeds in the same manner as insurance proceeds as provided herein. Mortgagor appoints Bank as its attorney-in-fact to receive and endorse the Proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

Environmental Condition of Property and Indemnity. Mortgagor warrants and represents to Bank, except as reported by Mortgagor to Bank in writing, that: (i) Mortgagor has inspected and is familiar with the environmental condition of the Property; (ii) the Property and Mortgagor, and any occupants of the Property, are in compliance with and shall continue to be in compliance with all applicable federal, state and local laws and regulations intended to protect the environment and public health and safety as the same may be amended from time to time ("Environmental Laws"); (iii) the Property is not and has never been used to generate, handle, treat, store or dispose of, in any quantity, oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances or hazardous air pollutants ("Hazardous Materials") in violation of any Environmental Laws; (iv) no Hazardous Materials (including asbestos, mold or lead paint in any form) are located on or under the Property or emanate from the Property; (v) there are no unregistered underground storage tanks on the Property that are subject to any underground storage tank registration laws or regulations; (vi) no notice has been received with regard to any Hazardous Material on the Property; (vii) no action, investigation or proceeding is pending or to Mortgagor's knowledge threatened which seeks to enforce any right or remedy against Mortgagor or the Property under any Environmental Law; and (viii) all licenses, permits and other governmental or regulatory actions necessary for the Property to comply with Environmental Laws shall be obtained and maintained and Mortgagor shall assure compliance therewith.

Further, Mortgagor represents to Bank that no portion of the Property is a protected wetland. Mortgagor agrees to notify Bank immediately upon receipt of any citations, warnings, orders, notices, consent agreements, process or claims alleging or relating to violations of any Environmental Laws or to the environmental condition of the Property and shall conduct and complete all investigations and all cleanup actions necessary to comply with the Environmental Laws and to remove, in accordance with Environmental Laws, any Hazardous Material from the Property.

Mortgagor shall indemnify, hold harmless, and defend Bank from and against any and all damages, penalties, fines, claims, suits, liabilities, costs, judgments and expenses, including attorneys', consultants' or experts' fees of every kind and nature incurred, suffered by or asserted against Bank as a direct or indirect result of: (i) representations made by Mortgagor in this Section being or becoming

untrue in any material respect; (ii) Mortgagor's violation of or failure to meet the requirements of any Environmental Laws; or (iii) Hazardous Materials which, while the Property is subject to this Mortgage, exist on the Property. Bank shall have the right to arrange for or conduct environmental inspections of the Property from time to time (including the taking of soil, water, air or material samples). The cost of such inspections made after Default (as hereinafter defined) or which are required by laws or regulations applicable to Bank shall be borne by Mortgagor. However, Mortgagor's indemnity shall not apply to any negligent or intentional act of Bank which takes place after foreclosure or satisfaction of this Mortgage. These indemnification obligations are in addition to General Indemnification provisions set forth hereafter. Mortgagor's Obligations under this section shall continue, survive and remain in full force and effect notwithstanding the repayment of the Obligations, a foreclosure of or exercise of power of sale under this instrument, a delivery of a deed in lieu of foreclosure, a cancellation or termination of record of this instrument and the transfer of the Property.

Appraisals. Mortgagor agrees that Bank may obtain an appraisal of the Property when required by the regulations of the Federal Reserve Board or the Office of the Comptroller of the Currency, or any other regulatory agency or at such other times as Bank may reasonably require. Such appraisals shall be performed by an independent third party appraiser selected by Bank. The cost of such appraisals shall be borne by Mortgagor. If requested by Bank, Mortgagor shall execute an engagement letter addressed to the appraiser selected by Bank. Mortgagor's failure or refusal to sign such an engagement letter, however, shall not impair Bank's right to obtain such an appraisal. Mortgagor agrees to pay the cost of such appraisal within 10 days after receiving an invoice for such appraisal.

Inspections. Bank, or its representatives or agents, are authorized to enter at any reasonable time upon any part of the Property for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage.

Liens and Subrogation. Mortgagor shall pay and promptly discharge all liens, claims and encumbrances upon the Property. Mortgagor shall have the right to contest in good faith the validity of any such lien, claim or encumbrance, provided: (i) such contest suspends the collection thereof or there is no danger of the Property being sold or forfeited while such contest is pending; (ii) Mortgagor first deposits with Bank a bond or other security satisfactory to Bank in such amounts as Bank shall reasonably require; and (iii) Mortgagor thereafter diligently proceeds to cause such lien, claim or encumbrance to be removed and discharged.

Bank shall be subrogated to any liens, claims and encumbrances against Mortgagor or the Property that are paid or discharged through payment by Bank or with loan proceeds, notwithstanding the record cancellation or satisfaction thereof.

Waiver of Mortgagor's Rights. To the fullest extent permitted by law, Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Property, (ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or any of the other Obligations, and any rights to hearing prior to the exercise by Bank of any right, power, or remedy herein provided to Bank.

To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisal, valuation, stay, extension or redemption, and Mortgagor for themselves and their respective heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Property, to the extent permitted by law, hereby waive and release all rights of valuation, appraisal, redemption, stay of execution, the benefit of all exemption laws, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. Mortgagor further waives any and all notices including, without limitation, notice of intention to accelerate and of acceleration of the Obligations.

Payments by Bank. In the event of Default (as hereinafter defined) in the timely payment or performance of any of the Obligations, Bank, at its option and without any duty on its part to determine the validity or necessity thereof, may pay the sums for which Mortgagor is obligated. Further, Bank may pay such sums as Bank deems appropriate for the protection and maintenance of the Property including, without limitation, sums to pay Impositions and other levies, assessments or liens, maintain insurance, make repairs, secure the Property, maintain utility service, intervene in any condemnation and pay attorneys' fees and other fees and costs to enforce this Mortgage or protect the lien hereof (including foreclosure) or collect the Obligations, without limitation, including those incurred in any proceeding including bankruptcy or arbitration. Any amounts so paid shall bear interest at the default rate stated in the Note and shall be secured by this Mortgage.

Indemnification. Mortgagor shall protect, indemnify and save harmless Bank from and against all losses, liabilities, obligations, claims, damages, penalties, fines, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Damages") imposed upon, incurred by or asserted or assessed against Bank on account of or in connection with (i) the Loan Documents or any failure or alleged failure of Mortgagor to comply with any of the terms of, or the inaccuracy or breach of any representation in, the Loan Documents; (ii) the Collateral or any claim of loss or damage to the Property or any injury or claim of injury to, or death of, any person or property that may be occasioned by any cause whatsoever pertaining to the Property or the use, occupancy or operation thereof, (iii) any failure or alleged failure of Mortgagor to comply with any law, rule or regulation applicable to it or to the Property or the use, occupancy or operation of the Property (including, without limitation, the failure to pay any taxes, fees or other charges), (iv) any Damages whatsoever by reason of any alleged action, obligation or undertaking of Bank relating in any way to or any matter contemplated by the Loan Documents, (v) any claim for brokerage fees or such other commissions relating to the Property or any other Obligations, or (vi) any and all liability arising from any leases related to the Property. Nothing contained herein shall require Mortgagor to indemnify Bank for any Damages resulting from Bank's gross negligence or its willful and wrongful acts, and such indemnity shall be effective only to the extent of any Damages that may be sustained by Bank in excess of any net proceeds received by it from any insurance of Mortgagor (other than self-insurance) with respect to such Damages. The indemnity provided for herein shall survive payment of the Obligations and shall extend to the officers, directors, employees and duly authorized agents of Bank. In the event the Bank incurs any Damages arising out of or in any way relating to the transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such Damages shall be added to the Obligations, shall bear interest, to the extent permitted by law, at the interest rate borne by the Obligations from the date incurred until paid and shall be payable on demand.

Assignment of Rents. Mortgagor hereby absolutely assigns and transfers to Bank all the leases, rents, issues and profits of the Property (collectively "Rents"). Although this assignment is effective immediately, so long as no Default exists, Bank gives to and confers upon Mortgagor the privilege under a revocable license to collect as they become due, but not prior to accrual, the Rents and to demand, receive and enforce payment, give receipts, releases and satisfactions, and sue in the name of Mortgagor for all such Rents. Mortgagor represents there has been no prior assignment of leases or Rents, and agrees not to further assign such leases or Rents. Upon any occurrence of Default, the license granted to Mortgagor herein shall be automatically revoked without further notice to or demand upon Mortgagor, and Bank shall have the right, in its discretion, without notice, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, (i) to enter upon and take possession of the Property, (ii) notify tenants, subtenants and any property manager to pay Rents to Bank or its designee, and upon receipt of such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by Mortgagor, and (iii) in its own name, sue for or otherwise collect Rents, including those past due, and apply Rents, less costs and expenses of operation and collection, including attorneys' fees, to the Obligations in such order and manner as Bank may determine or as otherwise provided for herein. Bank's exercise of any one or more of the foregoing rights shall not cure or waive any Default or notice of Default hereunder.

Due on Sale or Further Encumbrance or Transfer of an Interest in Mortgagor. Without the prior written consent of Bank in each instance, Mortgagor shall not (i) sell, convey, transfer or encumber the Property, or any part thereof or interest therein, whether legal or equitable, (ii) cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, or (iii) enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (a) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (c) if Mortgagor or any general partner or member of Mortgagor, is a corporation, partnership, limited liability company, trust or other business entity, the transfer, pledge, assignment or encumbrance (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity including, without limitation, changes in stockholders, partners, members, managers, trustees, beneficiaries, or their respective interests; whether directly or indirectly; (d) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

Bank's consent to any conveyance or encumbrance may be conditioned upon an increase in the interest rate specified in the Note (or other Obligations), an extension or curtailment of the maturity of the Obligations, or other modification of the Note or this instrument.

Remedies of Bank on Default. Failure of Mortgagor or any other person liable to timely pay or perform any of the Obligations or a violation of the preceding section is a default ("Default") under this Mortgage. Upon the occurrence of Default the following remedies are available, without limitation, to Bank: (i) Bank may exercise any or all of Bank's remedies under this Mortgage or other Loan Documents including, without limitation, acceleration of the maturity of all payments and Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or any of its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time); (ii) Bank may take immediate possession of the Property or any part thereof (which Mortgagor agrees to surrender to Bank) and manage, control or lease the same to such persons and at such rental as it may deem proper and collect and apply Rents to the payment of: (a) the Obligations, together with all costs and attorneys' fees; (b) all Impositions and any other levies, assessments or liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items; and (c) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Bank in its sole discretion may determine. The taking of possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property; (iii) Bank may apply to any court of competent jurisdiction for the appointment of a receiver for all purposes including, without limitation, to manage and operate the Property or any part thereof, and to apply the Rents therefrom as hereinabove provided. In the event of such application, Mortgagor consents to the appointment of a receiver, and agrees that a receiver may be appointed without notice to Mortgagor, without regard to whether Mortgagor has committed waste or permitted deterioration of the Property, without regard to the adequacy of any security for the Obligations, and without regard to the solvency of Mortgagor or any other person, firm or corporation who or which may be liable for the payment of the Obligations; (iv) Bank may exercise all the remedies of a mortgagee as provided by law and in equity including, without limitation, foreclosure upon this Mortgage and sale of the Property, or any part of the Property, at public sale conducted according to applicable law (referred to as "Sale") and conduct additional Sales as may be required until all of the Property is sold or the Obligations are satisfied; (v) With respect to any portion of the Property governed by the UCC, Bank shall have all of the rights and remedies of a secured party thereunder. Bank may elect to foreclose upon any Property that is fixtures under law applicable to foreclosure of interests in real estate or law applicable to personal property; (vi) Bank may bid at Sale and may accept, as successful bidder, credit of the bid amount against the Obligations as payment of any portion of the purchase price; and (vii) Bank shall apply the proceeds of Sale, first to any fees or attorney fees permitted Bank by law in connection with Sale, second

to expenses of foreclosure, publication, and sale permitted Bank by law in connection with Sale, third to the Obligations, and any remaining proceeds as required by law.

Miscellaneous Provisions. Mortgagor agrees to the following: (i) All remedies available to Bank with respect to this Mortgage or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Bank in exercising any remedy shall operate as a waiver of that remedy or of any Default. Any payment by Bank or acceptance by Bank of any partial payment shall not constitute a waiver by Bank of any Default; (ii) Mortgagor represents that Mortgagor (a) is (1) an adult individual and is sui juris, or (2) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Mortgage and any other Loan Document to which it is a party. (iii) The provisions hereof shall be binding upon and inure to the benefit of Mortgagor, its heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Bank, its successors and assigns and any future holder of the Note or other Obligations; (iv) Any notices, demands or requests shall be sufficiently given Mortgagor if in writing and mailed or delivered to the address of Mortgagor shown above or to another address as provided herein and to Bank if in writing and mailed or delivered to Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, P. O. Box 13327, Roanoke, VA 24040 or Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, 7711 Plantation Road, Roanoke, VA 24019, or such other address as Bank may specify from time to time and in the event that Mortgagor changes Mortgagor's address at any time prior to the date the Obligations are paid in full, that party shall promptly give written notice of such change of address by registered or certified mail, return receipt requested, all charges prepaid. Notices to Bank must include the mail code. (v) All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or such other address as provided by Bank in writing. (vi) This Mortgage may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (vii) All references to "Bank" shall mean to "Bank (for itself and its affiliate)"; (viii) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Mortgage; (ix) If the lien of this Mortgage is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations and if any clause, provision or obligation hereunder is determined invalid or unenforceable the remainder of this Mortgage shall be construed and enforced as if such clause, provision or obligation had not been contained herein; (x) This Mortgage shall be governed by and construed under the laws of the jurisdiction where this Mortgage is recorded; (xi) Mortgagor by execution and Bank by acceptance of this Mortgage agree to be bound by the terms and provisions hereof. (xii) **Telephone Communication Monitoring.** Mortgagor agrees that Mortgagor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. (xiii) **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

Minimum Standards. In addition to the requirements set forth in the Loan Documents, all surveys, insurance, title policies, construction documents, environmental reports, payment and performance bonds, and any other due diligence or additional documents required in connection with this Loan, shall comply with Bank's minimum standards in place from time to time for such documents, which shall be provided in writing by Bank to Borrower upon request.

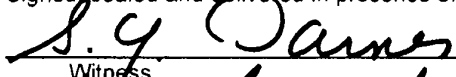
IN WITNESS WHEREOF, Mortgagor has duly signed and sealed this instrument as of the day and year first above written.

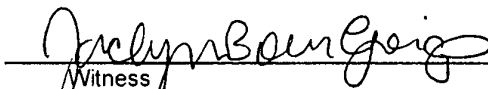
Mortgagor

The Grove At Fenwick Plantation, LLC

By:  (SEAL)
Michel F. LaPlante, Manager

Signed, sealed and delivered in presence of:


Witness
Charleston SC 29401
Address


Witness
Charleston SC
Address

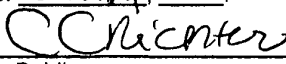
State of South Carolina
County of Charleston

PARTNERSHIP, LIMITED PARTNERSHIP or L.L.C. PROBATE

I, C.C. Richter, Notary Public, do hereby certify that Michel F. LaPlante, a Manager of The Grove At Fenwick Plantation, LLC, a limited liability company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal, this the 31 day of January, 2011

My commission expires:


Notary Public

CHRISTINE C. RICHTER
Notary Public, State of South Carolina
Qualified in Charleston County
Commission Expires October 13, 2015

Work Request / Tracking #: 2178599
CAT - Deal # 1491535 Facility #: 1230705

EXHIBIT A

Units 4-A, 4-B, 4-D, 4-E, 4-F, 2-F, 10-A, 10-B, 10-E, 10-F, 1-A, 1-B, 1-C, 1-D, 3-A, 3-B, 3-C, 3-D, 3-E, 3-F, 5-A, 5-B, 5-C, 5-D, 5-E, 5-F, 5-G, 5-H, 6-A, 6-B, 6-C, 6-D, 7-A, 7-B, 7-C, 7-D, 8-A, 8-B, 8-C, 8-D, 8-E, 8-F, 9-A, 9-B, 9-C, 9-D, 11-A, 11-B, 11-C, 11-D, 11-E, 11-F, 12-A, 12-B, 12-C, 12-D, 12-E, 12-F, 13-A, 13-B, 13-C, 13-D, 13-E, 13-F, 13-G, 13-H, 14-A, 14-B, 14-C, 14-D, 14-E, and 14-F in THE GROVE AT FENWICK PLANTATION HORIZONTAL PROPERTY REGIME located on Johns Island in the City of Charleston, Charleston County, South Carolina, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act (Section 27-31-10, et seq., S.C. Code Ann. (1976) as amended) by Master Deed dated January 11, 2008, with appended By-laws and other Exhibits, and recorded in the Charleston County RMC Office on January 25, 2008 in Book P-649, at Page 739, et seq., as amended by that certain First Amendment To Master Deed of The Grove at Fenwick Plantation Horizontal Property Regime dated May 7, 2008, and recorded in the Charleston County RMC Office in Book B-659 at Page 666, as amended and restated by that certain Amended and Restated Master Deed of The Grove At Fenwick Plantation Horizontal Property Regime dated June 26, 2009, and recorded in the Charleston County RMC Office on July 7, 2009, in Book 0066 at Page 394 with appended By-laws and other Exhibits, as amended by that certain First Amendment To Amended and Restated Master Deed of The Grove at Fenwick Plantation Horizontal Property Regime dated January 31, 2011 and recorded in the Charleston County RMC Office in Book 0169 at Page 380 (the "Restated Master Deed"), which Units are shown on the Plans attached as Exhibit "C" to the Restated Master Deed and described in the Restated Master Deed; together with the undivided interest in the Common Elements declared by the Restated Master Deed to be an appurtenance to the Units being conveyed. The Restated Master Deed and all Exhibits thereto are incorporated herein and by this reference are made a part hereof.

Being a portion of the same property conveyed to the mortgagor herein by deed of The Grove at Fenwick Plantation, LLC dated 31 January 2011 and recorded simultaneously herewith.

TMS Nos:

4-A: 312-00-00-415	5-E: 312-00-00-425	11-C: 312-00-00-455
4-B: 312-00-00-416	5-F: 312-00-00-426	11-D: 312-00-00-456
4-D: 312-00-00-418	5-G: 312-00-00-427	11-E: 312-00-00-457
4-E: 312-00-00-419	5-H: 312-00-00-428	11-F: 312-00-00-458
4-F: 312-00-00-420	6-A: 312-00-00-429	12-A: 312-00-00-459
2-F: 312-00-00-408	6-B: 312-00-00-430	12-B: 312-00-00-460
10-A: 312-00-00-447	6-C: 312-00-00-431	12-C: 312-00-00-461
10-B: 312-00-00-448	6-D: 312-00-00-432	12-D: 312-00-00-462
10-E: 312-00-00-451	7-A: 312-00-00-433	12-E: 312-00-00-463
10-F: 312-00-00-452	7-B: 312-00-00-434	12-F: 312-00-00-464
1-A: 312-00-00-399	7-C: 312-00-00-435	13-A: 312-00-00-465
1-B: 312-00-00-400	7-D: 312-00-00-436	13-B: 312-00-00-466
1-C: 312-00-00-401	8-A: 312-00-00-437	13-C: 312-00-00-467
1-D: 312-00-00-402	8-B: 312-00-00-438	13-D: 312-00-00-468
3-A: 312-00-00-409	8-C: 312-00-00-439	13-E: 312-00-00-469
3-B: 312-00-00-410	8-D: 312-00-00-440	13-F: 312-00-00-470
3-C: 312-00-00-411	8-E: 312-00-00-441	13-G: 312-00-00-471
3-D: 312-00-00-412	8-F: 312-00-00-442	13-H: 312-00-00-472
3-E: 312-00-00-413	9-A: 312-00-00-443	14-A: 312-00-00-473
3-F: 312-00-00-414	9-B: 312-00-00-444	14-B: 312-00-00-474
5-A: 312-00-00-421	9-C: 312-00-00-445	14-C: 312-00-00-475
5-B: 312-00-00-422	9-D: 312-00-00-446	14-D: 312-00-00-476
5-C: 312-00-00-423	11-A: 312-00-00-453	14-E: 312-00-00-477
5-D: 312-00-00-424	11-B: 312-00-00-454	14-F: 312-00-00-478

CONDOMINIUM ADDENDUM

THIS CONDOMINIUM ADDENDUM constitutes an addendum to this Mortgage Agreement, is attached thereto, incorporated therein by reference and made a part thereof.

The Property includes 72 unit(s) in, together with an undivided interest in the common elements of, a condominium project known as: The Grove at Fenwick Plantation (the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Premises also includes Mortgagor's interest in the Owners Association and the uses, proceeds and benefits of Mortgagor's interest.

Condominium Covenants. In addition to the other covenants and agreements contained in the Agreement, Mortgagor further covenant and agrees as follows:

A. Condominium Obligations. Mortgagor shall perform all of Mortgagor's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Mortgagor shall promptly pay when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Hazard Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Bank and which provides insurance coverage in the amounts, for the periods, and against the hazards Bank requires, including fire and hazards included within the term "extended coverage", Mortgagor's obligation under the Agreement to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Mortgagor shall give Bank prompt notice of any lapse in required hazard insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit(s) or to common elements, any proceeds payable to Mortgagor are hereby assigned and shall be paid to Bank for application to the sums secured by the Agreement, with any excess paid to Mortgagor or other person lawfully entitled thereto.

C. Public Liability Insurance. Mortgagor shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount and extent of coverage to Bank.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Mortgagor in connection with any condemnation or other taking of all or any part of the Property, whether of the unit(s) or of common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Mortgagor. Such proceeds shall be applied by Bank to the sums secured by the Agreement.

E. Bank's Prior Consent. Mortgagor shall not, except after notice to Bank and with Bank's prior written consent, either partition or subdivide the Property or consent to:

(i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Bank;

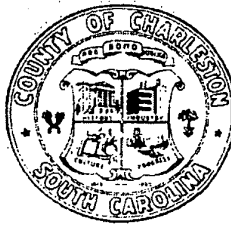
(iii) termination of professional management and assumption of self-management of the Owners Association; or

(iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Bank.

F. Remedies. If Mortgagor does not pay condominium dues and assessments when due, then Bank may pay them. Any amounts disbursed by Bank under this paragraph shall become additional debt of Mortgagor secured by the Agreement. Unless Mortgagor and Bank agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Bank to Mortgagor requesting payment.

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document

**Filed By:**

WARREN & SINKLER, LLP

P.O. BOX 1254
CHARLESTON SC 29402

RECORDED

Date: February 1, 2011

Time: 9:31:27 AM

Book

Page

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Charlie Lybrand, Register
Charleston County, SC

MAKER:

GROVE AT FENWICK PLTN

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of Pages: 13

of References:

Note:

RECIPIENT:

WELLS FARGO

Recording Fee \$ 10.00

Extra Reference Cost \$ -

Extra Pages \$ 8.00

Postage \$ -

Chattel \$ -

TOTAL \$ 18.00

Original Book:

Original Page:

DRAWER
CLERK



0169
Book



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Page



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FIRST MODIFICATION TO PROMISSORY NOTE

THIS MODIFICATION TO PROMISSORY NOTE (this "Modification") is entered into as of June 15, 2012, by and between THE GROVE AT FENWICK PLANTATION, LLC ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank").

RECITALS

WHEREAS, Borrower is currently indebted to Bank pursuant to the terms and conditions of that certain promissory note in the maximum principal amount of \$3,536,250.00, executed by Borrower and payable to the order of Bank, dated as of January 31, 2011 (the "Note").

WHEREAS, Bank and Borrower have agreed to certain changes in the terms and conditions set forth in the Note, and have agreed to modify the Note to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be modified as follows:

1. Paragraph under the heading "INTEREST RATE" and "DEFAULT RATE" are hereby deleted in its entirety, and the following substituted therefor

"INTEREST:

(a) Interest. The outstanding principal balance of this Note shall bear interest (computed on the basis of a 360-day year, actual days elapsed) at a rate per annum one percent (1%) above the Prime Rate in effect from time to time. The term "Prime Rate" means at any time the rate of interest most recently announced within Bank at its principal office as its Prime Rate, with the understanding that the Prime Rate is one of Bank's base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Bank may designate. Each change in the rate of interest hereunder shall become effective on the date each Prime Rate change is announced within Bank.

(b) Payment of Interest. Interest accrued on this Note shall be payable on the 15th day of each month, commencing July 15, 2012.

(c) Default Interest. From and after the maturity date of this Note, or such earlier date as all principal owing hereunder becomes due and payable by acceleration or otherwise, or at Bank's option upon the occurrence, and during the continuance of an Event of Default, the outstanding principal balance of this Note shall bear interest at an increased rate per annum (computed on the basis of a 360-day year, actual days elapsed) equal to four percent (4%) above the rate of interest from time to time applicable to this Note."

2. Paragraph under the heading "REPAYMENT TERMS" and "APPLICATION OF PAYMENTS" are hereby deleted in its entirety, and the following substituted therefor

(a) Repayment. The outstanding principal balance of this Note shall be due and payable in full on January 18, 2013.

(b) Application of Payments. Each payment made on this Note shall be credited first, to any interest then due and second, to the outstanding principal balance hereof.

(c) Prepayment. Borrower may prepay principal on this Note at any time, in any amount and without penalty."

3. The effective date of the changes set forth herein shall be June 15, 2012.

4. Except as expressly set forth herein, all terms and conditions of the Note remain in full force and effect, without waiver or modification. All terms defined in the Note [or the Loan Agreement] shall have the same meaning when used in this Modification. This Modification and the Note shall be read together, as one document.

5. Borrower certifies that as of the date of this Modification there exists no Event of Default under the Note, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default. Borrower further certifies that, notwithstanding the modifications set forth herein, all of the real property securing the Note shall remain subject to the lien, charge or encumbrance of the deed of trust, mortgage or other document pursuant to which such lien, charge or encumbrance is created, and nothing contained herein or done pursuant hereto shall affect or be construed to affect the priority of the lien, charge or encumbrance of any such deed of trust, mortgage or other document over any other liens, charges or encumbrances.

IN WITNESS WHEREOF, the parties hereto have caused this Modification to be executed, with the intention that it constitute an instrument under seal, as of the day and year first written above.

THE GROVE AT FENWICK PLANTATION, LLC

By: Michael F. LaPlante (SEAL)
Manager

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: Steven Jasinski
Private Banker

0264262444-18

SECOND MODIFICATION TO PROMISSORY NOTE

THIS MODIFICATION TO PROMISSORY NOTE (this "Modification") is entered into as of May 28, 2013, by and between THE GROVE AT FENWICK PLANTATION, LLC ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank").

RECITALS

WHEREAS, Borrower is currently indebted to Bank pursuant to the terms and conditions of that certain Promissory Note in the maximum principal amount of \$3,536,250.00, executed by Borrower and payable to the order of Bank, dated as of January 31, 2011 (the "Note").

WHEREAS, Bank and Borrower have agreed to certain changes in the terms and conditions set forth in the Note, and have agreed to modify the Note to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be modified as follows:

1. The maturity date of the Note is hereby modified to be January 18, 2014.
2. General Release. In consideration of the benefits provided to Borrower under the terms and provisions hereof, Borrower and each guarantor hereunder hereby agree as follows ("General Release"):

(a) Borrower and each guarantor hereunder, for itself and on behalf of its respective successors and assigns, do hereby release, acquit and forever discharge Bank, all of Bank's predecessors in interest, and all of Bank's past and present officers, directors, attorneys, affiliates, employees and agents, of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or of any relationship, acts, omissions, misfeasance, malfeasance, causes of action, defenses, offsets, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length (each, a "Released Claim" and collectively, the "Released Claims"), that Borrower or any guarantor hereunder now has or may acquire as of the later of: (i) the date this Modification becomes effective through the satisfaction (or waiver by Bank) of all conditions hereto; or (ii) the date that Borrower and each guarantor hereunder have executed and delivered this Modification to Bank (hereafter, the "Release Date"), including without limitation, those Released Claims in any way arising out of, connected with or related to any and all prior credit accommodations, if any, provided by Bank, or any of Bank's predecessors in interest, to Borrower or any guarantor hereunder, and any agreements, notes or documents of any kind related thereto or the transactions contemplated thereby or hereby, or any other agreement or document referred to herein or therein.

(b) Each person signing below on behalf of Borrower or any guarantor hereunder acknowledges that he or she has read each of the provisions of this General Release. Each such person fully understands that this General Release has important legal consequences, and each such person realizes that they are releasing any and all Released Claims that Borrower or any such guarantor may have as of the Release Date. Borrower and each guarantor hereunder hereby acknowledge that each of them has had an opportunity to obtain

a lawyer's advice concerning the legal consequences of each of the provisions of this General Release.

(c) Borrower and each guarantor hereunder hereby specifically acknowledge and agree that: (i) none of the provisions of this General Release shall be construed as or constitute an admission of any liability on the part of Bank; (ii) the provisions of this General Release shall constitute an absolute bar to any Released Claim of any kind, whether any such Released Claim is based on contract, tort, warranty, mistake or any other theory, whether legal, statutory or equitable; and (iii) any attempt to assert a Released Claim barred by the provisions of this General Release shall subject Borrower and each guarantor hereunder to the provisions of applicable law setting forth the remedies for the bringing of groundless, frivolous or baseless claims or causes of action.

3. The effective date of the changes set forth herein shall be May 28, 2013.

4. Except as expressly set forth herein, all terms and conditions of the Note remain in full force and effect, without waiver or modification. All terms defined in the Note shall have the same meaning when used in this Modification. This Modification and the Note shall be read together, as one document.

5. Borrower certifies that as of the date of this Modification there exists no Event of Default under the Note, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default. Borrower further certifies that, notwithstanding the modifications set forth herein, all of the real property securing the Note shall remain subject to the lien, charge or encumbrance of the deed of trust, mortgage or other document pursuant to which such lien, charge or encumbrance is created, and nothing contained herein or done pursuant hereto shall affect or be construed to affect the priority of the lien, charge or encumbrance of any such deed of trust, mortgage or other document over any other liens, charges or encumbrances.

WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS, WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE PROPERTY.

13165 M106027

IN WITNESS WHEREOF, the parties hereto have caused this Modification to be executed, with the intention that it constitute an instrument under seal, as of the day and year first written above.

THE GROVE AT FENWICK
PLANTATION, LLC

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____ (SEAL)
Michel F. LaPlante
Manager

By: _____
Steven Jasinski
Private Banker

GUARANTORS:

Michel F. LaPlante

Eugene J. Zurlo

Charlotte R. Zurlo

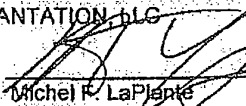
Eugene J. Zurlo, Trustee for
Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

Charlotte R. Zurlo, Trustee for
Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

IN WITNESS WHEREOF, the parties hereto have caused this Modification to be executed, with the intention that it constitute an instrument under seal, as of the day and year first written above.

THE GROVE AT FENWICK
PLANTATION, LLC

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By:  (SEAL)
Michel F. LaPlante
Manager

By: _____
Steven Jasinski
Private Banker

GUARANTORS:

Michel F. LaPlante

Eugene J. Zurlo

Charlotte R. Zurlo

Eugene J. Zurlo, Trustee for
Zurlo Investment Trust No.1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

Charlotte R. Zurlo, Trustee for
Zurlo Investment Trust No.1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

GUARANTORS' CONSENT AND REAFFIRMATION

Each of the undersigned guarantors of all indebtedness of THE GROVE AT FENWICK PLANTATION, LLC to WELLS FARGO BANK, NATIONAL ASSOCIATION hereby: (i) consents to the foregoing Modification; (ii) reaffirms its obligations under its respective Continuing Guaranty; (iii) reaffirms its waivers of each and every one of the defenses to such obligations as set forth in its respective Continuing Guaranty; and (iv) reaffirms that its obligations under its respective Continuing Guaranty are separate and distinct from the obligations of any other party under said Modification and the other Loan Documents described therein.

GUARANTORS:

Michel F. LaPlante

Eugene J. Zurlo

Charlotte R. Zurlo

Eugene J. Zurlo, Trustee for
Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

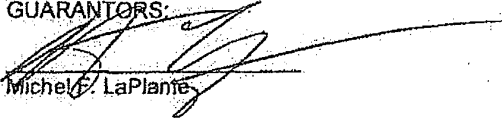
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R. Zurlo as Grantors

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GUARANTORS:


Michel P. LaPlante

Eugene J. Zurlo

Charlotte R. Zurlo

Eugene J. Zurlo, Trustee for
Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

Charlotte R. Zurlo, Trustee for
Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

UNCONDITIONAL GUARANTY

July 28, 2009

Penny Creek Associates, LLC
C/O Mitch Laplante
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Michel F. LaPlante
155 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any

defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for,

dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor, and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations.

Organization; Powers. Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party.

Applicable Law; Conflict Between Documents. This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control.

Guarantor's Accounts. Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates.

Jurisdiction. Guarantor

irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate

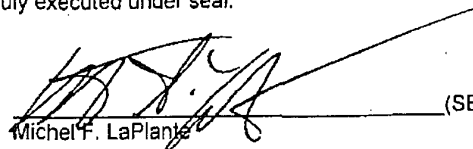
NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

PERSONAL FINANCIAL STATEMENTS. Each Guarantor who is an individual shall deliver to Bank annually, no later than April 30th of each fiscal year, Guarantor's financial statement. Said financial statement shall disclose all of Guarantor's assets, liabilities, net worth, income and contingent liabilities, all in reasonable detail and acceptable to Bank and submitted on a form to be provided by Bank or on such other form acceptable to Bank, signed by Guarantor and certified by Guarantor to Bank to be true, correct and complete.

TAX RETURNS. Guarantor shall deliver to Bank, no later than August 28th of each year, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, including, without limitation, K-1 statements for all Partnerships and Sub Chapter S Corporations, each of which shall be signed and certified by Guarantor to be true and complete copies of such returns. In the event an extension is filed, Guarantor shall deliver a copy of the extension within 30 days of filing.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.


Michel F. LaPlante (SEAL)

Work Request / Tracking # 1397639
CAT - Deal # 1133533 Facility #. 951303
Obligor # 41/6909622159 Obligation #. 1644814 & 1324987

UNCONDITIONAL GUARANTY

July 28, 2009

Penny Creek Associates, LLC
C/O Mitch Laplante
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Charlotte R. Zurlo
4 Nicklaus Lane
Kiawah Island, South Carolina 29455

Eugene J. Zurlo
4 Nicklaus Lane
Kiawah Island, South Carolina 29455
(Individually and collectively, "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

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to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations, (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations. (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, *et seq.*, N.C.G.S. §§ 26-7, *et seq.*, Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f)

presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral, Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan

Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment

letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final

agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

PERSONAL FINANCIAL STATEMENTS. Each Guarantor who is an individual shall deliver to Bank annually, no later than March 18th of each year, Guarantor's financial statement. Said financial statement shall disclose all of Guarantor's assets, liabilities, net worth, income and contingent liabilities, all in reasonable detail and acceptable to Bank and submitted on a form to be provided by Bank or on such other form acceptable to Bank, signed by Guarantor and certified by Guarantor to Bank to be true, correct and complete.

TAX RETURNS. Guarantor shall deliver to Bank, no later than October 31st of each year, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Guarantor to be true and complete copies of such returns. In the event an extension is filed, Guarantor shall deliver a copy of the extension within 30 days of filing.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.

Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo

Eugene J. Zurlo (SEAL)
Eugene J. Zurlo

Work Request / Tracking #: 1397639
CAT - Deal # 1133533 Facility # 951303
Obligor #: 41/6909622159 Obligation #: 1644814 & 1324987

UNCONDITIONAL GUARANTY

July 28, 2009

Penny Creek Associates, LLC
C/O Mitch Laplante
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

The Nicklaus Lane Realty Trust No. 1
4 Nicklaus Lane
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

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TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank, (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor, (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled, (g) the right to assert against Bank or its affiliates any

defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement thereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for,

dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor

irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

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FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

ANNUAL FINANCIAL STATEMENTS. Guarantor shall deliver to Bank, no later than April 30th of each fiscal year, unaudited management-prepared financial statements reflecting its operations during such fiscal year, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules and in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year. If unaudited statements are required, such statements shall be certified as to their correctness by a principal financial officer of Guarantor.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

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IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.

The Nicklaus Lane Realty Trust No. 1

By: Eugene J. Zurlo (SEAL)
Eugene J. Zurlo,
as Trustee under Declaration of Trust dated May 22, 1998

By: Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo,
as Trustee under Declaration of Trust dated May 22, 1998

Work Request / Tracking #: 1397639
CAT - Deal # 1133533 Facility # 951303
Obligor #: 41/6909622159 Obligation #: 1644814 & 1324987

UNCONDITIONAL GUARANTY

July 28, 2009

Penny Creek Associates, LLC
C/O Mitch Laplante
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

The Zurlo Investment Trust No. 1
4 Nicklaus Lane
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any

defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral, Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for,

dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is *sui juris*, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor

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irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

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FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

ANNUAL FINANCIAL STATEMENTS. Guarantor shall deliver to Bank, no later than April 30th of each fiscal year, unaudited management-prepared financial statements reflecting its operations during such fiscal year, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules and in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year. If unaudited statements are required, such statements shall be certified as to their correctness by a principal financial officer of Guarantor.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

09212P240026

IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.

The Zurlo Investment Trust No. 1

By: Eugene J. Zurlo (SEAL)
Eugene J. Zurlo, as Co-Trustee pursuant to trust agreement
Dated August 10, 1998

By: Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo, as Co-Trustee pursuant to trust agreement
Dated August 10, 1998

Work Request / Tracking #: 1397639
CAT - Deal # 1133533 Facility # 951303
Obligor #: 41/6809622159 Obligation #: 1644814 & 1324987

UNCONDITIONAL GUARANTY

January 31, 2011

The Grove At Fenwick Plantation, LLC
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Michel F. LaPlante
155 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Guarantor")

Wells Fargo Bank, N.A.
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to

Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, *as in effect from time to time*), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, *et seq.*, N.C.G.S. §§ 26-7, *et seq.*, Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any

collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership

interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is *sui juris*, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such

prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, P.O. Box 13327, Roanoke, VA 24040 or Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due Guarantor. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

PERSONAL FINANCIAL STATEMENTS. Each Guarantor who is an individual shall deliver to Bank annually, within thirteen months of the previous statement date on file with Bank, Guarantor's financial statement. Said financial statement shall disclose all of Guarantor's assets, liabilities, net worth, income and contingent liabilities, all in reasonable detail and acceptable to Bank and submitted on a form to be provided by Bank or on such other form acceptable to Bank, signed by Guarantor and certified by Guarantor to Bank to be true, correct and complete.

TAX RETURNS. Guarantor shall deliver to Bank, within 30 days of filing, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Guarantor to be true and complete copies of such returns. In the event an extension is filed, Guarantor shall deliver a copy of the extension within 30 days of filing.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.


Michel F. Laplante (SEAL)

Work Request / Tracking #: 2178599
CAT - Deal # 1491535 Facility #: 1230705

UNCONDITIONAL GUARANTY

January 31, 2011



The Grove At Fenwick Plantation, LLC
151 Treeduct Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Eugene J. Zurlo
4 Nicklaus Lane
Kiawah Island, South Carolina 29455

Charlotte R. Zurlo
4 Nicklaus Lane
Kiawah Island, South Carolina 29455
(Individually and collectively, "Guarantor")

Wells Fargo Bank, N.A.
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, *et seq.*, N.C.G.S. §§ 26-7, *et seq.*, Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind

whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or

its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), *duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party.* **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit

accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, P.O. Box 13327, Roanoke, VA 24040 or Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

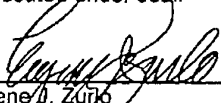
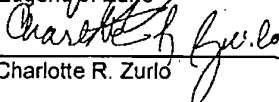
NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the *Guaranteed Obligations*, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due Guarantor. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

PERSONAL FINANCIAL STATEMENTS. Each Guarantor who is an individual shall deliver to Bank annually, within thirteen months of the previous statement date on file with Bank, Guarantor's financial statement. Said financial statement shall disclose all of Guarantor's assets, liabilities, net worth, income and contingent liabilities, all in reasonable detail and acceptable to Bank and submitted on a form to be provided by Bank or on such other form acceptable to Bank, signed by Guarantor and certified by Guarantor to Bank to be true, correct and complete.

TAX RETURNS. Guarantor shall deliver to Bank, within 30 days of filing, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Guarantor to be true and complete copies of such returns. In the event an extension is filed, Guarantor shall deliver a copy of the extension within 30 days of filing.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.


Eugene J. Zurlo (SEAL)

Charlotte R. Zurlo (SEAL)

Work Request / Tracking #: 2178599
CAT - Deal # 1491535 Facility #: 1230705

UNCONDITIONAL GUARANTY

January 31, 2011



The Grove At Fenwick Plantation, LLC
151 Treeduct Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Eugene J. Zurlo, Trustee
for Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte R. Zurlo as Grantors
4 Nicklaus Lane
Kiawah Island, South Carolina 29455-0000

Charlotte R. Zurlo, Trustee
for Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte R. Zurlo as Grantors
4 Nicklaus Lane
Kiawah Island, South Carolina 29455-0000
(Individually and collectively, "Guarantor")

Wells Fargo Bank, N.A.
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this

Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new

transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law,

the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, P.O. Box 13327, Roanoke, VA 24040 or Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service

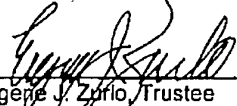
and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

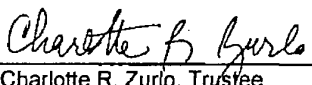
NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due Guarantor. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.



(SEAL)
Eugene J. Zurlo, Trustee
for Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte R. Zurlo as Grantors



(SEAL)
Charlotte R. Zurlo, Trustee
for Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte R. Zurlo as Grantors

Work Request / Tracking #: 2178599
CAT - Deal # 1491535 Facility #: 1230705



Robert C. Byrd

Partner

Telephone: 843.727.2665

Direct Fax: 843.727.2680

bobbybyrd@parkerpoe.com

Charleston, SC

Charlotte, NC

Columbia, SC

Raleigh, NC

Spartanburg, SC

August 14, 2014

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

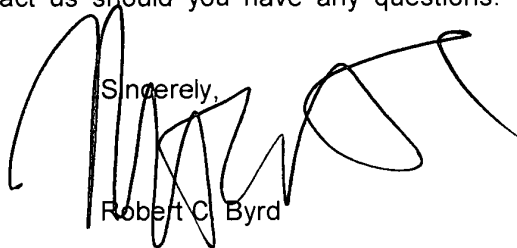
Re: Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, National Association, as Successor by Merger to First Union National Bank vs. Penny Creek Associates, L.L.C. a/k/a Penny Creek Associates, LLC, et al.

Dear Ms. Armstrong:

Enclosed herewith please find an original and one (1) copy of the Civil Action Cover Sheet, Lis Pendens, Summons, Complaint and Notice of Intent to Refer in the above-referenced matter. Please file the originals with the Court and return the file stamped copies to us by means of our courier who is hand delivering this letter. Also enclosed is this firm's check in the amount of \$150.00.

Please do not hesitate to contact us should you have any questions. With kindest regards, I remain

Sincerely,



Robert C. Byrd

RCB:kxl

Enclosures

PPAB 2531976v1

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE #: _____

MAYBANK 2754, LLC,

SUMMONS

Plaintiff,

(Jury Trial Requested)

v.

EUGENE J. ZURLO, Individually and as Co-Trustee
of the Eugene J. Zurlo Living Trust Dated December
11, 1997; 1776, LLC; BEACH FENWICK, LLC;
THE BEACH COMPANY; SEAMON, WHITESIDE
& ASSOCIATES, INC.; PENNY CREEK ASSOCIATES,
LLC; JOHN DOE AND MARY ROE;

Defendants,

_____/

TO: EUGENE J. ZURLO, Individually and as Co-Trustee of the Eugene J. Zurlo Living Trust, Dated December 11, 1997; 1776, LLC; BEACH FENWICK, LLC; THE BEACH COMPANY; SEAMON, WHITESIDE & ASSOCIATES, INC.; PENNY CREEK ASSOCIATES, LLC; JOHN DOE AND MARY ROE

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint upon the subscribers, at their office, TAROKH LAW, PLLC, PO Box 10827, Tampa, FL 33679, within thirty (30) days, after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

TAROKH LAW, PLLC
PO BOX 10827
TAMPA, FL 33679
813-922-5510

/s/ Jason M. Tarokh
JASON M. TAROKH
SOUTH CAROLINA BAR # 72837

January 13, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE #: _____

MAYBANK 2754, LLC,

Complaint

Plaintiff,

(Jury Trial Requested)

v.

EUGENE J. ZURLO, Individually and as Co-Trustee
of the Eugene J. Zurlo Living Trust Dated December
11, 1997; 1776, LLC; BEACH FENWICK, LLC;
THE BEACH COMPANY; SEAMON, WHITESIDE
& ASSOCIATES, INC.; PENNY CREEK ASSOCIATES,
LLC; JOHN DOE AND MARY ROE

Defendants,

_____ /

VERIFIED COMPLAINT

COMES NOW THE PLAINTIFF, MAYBANK 2754, LLC, and sues the Defendants, EUGENE J. ZURLO, Individually and as Co-Trustee of the Eugene J. Zurlo Living Trust Dated December 11, 1997; 1776, LLC; BEACH FENWICK, LLC; THE BEACH COMPANY; SEAMON, WHITESIDE & ASSOCIATES, INC.; PENNY CREEK ASSOCIATES, LLC; JOHN DOE AND MARY ROE; and alleges as follows:

General Allegations

1. Plaintiff, MAYBANK 2754, LLC (herein "Maybank"), is a limited liability company organized and existing under the laws of the State of South Carolina, and transacted business in Charleston County, South Carolina at all relevant times.

2. Defendant, EUGENE J. ZURLO, Individually and as Co-Trustee of the Eugene J. Zurlo Living Trust Dated December 11, 1997 (herein "Zurlo"), is a resident of Charleston County, South Carolina.

3. Defendant, 1776, LLC (herein "1776"), is a limited liability company organized and

existing under the laws of the State of South Carolina, and transacted business in Charleston County, South Carolina at all relevant times. Upon information and belief, the sole member of 1776, LLC, is The Eugene Zurlo Living Trust Dated December 11, 1997, in which Zurlo and his wife are its Co-Trustees.

4. Defendant, BEACH FENWICK, LLC (herein “Beach Fenwick”), is a limited liability company organized and existing under the laws of the State of South Carolina, and transacted business in Charleston County, South Carolina at all relevant times. Upon information and belief, Beach Fenwick is an affiliate and/or subsidiary of Beach Company sharing some of the same officers, directors and/or employees.

5. Defendant, THE BEACH COMPANY (herein “Beach Company”), is a corporation organized and existing under the laws of the State of South Carolina, and transacted business in Charleston County, South Carolina at all relevant times.

6. Defendant, SEAMON, WHITESIDE & ASSOCIATES, INC. (herein “Seamon Whiteside”), is a corporation organized and existing under the laws of the State of South Carolina, and transacted business in Charleston County, South Carolina at all relevant times.

7. Defendant, PENNY CREEK ASSOCIATES, LLC (herein “Penny Creek”), is a limited liability corporation organized and existing under the laws of the State of South Carolina, and transacted business in Charleston County, South Carolina at all relevant times. Zurlo, individually, was a member of Penny Creek during all relevant times, and upon information and belief, is currently a member.

8. Upon information and belief Defendants, JOHN DOE and MARY ROE, are presently

unknown persons who are principals of one or more Defendants, and/or agents thereof, and each other, who conspired together and with one or more Defendants to defraud the Plaintiff of its easement rights as described herein.

9. This Court has jurisdiction over the parties and the subject of this lawsuit.

10. Venue is appropriate in Charleston County, South Carolina.

11. The real estate that is the subject of this case (herein "Property") is described as follows:

ALL that certain piece, parcel or tract of land situate, lying and being in the City of Charleston County, South Carolina, containing 19.322 acres, more or less, and being shown as **"TRACT B-2-2 TMS 346-00-00-076 OWNER: 1776 LLC PREVIOUS ACREAGE 998,976 SF 22.933 AC NEW ACREAGE 841,688 SF 19.322 AC"** on a plat entitled "A PLAT OF A PORTION OF TMS #346-00-00-004, and -076 OWNED BY 1776, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA FOR THE NORTHERN PITCHFORK ROAD" dated January 22, 2019, last revised December 4, 2019, prepared by Philip R. Bryan, Jr. S.C.P.L.S. No. 28597 of Southeastern Land Surveying LLC and recorded on December 4, 2019, in Plat Book L19, Page 0515, in the ROD Office for Charleston County, South Carolina. Said parcel having such size, shape, buttings and boundings as will more fully appear by reference to said plat.

BEING A PORTION of the property conveyed to Grantor by deed of Mikell R. Scarborough as Master-in-Equity dated August 29, 2017 and recorded August 29, 2017 at Book 0662, Page 915 in the ROD Office for Charleston County, South Carolina.

This being the same property conveyed to Beach Fenwick, LLC, by deed of 1776, LLC, recorded on December 12, 2019, in Book 0846, Page 268 in the ROD Office for Charleston County, South Carolina
Owner of the Property: Beach Fenwick, LLC

TMS# 346-00-00-076.

The Thirty (30) Foot Private Right of Way Easement on the Property

12. Maybank owns a lot adjacent to the Property. The lot has a building situated thereon with office spaces for lease. During all material times, office space on the lot has been leased and is currently leased.

13. Until on or about October 4, 2013, Penny Creek solely owned Maybank and was the sole member of Maybank.

14. On October 4, 2013, Zurlo executed that certain Resolution of the Sole Shareholder of Penny Creek Associates, LLC (herein "Resolution"). A true and correct copy of the Resolution is attached hereto and incorporated herein as an exhibit.

15. Pursuant to the Resolution, Penny Creek approved the transfer of its membership interest in Maybank to individuals set forth therein (herein "Laplane Family"), and also agreed to grant to them, and their assigns, a thirty (30) foot private right of way access easement for pedestrian and vehicular ingress, egress and access to, from and over the Property, the location and condition of which to be mutually agreed upon at the completion of that certain roadway known as Pitchfork Road (herein "thirty (30) foot private right of way easement").

16. Pursuant to the Resolution, upon completion Pitchfork Road, an easement agreement to memorialize the thirty (30) foot private right of way easement would follow.

17. Pitchfork Road has not been completed.

18. The resolution was not recorded.

19. At the time of the Resolution, members of the Laplane Family owned real estate, or had an interest in residential real estate, that was also adjacent to the Property.

20. Maybank was assigned rights to the thirty (30) foot private right of way easement.

The Derivative and Judicial Dissolution Against Penny Creek and the Foreclosure of the Property

21. Zurlo has a contentious history with certain members of the Laplane Family.

22. On December 16, 2013, a little over two (2) months after Zurlo executed the Resolution, Zurlo and others commenced a derivative and judicial dissolution action against Penny Creek and others in Charleston County Court of Common Pleas Case # 2013-CP-07280.

23. On August 14, 2014, approximately ten (10) months after the Zurlo executed the Resolution, a foreclosure action, the Property being a subject thereof, was commenced against Penny Creek and others by Wells Fargo Bank, N.A., in Charleston County Court of Common Pleas Case # 2014-CP-10-4946.

24. Thereafter, on or about February 29, 2016, the derivative and judicial dissolution action was settled on the record before the Court.

25. Upon information and belief, on May 19, 2016, as part of the settlement of the derivative and judicial dissolution action, Penny Creek executed and delivered a promissory note to The Eugene J. Zurlo Living Trust Dated December 11, 1997, and secured it with a second mortgage on the Property (herein "Zurlo Note and Mortgage").

26. On April 7, 2017, the articles of organization of 1776 were filed with the South Carolina Secretary of State.

27. On the same day 1776 was created, April 7, 2017, The Eugene J. Zurlo Living Trust Dated December 11, 1997 also assigned the Zurlo Note and Mortgage to 1776.

28. Upon information and belief, around the time of the creation of 1776, the Zurlo Note and Mortgage went into default.

29. Thereafter, 1776 intervened in the above-referenced foreclosure action and received a credit bid based on the indebtedness owned on the Zurlo Note and Mortgage.

30. Subsequently, 1776 was the winning bidder at the foreclosure sale and consequently received title to the Property by virtue of a master's deed.

The Development of the Property

31. During the pendency of the above-referenced derivative and judicial dissolution

and foreclosure action, the Property was in the process of being developed while it was still owned by Penny Creek.

32. During the pendency of the above-referenced derivative and judicial dissolution action and foreclosure action, Seamon Whiteside was hired by Penny Creek to prepare planned unit development guidelines for the Property that were submitted to the City of Charleston for approval.

33. Upon information and belief, as a direct result of its involvement with the development process and in working with Penny Creek, and later also with 1776 and Zurlo, for the development of the Property, Seamon Whiteside acquired actual knowledge of the thirty (30) foot private right of way easement.

34. Upon information and belief, sometime after 1776's acquisition of the Property, Beach Company became involved with, and assisted with, the development of the Property.

35. Upon information and belief, as a direct result of its involvement with the development process and working with 1776 and Zurlo for the development of the Property, Beach Company acquired actual knowledge of the thirty (30) foot private right of way easement.

36. Subsequently, on November 27, 2019, 1776 entered into a certain development agreement with the City of Charleston to develop the Property, which was recorded in Book 0843, Page 506, in the ROD Office of Charleston County, South Carolina.

37. Then, on December 12, 2019, 1776 transferred the Property to Beach Fenwick by virtue of a deed recorded in Book 0846, Page 268, in the ROD Office of Charleston County, South Carolina.

38. Beach Fenwick is the current owner of the Property, and upon information and

belief, is an affiliate and/or subsidiary of Beach Company, sharing some of the same officers, directors and/or employees who had actual knowledge of the thirty (30) foot private right of way easement, and otherwise had actual knowledge of the thirty (30) foot private right of way easement before it acquired title to the Property.

39. Also, on December 12, 2019, 1776 partially assigned its rights and obligations of the above-referenced development agreement to Beach Fenwick except for its obligations “with respect to the contribution of land for Northern Pitchfork Road...” pursuant to that certain partial assignment and assumption of rights and obligations under development agreement recorded in Book 0846, Page 269 in the ROD Office of Charleston County, South Carolina.

40. Upon information and belief, the development plans for the Property do not have any specific provisions or reservations for the thirty (30) foot private right of way easement upon the completion of Pitchfork Road.

The Conspiracy

41. At all relevant times, Zurlo had actual knowledge of the thirty (30) foot private right of way easement.

42. Upon information and belief, Zurlo’s actual knowledge of the thirty (30) foot private right of way easement is imputed to each Defendant with whom he possessed any ownership or held any other interest therein.

43. Upon information and belief, during all relevant times, the Defendants had actual knowledge of the thirty (30) foot private right of way easement.

44. Upon information and belief, after 1776 acquired the Property and despite all Defendants having actual knowledge of the thirty (30) foot private right of way easement, Defendants, at the direction, guidance, and/or persuasion of Zurlo, surreptitiously concealed the

thirty (30) foot private right of way easement by intentionally and wrongfully omitting any references thereof in various recorded documents, and also in their submissions and representations to the City of Charleston to obtain development approval of the Property, and/or assisting in these nefarious efforts, as part of a deceitful scheme to have the Property developed without affording any provisions or reservations for the thirty (30) foot private right of way easement.

45. Upon information and belief, as intended by the Zurlo and/or all the Defendants, the Property now appears primed for development without any provision or reservation made for the Plaintiff's thirty (30) foot private right of way easement across the Property.

COUNT I
(Declaratory Judgment - Easement)

46. Plaintiff re-alleges the Paragraphs above as though fully set forth herein verbatim.

47. This is an action for declaratory judgment pursuant to South Carolina Code § 15-53-10, et. seq.

48. There is a bona fide dispute between the Plaintiff and Defendants that constitutes a justiciable controversy.

49. Plaintiff seeks a judgment declaring that it has a thirty (30) foot private right of way easement across the Property, the location and condition of which is to be mutually agreed upon at the completion of Pitchfork Road.

50. Plaintiff has retained TAROKH LAW, PLLC, to initiate and maintain this action and is obligated to pay it a reasonable fee for its services in bringing this action.

WHEREFORE, Plaintiff requests a declaratory judgment declaring that it has a thirty (30) foot private right of way easement across the Property, the location and condition of which is to be mutually agreed upon at the completion of Pitchfork Road, including a separate award of attorney's fees and costs against the Defendants, and for such further relief as this Court deems just and proper.

COUNT II
(Declaratory Judgment – Restrictive Covenant)

51. This count is pled in the alternative to Count I.

52. Plaintiff re-alleges the Paragraphs above as though fully set forth herein verbatim except for the Paragraphs comprising Count I.

53. This is an action for declaratory judgment pursuant to South Carolina Code § 15-53-10. et. seq.

54. There is a bona fide dispute between the Plaintiff and Defendants that constitutes a justiciable controversy.

55. The very language of the Resolution for the grant of a thirty (30) foot private right of way across the Property upon the completion of Pitchfork Road constitutes a restrictive covenant that runs with the land in that the parties to the Resolution intended that the covenant run with the land, and the covenant touches and concerns the land.

56. By developing the Property without making any reservation of provision for the thirty (30) foot private right of way, the Defendants are intentionally violating the restrictive covenant.

57. Plaintiff seeks a judgment declaring that the creation of a thirty (30) foot private right of way upon the completion of Pitchfork Road as set forth in the Resolution is a restrictive covenant that runs with the land.

58. Plaintiff has retained TAROKH LAW, PLLC, to initiate and maintain this action and is obligated to pay it a reasonable fee for its services in bringing this action.

WHEREFORE, Plaintiff requests a declaratory judgment that the Resolution for the grant of a thirty (30) foot private right of way across the Property upon the completion of Pitchfork Road constitutes a restrictive covenant that runs with the land, including a separate award of attorney's fees and costs against the Defendants, and for such further relief as this Court deems just and proper.

COUNT III
(Civil Conspiracy)

59. Plaintiff re-alleges the Paragraphs above as though fully set forth herein verbatim except for the Paragraphs comprising Counts I and II.

60. This is an action for damages based upon the civil conspiracy committed by the Defendants.

61. Upon information and belief, after 1776 acquired the Property and despite all Defendants having actual knowledge of the thirty (30) foot private right of way easement, Defendants, at the direction, guidance, and/or persuasion of Zurlo, surreptitiously concealed the thirty (30) foot private right of way easement by intentionally and wrongfully omitting any references thereof in various recorded documents, and also in their submissions and representations to the City of Charleston to obtain development approval of the Property, and/or assisting in these nefarious efforts, as part of a deceitful scheme to have the Property developed without affording any provisions or reservations for the thirty (30) foot private right of way easement.

62. As a result, the Plaintiff has suffered damages.

63. Plaintiff has suffered special damages in that its adjacent lot has lost the value of a (30) foot private right of way easement across the Property.

64. Plaintiff is entitled to punitive damages as result of the Defendants' unfair and fraudulent conduct.

64. Plaintiff has retained TAROKH LAW, PLLC, to initiate and maintain this action and is obligated to pay it a reasonable fee for its services in bringing this action.

WHEREFORE, Plaintiff requests a judgment for damages against the Defendants, including special and punitive damages, and also including a separate award of attorney's fees and costs against the Defendants, and for such further relief as this Court deems just and proper.

COUNT IV
(Temporary Injunction)

65. Plaintiff re-alleges the Paragraphs above as though fully set forth herein verbatim except for the Paragraphs comprising Counts I, II and III.

66. This is an action for a temporary injunction.

67. Upon information and belief, the Plaintiff is entitled to a temporary injunction against Zurlo, 1776 and Beach Fenwick to enjoin them from developing the Property so as to preserve the status quo until after a trial on the merits and a judgment rendered so that the status quo can be maintained pending this litigation.

68. Plaintiff will suffer irreparable harm if an injunction is not granted because the development of the Property can presently proceed in total disregard to, and without any provision or reservation for, Plaintiff's right to a thirty (30) private right of way easement upon the completion of Pitchfork Road.

69. Thus, a temporary injunction is reasonably necessary to protect the rights of the Plaintiff pending this litigation.

70. Plaintiff has a likelihood of success on the merits.

71. There is no adequate remedy of law.

72. Plaintiff has retained TAROKH LAW, PLLC, to initiate and maintain this action and is obligated to pay it a reasonable fee for its services in bringing this action.

WHEREFORE, Plaintiff requests a temporary injunction against Zurlo, 1776 and Beach Fenwick to enjoin them from developing the Property so as to preserve the status quo until after a trial on the merits and a judgment rendered so that the status quo can be maintained pending this litigation, and also including a separate award of attorney's fees and costs against the Defendants, and for such further relief as this Court deems just and proper.

REQUEST FOR JURY TRIAL

73. The Plaintiff requests a trial by jury on all issues so triable.

Respectfully submitted,

TAROKH LAW, PLLC
PO BOX 10827
TAMPA, FL 33679
813-922-5510

/s/ Jason M. Tarokh
JASON M. TAROKH
SOUTH CAROLINA BAR # 72837

January 13, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE #: _____

MAYBANK 2754, LLC,

Plaintiff,

v.

EUGENE J. ZURLO, Individually and as Co-Trustee
of the Eugene J. Zurlo Living Trust Dated December
11, 1997; 1776, LLC; BEACH FENWICK, LLC;
THE BEACH COMPANY; SEAMON, WHITESIDE
& ASSOCIATES, INC.; PENNY CREEK ASSOCIATES,
LLC; JOHN DOE AND MARY ROE;

Defendants,

VERIFICATION

PERSONALLY APPEARED before me, Michel F. Laplante, Manager of MAYBANK
2754, LLC, who after first being duly sworn, deposes and says that he has read the foregoing
Verified Complaint and the statements contained therein are true, except those made on
information and belief, and as to those he believes them to be true.

MAYBANK 2754, LLC

BY: _____

Michel F. Laplante

ITS: Manager

SWORN to and subscribed before me
this 13th day of January, 2020.

Cherie Rogers Couche
Notary Public for South Carolina
My Commission Expires: September 26, 2027

CHERIE ROGERS COUCHE
Notary Public - State of South Carolina
My Commission Expires September 26, 2027

**RESOLUTION OF THE SOLE SHAREHOLDER
OF PENNY CREEK ASSOCIATES, L.L.C.**

At a meeting of the Members of Penny Creek Associates, L.L.C. (the "Company") held at the Company's offices in Charleston, South Carolina, the Members of the Company hereby adopt the following resolutions:

WHEREAS, the Company is the sole member of Maybank 2754, LLC, a South Carolina limited liability company (the "Maybank 2754, LLC"); and

WHEREAS, pursuant to the terms and conditions of that certain Contract for Assignment of Interest, dated October 9, 2013, by and between the Company, Inc. (as Seller thereunder) and John H. Laplante, Michiel F. Laplante, Peter F. Laplante, Marianne Laplante-Scarlatia, or their assigns (as Purchasers thereunder) (the "Agreement"), the Seller desire to sell, assign, transfer and convey certain Membership Interest in the Company to those certain Purchasers mentioned above and according to the provisions of the Agreement; and

WHEREAS, pursuant to the Agreement, the Company hereby certifies that the Company has complied with all provisions of the Company operating documents, with respect to the aforementioned sale, assignment and/or transfer of the Company Membership Interest in the Maybank 2754, LLC to the Purchaser, in consideration of Four Hundred Thousand and no/100 Dollars (\$400,000.00) and that the Members of the Company consent to the same; and

WHEREAS, as a condition of closing, the Company has agreed to grant, transfer, sell and convey to Purchasers, their successors and assigns, an access easement for pedestrian and vehicular ingress, egress and access to, from and over that portion of the lands of Seller known as "Residual Tract B-2-2" as shown on that plat by Richard D. Lacy, entitled "PLAT SHOWING THE SUBDIVISION OF TRACT C-1 TMS NO. 346-00-00-077), TRACT B-2-1 (TMS NO. 346-00-00-004), AND TRACT B-2-2 (TMS NO. 346-00-00-076) TO CREATE EXTENSION OF FENWICK HALL ALLEÉ (CONTAINING 0.272 ACRES) AND CREATING RESIDUAL TRACT C-1 (TMS NO. 346-00-00-077) CONTAINING 15.454 ACRES, RESIDUAL TRACT B-2-1 (TMS NO. 346-00-00-004) CONTAINING 24.895 ACRES, AND RESIDUAL TRACT B-2-2 (TMS NO. 346-00-00-076) CONTAINING 22.856 ACRES)," having been recorded in Plat Book EH, page 817 in the Charleston County RMC Office on March 25, 2005 ("30' Private R/W"), the location and condition of which shall be mutually agreed upon at the completion of that certain roadway known as Pitch Fork Road ("Pitch Fork Road"). Upon the completion of Pitch Fork Road, the Parties hereto shall execute and record an Easement Agreement to memorialize the 30' Private R/W.

NOW THEREFORE IT IS RESOLVED, that the Company approves the Agreement; the sale, assignment, transfer and conveyance of Membership Interest in the Company thereunder; and any and all other documents necessary to facilitate the Company's execution of the Agreement and its compliance with the transactions contemplated thereunder.

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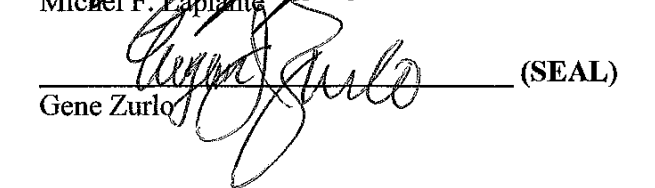
BE IT FURTHER RESOLVED, that upon the completion of Pitch Fork Road, the Company shall grant to Purchasers, their successors and assigns, an access easement for pedestrian and vehicular ingress, egress and access to, from and over that portion of the lands of the Company known as "Residual Tract B-2-2" as shown on that plat by Richard D. Lacy, entitled "PLAT SHOWING THE SUBDIVISION OF TRACT C-1 TMS NO. 346-00-00-077), TRACT B-2-1 (TMS NO. 346-00-00-004), AND TRACT B-2-2 (TMS NO. 346-00-00-076) TO CREATE EXTENSION OF FENWICK HALL ALLEÉ (CONTAINING 0.272 ACRES) AND CREATING RESIDUAL TRACT C-1 (TMS NO. 346-00-00-077) CONTAINING 15.454 ACRES, RESIDUAL TRACT B-2-1 (TMS NO. 346-00-00-004) CONTAINING 24.895 ACRES, AND RESIDUAL TRACT B-2-2 (TMS NO. 346-00-00-076) CONTAINING 22.856 ACRES)," having been recorded in Plat Book EH, page 817 in the Charleston County RMC Office on March 25, 2005 ("30' Private R/W"), the location and condition of which shall be mutually agreed upon at a future date.

BE IT FURTHER RESOLVED, that Michel F. Laplante in his capacity as Manager of the Company is hereby authorized to execute and deliver on behalf of the Company any and all agreements, assignments, satisfactions, releases, discharges, papers, documents, lending and collateral documents, offers, applications, leases, affidavits, certificates, certifications, verifications, non-disturbance agreements, guaranties, bonds, notes, subordination agreements, security agreements, resolutions, settlement statements, and any and all other contracts, papers or documents required in the course of the execution of the Agreement and the assignment and transfer of Membership Interest in the Company.

The undersigned Members of the Company do hereby certify that as of this 4TH day of October, 2013 the above to be a true and correct transcript of the Resolutions passed by the Company at the time and place above stated.

MEMBERS:

 (SEAL)
Michel F. Laplante

 (SEAL)
Gene Zurlo