

LOAN CLOSING STATEMENT

LENDER: SABAL PALM BANK
BORROWER: Bern Creek Improvement Association, Inc., a Florida non-profit corporation
REGARDING: One Hundred Eighty Thousand & 00/100 DOLLARS (\$180,000.00) Loan
DATE OF CLOSING: March 22, 2011
PRINCIPAL AMOUNT OF LOAN: \$180,000.00

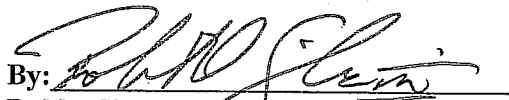
DISBURSEMENTS:

CLERK OF CIRCUIT COURT (Sarasota County)	
Documentary Stamps	\$630.00
Record UCC-1	<u>\$10.00</u>
	\$640.00
SABAL PALM BANK	
Loan Fee	\$900.00
FLORIDA UCC, INC.	
File UCC-1	\$35.00
DUNLAP & MORAN, P.A.	
Lender counsel attorney's fees and costs	\$1,450.00
TOTAL BORROWER EXPENSES:	\$3,025.00
TOTAL AMOUNT DUE TO BORROWER:	\$176,975.00

Borrower acknowledges that Lender has retained DUNLAP & MORAN, P.A. as Lender's legal counsel in the subject loan transaction for the exclusive and sole benefit of SABAL PALM BANK. Notwithstanding that DUNLAP & MORAN, P.A. legal fees and costs are being charged to the Borrower as part of the Loan costs, Borrower acknowledges that DUNLAP & MORAN, P.A. has only represented the Lender with respect to the Loan transaction. Borrower further acknowledges that DUNLAP & MORAN, P.A. has made no legal representations to Borrower with respect to the Loan or any matter connected with the Loan, and that Borrower has not relied upon DUNLAP & MORAN, P.A., in any way whatsoever with respect to the Loan or any matter connected with the Loan transaction. We hereby approve the above statements and authorize the disbursements herein.

BORROWER:

**Bern Creek Improvement Association, Inc.,
a Florida non-profit corporation**

By: 
Robby Sinclair, as its President

ATTEST: 
Lance Eisinger, as Secretary

PROMISSORY NOTE

\$180,000.00

Effective Date: March 22, 2011
Execution Date: March 22, 2011
Sarasota, Florida

FOR VALUE RECEIVED **Bern Creek Improvement Association, Inc, a Florida non-profit corporation** ("Borrower"), hereby promises, to pay to the order of **Sabal Palm Bank** ("Lender"), at 5101 Fruitville Road, Suite 100, Sarasota, FL 34232, or at such other place as the holder hereof may from time to time designate in writing, the principal sum of **ONE HUNDRED EIGHTY THOUSAND AND & 00/100 DOLLARS (\$180,000.00)**, or so much thereof as may be advanced from time to time, together with interest at the rate hereinafter specified on such indebtedness as shall from time to time remain unpaid, until paid in full, such principal and interest being payable in lawful money of the United States which shall be legal tender in payment of all debts at the time of payment.

1. Interest will be charged on the unpaid principal until the full amount of the principal has been paid. Beginning on the date of this Note interest will accrue and be charged at an annual rate of 6.75%. The interest rate will change as provided for elsewhere herein.

Changes in the monthly interest rate will result in corresponding changes in the monthly payment and Lender will determine the new interest rate and the changed amount of the monthly payment in accordance with this Note.

The interest rate will change on the 22nd day of March, 2016, and on that day every twelve (12) months thereafter. Each date on which the interest rate could change is called a "Change Date".

Upon each Change Date, the interest rate will be based on an Index. The "Index" is the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board. The most recent Index figure available as of the date forty-five (45) days before each Change Date is called the "Current Index".

If the Index is no longer available, the Lender will choose a new Index which is based upon comparable information. The Lender will give Borrower notice of this choice.

Before each Change Date, the Lender will calculate the new interest rate by adding three and one quarter percentage points (3.25%) to the Current Index. This amount will be the new interest rate until the next Change Date; provided however, that the new interest rate at each Change Date shall never be less than 6% per annum. The new interest rate will become effective on each Change Date.

Interest at the rate set forth above, unless otherwise indicated, will be calculated on the basis of a 360-day year so as to compute a daily amount of interest for a hypothetical year of 360 days, then multiplying such amount by the actual number of days elapsed in an interest calculation period. Payments will be applied first to accrued unpaid interest, then to principal and any remaining amount to any unpaid collection costs and late charges.

If any payment is more than ten (10) days late, Borrower agrees to pay to Lender a late charge equal to five percent (5%) of the overdue payment. The late fee is for the purpose of reimbursing the Lender for expenses incurred by reason of such late payment. Borrower stipulates that such late fee is in an amount reasonably calculated to reimburse the Lender for expense and damages incurred by reason of the late payment. Notwithstanding the foregoing, however, all payments shall be due and payable as of the dates set forth above, and the failure to make all payments when due shall constitute a default under this Note. The terms of this paragraph are not intended and shall not be deemed to create a grace period for payment.

THE PRINCIPAL BALANCE UNDER THIS NOTE SHALL BE DISBURSED TO BORROWER AT SUCH TIME AND ON SUCH CONDITIONS AS PROVIDED FOR IN THAT CERTAIN LOAN AGREEMENT EXECUTED BETWEEN LENDER AND BORROWER OF EVEN DATE HEREWITH.

2. Borrower will initially make monthly principal and interest payments of \$2,076.42 per month, said payments to commence one month subsequent to the date hereof, and said monthly payments to continue on the like day of every month thereafter, through and including the payment due on the first Change Date hereof.

On each Change Date, as aforesaid, the interest rate shall be recomputed as provided in paragraph 1 above, and Lender will determine the amount of the monthly payment that would be sufficient to repay the principal owed as of the applicable Change Date in full on a date that is ten (10) years from the original date of this Note, at the new interest rate, in substantially equal payments. The result of this calculation will be the new amount of the monthly payment. The new monthly payment amount shall commence one month subsequent to the applicable Change Date, and continue on a like day of every month thereafter through the next Change Date, or until the Maturity Date, as the case may be.

Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an event of default hereunder. At any time thereafter and until the entire amount then due has been paid, Lender shall be entitled to exercise all rights contained hereunder upon an occurrence of default.

3. Unless sooner paid, all outstanding principal and accrued interest thereon, shall be due in full on March 18, 2021 (the "Maturity Date"). Payments shall be applied first to interest and then to principal.

This Note is secured by a Pledge Agreement and Security Agreement (the "Security Agreements") dated of even date herewith made by Borrower in favor of Lender, encumbering personal property described therein (the "Secured Property").

All payments made hereunder shall be applied as follows: (a) first against accrued interest then due and owing; (b) next to amounts expended by Lender to cure any default under this Note, the Mortgage or any other Loan Documents executed in connection herewith (collectively "Loan Documents"); (c) next to costs, expenses, or attorneys' fees due and payable to Lender pursuant to this Note, the Security Agreements,

or any other loan document executed in connection herewith; and (d) thereafter against the principal installments due hereunder except for prepayments, which shall be applied against the principal installments in inverse order of their due dates. The making of any prepayment shall not relieve Borrower from the obligation to make the payments next due hereunder on a timely basis.

Each and every party to this Note, whether as Borrower endorser, surety, guarantor, or otherwise ("Obligor"), hereby waives all rights of homestead and other exemptions granted by the constitution or laws of Florida, and further waives presentment, demand, protest, notice of dishonor, notice of nonpayment, notice of protest, and diligence in collection, and assents to the terms hereof and to any extension or postponement of the time for payment or any other indulgence. It is further specifically agreed that this Note or any part of the principal or interest due hereon may be renewed, modified or extended, in whole or in part, such modification to include but not be limited to changes in payment schedules and interest rates, from time to time by the holder of the Note, at the request of the then owners of all or part of the Secured Property, or at the request of any party bound hereon or who has assumed or may hereafter assume payment hereof, without the consent of or notice to other parties bound hereon and without releasing them from any liabilities then existing.

Each and every Obligor hereby consents that the property securing this Note, or any part of such security, may be released, exchanged, added to or substituted for by Lender, without in any way modifying, altering, releasing, affecting or limiting their respective liabilities or the lien of the Security Agreements, and further agrees that Lender shall not be required first to institute any suit, or to exhaust any of its remedies against Borrower or any other person or party liable or to become liable hereunder, in order to enforce payment of this Note, and further agrees that Borrower or any other party liable hereunder may be released by Lender from any or all liability under this Note and such release shall in no way affect or modify the liability of the remaining parties hereto.

Each and every Obligor hereby consents and agrees that he is bound, jointly and severally, under the terms hereof and is subject to all of the provisions set forth herein as fully as though each was an undersigned hereof, and further consents and agrees that any Obligor may be sued by Lender without joining any other Obligor, whether primarily or secondarily liable.

Notwithstanding anything contained herein to the contrary or in any other document executed in connection herewith, no payee or holder of this Note shall ever be entitled to receive, collect or apply as interest on the obligation evidenced hereby any amount in excess of the maximum rate of interest permitted to be charged by applicable law and, in the event Lender or any holder hereof ever receives, collects or applies as interest any such excess, such amount which would be excessive interest shall be applied to the reduction of the principal sum; and, if the principal sum is paid in full, any remaining excess shall forthwith be paid to Borrower. In determining whether or not the interest paid or payable under any specific contingency exceeds the highest lawful rate, Borrower and Lender shall, to the maximum extent permitted under applicable law: (a) characterize any non-principal payment as an expense, fee or premium rather than as interest; (b) exclude voluntary prepayments and the effects thereof; and (c) spread the total amount of interest, or charges in the nature of interest, pursuant to applicable law.

It is expressly agreed that upon the occurrence of an Event of Default, then or at any time thereafter

at the option of Lender, the whole of the principal sum remaining unpaid hereunder, together with all accrued and unpaid interest thereon, shall become due and payable immediately without presentment, notice, protest or demand of any kind, anything contained therein to the contrary in anyway notwithstanding, and in any such event Lender shall have the right to set-off against this Note all money owed by Lender in any capacity to any Obligor, whether or not due, and Lender shall be deemed to have exercised such right of set-off and to have made a charge against any such money immediately upon the occurrence of such default although made or entered on the books subsequent thereto. Obligor authorizes Lender from time to time to debit any account that Obligor may have with Lender, after expiration of any grace period as provided herein, of any payment of principal or interest due hereunder for the amount of such payment of principal or interest and the Obligor may ascertain such debited amount by inquiry to the Lender. Exercise of this right shall be optional with the Lender and the provisions of this paragraph shall not be construed as releasing Obligor from the obligation to make payments of principal and interest due under the terms of this Note according to the terms of this Note. From and after acceleration of the loan pursuant to this paragraph, the interest rate on the entire outstanding principal balance hereunder shall accrue at the highest rate permitted to be charged by applicable law ("Default Rate"). In the event the Default Rate shall be applicable and Lender has not accelerated this Note, the amount of each payment otherwise due hereunder shall be increased to an amount equal to the regular amount of the principal installment due hereunder, plus accrued interest at the Default Rate. Obligor shall also be obligated to pay as part of the indebtedness evidenced by this Note, all costs of collection, whether or not a suit is brought, including any reasonable attorneys' fees that may be incurred in the collection or enforcement hereof. Reasonable attorney's fees are defined to include, but not be limited to, the fees of paralegals working under the supervision of an attorney and all fees and costs incurred in all matters of collection and enforcement, construction and interpretation, before, during and after suit, trial, proceedings and appeals, as well as appearances in and connected with any bankruptcy proceedings or creditors' reorganization or similar proceedings. In the event of any judgment for recovery of amounts due hereunder, such judgment shall bear interest at the highest rate then allowed under Florida law in lieu of any statutory interest rate otherwise provided by law. The provisions herein for a Default Rate or a delinquency charge shall not be deemed to extend the time for any payment hereunder or to constitute a "grace period" giving the Obligors a right to cure any default.

As used herein, "Event of Default" shall mean the occurrence of any of the following events or conditions: (a) failure or omission to pay when due this Note (or any installment of principal or interest thereunder); (b) default in the payment (other than payment of principal and interest) or performance of any obligation, covenant, agreement or liability contained or referred to in this Note, the Security Agreements, or any other Loan Document executed in connection herewith, or upon the existence or occurrence of any circumstance or event deemed a default under this Note or any of the other Loan Documents; (c) a default under any other pledge or encumbrance on the Secured Property (whether such mortgage be held by Lender or by a third party) (d) any warranty, representation or statement made or furnished to lender for the purpose of inducing Lender to make the loan evidenced by this Note, proves to have been false in any material respect when made or furnished; (e) the institution of default proceedings of any kind on the Secured Property (whether held by Lender or by a third party); (f) the default by Borrower in the payment or performance of any obligation, covenant, agreement, or liability contained in any other note, obligation or agreement held by Lender; (g) the appointment of a receiver of any part of the Mortgaged Property; (h) assignment for the benefit of creditors by Borrower, or the commencement of any proceedings in

bankruptcy or insolvency by or against any Obligor; (i) the determination by Lender that a material adverse change has occurred in the financial condition of the any Obligor from the conditions set forth in the most recent financial statement of the such Obligor heretofore furnished to the Lender or from the condition of such Obligor as heretofore most recently disclosed to Lender in any manner (j) falsity in any material respect of, or any material omission in, any warranty, representation or statement made to Lender by or on behalf of Obligor: (i) for the purpose of inducing Lender to make the loan evidenced by this Note; or (ii) in or in connection with any of the Loan Documents; (k) a proceeding being filed or commenced against any Obligor for dissolution or liquidation, or any Obligor voluntarily or involuntarily terminating or dissolving or being terminated or dissolved; (l) entry of a judgment in excess of \$50,000 against Borrower, provided that said judgment, in Lender's reasonable discretion, impairs the ability of any Obligor to perform their respective obligations under the Loan Documents; (m) any attachment, lien or additional security interest being placed upon any of the property which is security for this Note; or (n) the dissolution, termination of existence, insolvency, or business failure of any Borrower, or death of any Obligor or guarantor (Note: As to the death of a guarantor of this Note, the death of a guarantor shall not be considered an event of default provided that Borrower, within sixty (60) days from the date of any said death, provides a substitute guarantor for the individual guarantor that has passed away, and such substitute guarantor is approved by Lender, in Lender's sole discretion). Any default hereunder shall constitute a default under any other note obligation or agreement of each Obligor held by Lender. The agreements contained in this paragraph to create cross-defaults under all notes, obligations, and agreements between Borrower and Lender, whether currently existing or hereafter created, in the event of default under one or more of such mortgages, notes, obligations or agreements are a material and specific inducement and consideration for the making by Lender of the loan evidenced by this Note. Notwithstanding the foregoing, Borrower is entitled to any grace periods or notices as provided in any other Loan Documents executed in connection with this Note.

Time is of the essence of this Note. The remedies of Lender as provided herein or in the Security Agreements or any other loan document executed in connection herewith, shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Lender, and may be exercised as often as occasion therefore shall arise. No act or omission of Lender, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of such right, remedy or recourse, and any waiver or release may be effected only through a written document executed by Lender and then only to the extent specifically recited therein. A waiver or release with respect to any one event shall not be construed as continuing as a bar to, or as a waiver or release of, any subsequent right, remedy or recourse as to any subsequent event.

The term "Lender" where used herein shall include Lender, as defined above, Lender's successors and assigns. The term "Borrower" shall include each person signing this Note, jointly and severally, and their respective heirs, successors and assigns. The term "Obligor" shall include Borrower and every person who is an endorser, guarantor, or surety of this Note, or who is otherwise a part hereto, and their respective heirs, successors and assigns. The terms "person" and "party" shall include individuals, firms and associations, joint venturers, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. This Note shall be construed under Florida law.

THE BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS PROMISSORY NOTE AND ANY AGREEMENT CONTEMPLATED HEREUNDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER AGREEING TO MAKE THE LOAN TO BORROWER EVIDENCED BY THIS PROMISSORY NOTE AND ANY AND ALL OTHER LOAN DOCUMENTS.

Bern Creek Improvement Association, Inc.,
a Florida non-profit corporation

By: 
Robby Sinclair, as its President

ATTEST: 
Lance Eisinger, as Secretary

SWD:stp\DOCS\re\File No. 9901-15\ pn

LOAN AGREEMENT

This Agreement is made and entered into this 22nd day of March, 2011, by and between **BERN CREEK IMPROVEMENT ASSOCIATION, INC., a Florida non-profit corporation**, whose address is: c/o All Florida Services, 2831 Ringling Boulevard, 218F, Sarasota, FL 34237 ("Borrower"), and **SABAL PALM BANK**, whose address is 5101 Fruitville Road, Sarasota, FL 34232 ("Bank" or "Lender").

RECITALS

A. Borrower has heretofore requested that Lender loan to Borrower the sum of **ONE HUNDRED EIGHTY THOUSAND & 00/100 DOLLARS (\$180,000.00)**, (the "Loan"), which Loan shall be secured by various loan documents, including but not limited to an Assignment of Deposit Account, Commercial Pledge Agreement, and various other loan documents, which provide for a security interest given by Borrower in favor of Lender, of all road reserve funds paid and to be paid to Borrower and the restrictive road fund portion of all future assessments collected and to be collected by Borrower.

B. Bank has agreed to make such loan conditioned, in part, upon the execution by Borrower of this Agreement.

C. The Borrower is agreeable thereto.

AGREEMENT

1) **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

2) **Loan.** Bank has loaned to Borrower the sum of **ONE HUNDRED EIGHTY THOUSAND & 00/100 DOLLARS (\$180,000.00)**, and, as a condition precedent, or as a condition subsequent to said loan, the Borrower agrees as follows:

- (a) Borrower shall furnish to Lender annual tax returns (including all statements, schedules, and K-1's as applicable) for Borrower, no later than 30 days subsequent to filing. If any tax returns will be under an extension, then Borrower shall provide Bank copies of any such extension within 30 days of due dates for any such tax returns. Each return shall be signed and certified to be true.
- (b) Borrower is to provide annually to Lender within thirty (30) days after the close of each fiscal year, a current financial statement. Financial statements shall be unaudited, company prepared statements, certified by Borrower to be true and accurate and in all respects reflective of Borrower's operations during such fiscal year and shall include without limitation a balance sheet, profit and loss statement, and statement of cash flow, with supporting schedules, all on a consolidated and consolidating basis in reasonable detail, prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Borrower shall also include its budget for the upcoming year.

- (c) In the event that Borrower fails to timely provide financial statements or tax returns as required, the Bank may, upon forty-five (45) days notice to the Borrower, elect to increase the interest rate under the promissory note for the subject Loan, and relative to the principal balance due under the note, by two percent (2%) per annum above the interest rate under the said promissory note which would otherwise be in effect. Upon the curing of such failure to provide financial statements or tax returns, the interest rate accruing upon the principal balance under the subject promissory note, shall return to the rate that would otherwise be in effect under the said promissory note. The increase in the interest rate provided for herein is separate and distinct from any other rights or remedies the Bank has under the subject promissory note or other Loan Documents.
- (d) Borrower shall provide verification of insurance with responsible companies in such amounts providing for coverage of such risks as is usually carried by owners of similar businesses and property, with an endorsement showing SABAL PALM BANK, as "Mortgagee" or "Additional Loss Payee."
- (e) Borrower shall keep, and cause to be kept, adequate records and books of account, in which complete entries will be made in accordance with generally accepted accounting practices consistently applied, reflecting all financial transactions of the Borrower during the term of the Loan.
- (f) Borrower shall not reduce the amount of its annual restricted road fund assessment (currently \$286.00 per year) without the prior written consent of Bank, which consent will not be unreasonably withheld or delayed.
- (g) A default under any of the terms of this Loan Agreement shall at Bank's sole option, constitute a default under all other loan documents entitling Bank to all rights and remedies provided therein.
- (h) The Bank shall have full authority to inspect all records and property of the Borrower during the term of the loans provided such records relate to the collateral of the loan.
- (i) In addition to all liens upon and rights of setoff against, any moneys, securities, or other property of Borrower given to Bank by law, Bank shall have a lien upon and a right of setoff against and (to the extent allowed by law), a lien and continuing security interest, upon all moneys, securities and other property of Borrower now or hereafter in the possession of, or on deposit with, Bank, whether held in a general or special account or deposit, for safekeeping, or otherwise,; and every such lien, security interest, and right of setoff may be exercised without demand upon or notice to Borrower, and Bank shall have no liability with respect to Borrower's checks or other items that may be returned or other funds transfers that may not be made due to insufficient funds thereafter.
- (j) At all times during the term of the Loan, Borrower shall maintain its primary depository relationship with Bank, as well as all of Borrower's escrow and reserve accounts.

3) **Costs and Expenses.** Borrower shall pay all costs and expenses incurred in connection with preparation for, closing, and servicing the Loan including, without limitation, any appraisal fees, inspection fees, surveys, legal fees (including the fees of Lender's counsel), intangible taxes, documentary taxes, recording costs, license and permit fees.

4) **Representations and Warranties.** Borrower and Guarantor hereby represent and warrant to Lender as follows:

- (a) The execution and delivery of the Loan Documents and performance by the Borrower of the covenants and obligations of the Loan Documents do not and will not: (i) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree or the like affecting the Borrower; (ii) result in a breach of or constitute a default under any indenture or loan or credit agreement, mortgage, or any other agreement, lease or instrument to which the Borrower is a party or by which it or its properties may be bound or affected; or (iii) except as contemplated by this Agreement, result in or require the creation or imposition of any mortgage and security agreement, pledge, lien, security interest or other charge or encumbrance of any nature upon or with respect to any of the properties now owned or hereafter acquired by the Borrower.
- (b) Borrower has full power and authority to execute and deliver the Loan Documents and to incur and perform the obligations provided therein. No authorization, consent, approval, license, exemption or filing or registration with any third party, court or governmental authority or regulatory body is required for the due execution, delivery or performance by the Borrower of any of the Loan Documents.
- (c) Each of the Loan Documents evidences and will constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms.
- (d) Borrower is not in default of any indenture, mortgage, loan or credit agreement or any lease or other agreement or instrument which default could have a material adverse effect on the business, properties, assets, operations or condition, financial or otherwise, of the Borrower, or its ability to carry out the obligations under the Loan Documents. Borrower is not presently in default under any material term, including, without limitation, a default which would give rise to a right of acceleration, of any agreement or instrument relating to any debts owing by the Borrower.
- (e) At time of loan closing and funding of the Loan, Borrower has good and marketable title to the property and assets described in the Loan Documents subject to no security interest, encumbrance or lien or the claim of any third person, except for those liens that will be removed upon disbursement of Loan proceeds.
- (f) None of the representations or warranties made by the Borrower in this Agreement or in any of the other Loan Documents, as of the respective dates of

such representations and warranties, and none of the statements contained in any exhibit or report furnished by or on behalf of the Borrower to Lender in connection with this Agreement and the other Loan Documents, contains any untrue statement of a material fact or omits any material fact necessary to make such statement not misleading. All representations and warranties made under this Agreement shall survive the closing and shall be applicable to any future advances made under the Loan or any modifications to any Loan documents.

- (g) Except for the due execution and recordation of the Loan Documents, and the payments, releases and recordings contemplated herein above, no further action, including any filing or recording of any other agreement, is necessary in order to establish and perfect Lender's first lien on the Property.
- (h) The Loan Documents do not violate any applicable usury laws.
- (i) All financial information of the Borrower is correct as to the financial condition represented therein, and no material fact known to the Borrower necessary to make such financial information not misleading has been omitted, and since the date of such financial information, no material adverse changes have occurred as to the financial conditions represented therein.
- (j) There are no actions, suits or proceedings pending or threatened against or affecting the Borrower before any court or governmental agency, arbitrator or instrumentality that if determined adversely to the Borrower, would have a material adverse effect on the financial condition, properties or operations of the Borrower.

5. **Affirmative Covenants of the Borrower.** So long as any amount payable hereunder shall remain unpaid or Lender shall have any commitment hereunder, the Borrower covenants that it shall, unless Lender shall otherwise consent in writing:

- (a) File all tax returns (federal, state, and local) required to be filed by it and pay and discharge all taxes, assessments and governmental charges or levies imposed upon the Borrower or upon the income or profits, or upon any of Borrower prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon the Property, except to the extent such taxes, assessments or governmental charges or levies are being contested in good faith and are adequately reserved against to the satisfaction of Lender.
- (b) Execute, acknowledge, deliver, file, notarize and register at its own expense all such further agreements, instruments, certificates, documents and assurances and perform such acts as Lender shall deem necessary or appropriate to effectuate the purposes of this Agreement and other Loan Documents; and (ii) promptly provide Lender with evidence of the foregoing in form and substance satisfactory to Lender.
- (c) Borrower shall promptly give Lender written notice of any act of default under any agreement with Lender or under any other contract to which Borrower is a party and of any acceleration of indebtedness caused thereby.

- (d) Borrower shall maintain its entity status in good standing, with no mergers or consolidations without Lender's prior written consent.
- (e) Borrower will comply promptly with all applicable federal, state and local laws, ordinances and regulations.
- (f) Borrower shall keep its business operations and properties properly insured at all times during the term of the Loan. Such insurance shall be issued by an insurance company or companies, in such types, and in such amounts as are acceptable to Lender, with loss, if any, payable to Lender as its interest may appear, pursuant to a mortgagee clause which shall be satisfactory to Lender, and shall prohibit cancellation or substantial modification without at least thirty (30) days prior written notice to Lender.

6) **Events of Default.** The occurrence of any one or more of the following events shall constitute a default hereunder and under the terms of any of the Loan Documents including but not limited to the Note:

- (a) failure by Borrower to comply with any of the terms, conditions, covenants of the Promissory Note or any instrument or Loan Document executed in connection with the Note, including but not limited to payments of principal and interest on specified due dates or any escrow payments or other payments when so due, with consideration being given to any requirements for notice within any Loan Document;
- (b) failure to keep in force the policies of insurance any of the Loan Documents;
- (c) if any material warranty or representation made by Borrower in this Agreement or pursuant to the terms hereof shall at any time be false or misleading in any material respect, or if Borrower shall fail to keep, observe or perform any of the terms, covenants, representations or warranties contained in this Agreement or any other Loan Documents.

7) **Lender Action in Event of Default.** Upon the occurrence of any Event of Default described above, Lender, may proceed to:

- (a) declare the obligation of Lender to make the Loan to be terminated, whereupon the same shall forthwith terminate; and/or
- (b) declare any unpaid principal amount of the Note, all interest accrued and unpaid thereon and all other amounts payable under this Agreement to be forthwith due and payable (thereafter accruing interest at the Default Rate as defined in the Note), whereupon the Note, all such accrued interest and all such other amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower, and Lender may exercise any or all of its rights and remedies under the Collateral and/or Loan Documents, including, without limitation, the rights of a secured party pursuant to the Uniform Commercial Code. Lender may exercise

remedies in whatever order it deems appropriate.

8) **Disbursement of Loan Proceeds.** The purpose of the subject loan is to provide Borrower with a portion of the required funds in order for Borrower to complete that certain paving project with Superior Asphalt, Inc., said total contract price in the amount **FOUR HUNDRED TWENTY THOUSAND THREE HUNDRED FORTY-ONE AND 80/100 (\$420,341.80)**. A copy of the bid quotation is annexed hereto as **Exhibit "A"**. The contractor, per the bid quotation, is due 30% prior to the job starting, and Borrower shall fund such initial payment to Contractor. Additionally, all remaining amounts due to Contractor, will be paid upon completion of the project. The net loan proceeds under the subject loan will constitute a portion of the final payment due to Contractor, and Borrower shall provide any remaining funds due to Contractor. Prior to the net loan proceeds being released to Contractor, Lender must receive a copy of a Final Contractor's Affidavit and lien releases as may be reasonably required, and Lender must receive from Borrower an authorization for Lender to release such proceeds to Contractor.

Additionally, as evidenced by the Assignment of Deposit Account and Commercial Pledge Agreement executed by Borrower and Lender of even date herewith, all of the net loan proceeds have been disbursed into said pledged, deposit account. Additionally, all existing road reserve funds held by the Borrower, have also been placed into said pledged account. All such funds now in the account and to be paid into the account, shall be held by Lender according to the terms of said pledge and Assignment and other Loan Documents. Upon completion of the subject road paving project by Contractor, and receipt by Lender of appropriate final release documents from Contractor, Lender agrees to release the net loan proceeds and remaining amounts necessary to make the final payment due to Contractor.

During the term of the loan, Borrower agrees not to reduce the annual restrictive road fund assessment of \$286.00 per year per lot. Additionally, in the event of any unexpected shortfalls due to collection or otherwise, Borrower agrees to propose an increase to the restricted road fund in order for repayment of the loan to continue as provided for in the subject loan documents.

9) **Miscellaneous.**

- (a) No amendment or waiver of any provision of this Agreement or the Note, nor consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
- (b) Any and all notices or other communications required or permitted hereunder or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to such party to whom it is directed, or in lieu of such personal service, when: (i) deposited in the United States mail, first-class postage prepaid, return receipt requested; or (ii) deposited with a nationally recognized overnight delivery service, addressed to the parties at the addresses set forth herein. Copies of all notices shall be directed to the addresses first set forth above. Either party may change its address for the purpose of this Section by giving written notice of such change to the other party in the manner provided in this Section.
- (c) No failure on the part of Lender to exercise, and no delay in exercising, any right hereunder or under any Loan Document shall operate as a waiver thereof, nor


shall any single or partial exercise of any such right preclude any other or further exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

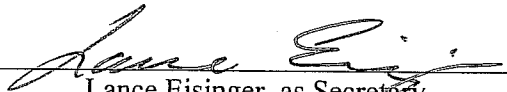
- (d) This Agreement shall be binding upon the Borrower and inure to the benefit of Lender and their respective heirs, successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of lender. The Lender may sell, assign or grant participation in all or any portion of its rights and benefits hereunder and under the Note. The Borrower agrees that in connection with any such grant or assignment, Lender may deliver to the prospective participant or assignee tax returns as so received by Lender and other relevant information relating to the Borrower in possession of Lender upon first notifying Borrower in writing of the name of the assignee and upon receipt from the assignee of a non disclosure confidentiality agreement.
- (e) This Agreement and the other Loan Documents are made in the State of Florida, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Agreement and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of Florida applicable to contracts made and performed in such state and any applicable law of the United States of America. Each party hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than the State of Florida governs this Agreement or any other Loan Document.
- (f) This Agreement (together with any exhibits), the and the Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof, superseding all prior or contemporaneous discussions, understandings or agreements, whether written or verbal. This Agreement, and the Loan Documents may not be changed, modified, explained or supplemented by any extrinsic evidence, including but not limited to, usage of trade, course of dealing and course of performance.
- (g) The Borrower has sought and received the advice of its counsel, with which it is fully satisfied, and in consideration of the financing accommodations extended, and with a clear understanding of the terms of the Loan Documents and this Agreement, hereby declares its intention to be bound by such terms and promises unconditionally to perform fully and faithfully each and every one of its obligations hereunder and under the Loan Documents. The terms of this Loan Agreement shall survive closing.
- (h) **LENDER AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE**

EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER ENTERING INTO THIS AGREEMENT.

BORROWER:


Bern Creek Improvement Association, Inc., a Florida non-profit corporation

By: 
Robby Sinclair, as President

ATTEST: 
Lance Eisinger, as Secretary

LENDER:

SABAL PALM BANK

By: 
Kathy Collura
As its Vice President