Draft 2-9-2015

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT ("Guaranty") is executed by the undersigned CHARLENE W. HABER ("Guarantor") in favor of CITY OF FOLEY, ALABAMA, a municipal corporation, ("Lender") as of the ____ day of _____________, 2015.

W I T N E S S E T H:

WHEREAS, Lender has agreed to lend to Wolf Bay Lodge, Inc., an Alabama corporation ("Borrower"), and Borrower has agreed to borrow from Lender, the sum of ONE MILLION FORTY THOUSAND AND NO/100THS DOLLARS ($1,040,000.00) (the "Loan"), which such indebtedness will be evidenced by that a Promissory Note of even date herewith, executed by Borrower in favor of Lender in the principal amount of $1,040,000.00 (the "Note") and secured by a Vendor's Lien executed by Borrower in favor of Lender (all of which documents, are collectively referred to herein as the "Loan Documents"); and

WHEREAS, the making of the Loan and the extension of credit as evidenced by the Note are conditioned upon the Guarantor giving this guaranty, and Guarantor hereby acknowledges that Lender would not make the Loan or extend such credit to Borrower in the absence of this Guaranty; and

WHEREAS, Guarantor is the sole owner and shareholder of Borrower and the Loan to Borrower is to the direct and indirect interest, benefit and advantage of Guarantor;

NOW, THEREFORE, in order to induce Lender to enter into the above-described agreements with Borrower and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Guarantor hereby unconditionally covenants and agrees with Lender as follows:

(1) Guarantor does hereby absolutely and unconditionally guarantee to Lender and its successors, successors-in-title and assigns at all times all of the following (the "Obligations"):

(a) The full and prompt payment of the Note and all renewals, replacements, modifications, consolidations and extensions thereof, as and when due, whether by acceleration or otherwise, with such interest and late charges as may accrue thereon, either before or after an event of default thereunder or maturity thereof;

(b) The full and prompt payment of any and all other indebtedness and obligations for the payment of money of Borrower to Lender under or arising out of any other documents or instruments now or hereafter evidencing, securing or otherwise relating to the Loan or the Note, including, without limitation, the Vendor's Lien, together with any and all renewals, replacements, modifications, consolidations and extensions thereof; and

(c) The full and prompt payment of all fees and expenses, including without limitation attorney's fees, court costs and other expenses, incurred by Lender in the collection or enforcement of the Note, this Guaranty or any of the Obligations guaranteed hereby.

(2) Guarantor hereby consents and agrees that Lender may at any time, and from time to time, without notice to or further consent from Guarantor (but only with such notice to or consent of Borrower as may be required by the Note), and without releasing, discharging, modifying or otherwise affecting the obligations and liabilities of Guarantor in any manner, either with or without consideration: (a) take, exchange, surrender, release or otherwise acquire or dispose of any property or other security or collateral of any kind or nature whatsoever held by it or by any person or entity on its behalf or for its account, securing any Obligation hereby guaranteed; (b) substitute for any collateral so held by it, other collateral of like kind, or of any kind; (c) with Borrower's consent, modify or otherwise change the terms of the Note or of any of the Obligations guaranteed hereby; (d) rearrange, extend or renew the Note for any period with Borrower's consent and make any advances and disbursements of the Loan and any other extensions of credit related to the Loan; (e) grant subordinations, releases, compromises, waivers of compliance, waivers of default and other indulgences with respect to the Note or the Obligations guaranteed hereby and to any persons or entities now or hereafter liable thereunder or hereunder; (f) release any other guarantor or endorser of, or any other obligor under, any of the Obligations, the Note, or any other loan document; and (g) otherwise deal with Borrower or any other person or entity in all respects or take or fail to take any action of any type whatsoever, all without affecting the obligations and liabilities of Guarantor hereunder. No such action which Lender shall take or fail to take in connection with the Obligations, the Note, or any security for the payment of the indebtedness of Borrower to Lender or for the performance of any Obligation, nor any course of dealing with Borrower or any other person, shall release Guarantor's obligations hereunder, affect this Guaranty in any way or afford Guarantor any recourse against Lender. The provisions of this Guaranty shall extend and be applicable to all renewals, amendments, replacements, extensions, consolidations and modifications of the Note, and any and all references herein to the Note shall be deemed to include any and all such renewals, extensions, amendments, replacements, consolidations and modifications thereof.

(3) Guarantor unconditionally guarantees the payment of all Obligations to Lender made or purportedly made on behalf of Borrower by Borrower or any agent or apparent agent of Borrower with respect to the Loan.

(4) Guarantor hereby subordinates any and all indebtedness of Borrower now or hereafter owed to Guarantor to all indebtedness of Borrower to Lender, and agrees with Lender that Guarantor shall not demand or accept any payment of principal or interest from Borrower, shall not claim any offset or other reduction of Guarantor's obligations hereunder because of any such indebtedness, and shall not take any action to obtain any of the security therefore; provided, however, that, if Lender so requests, such indebtedness shall be collected, enforced and received by Guarantor as trustee for Lender and be paid over to Lender on account of the indebtedness of Borrower to Lender, but

without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.

(5) Guarantor hereby waives and agrees not to assert or take advantage of (a) any defense that may arise by reason of the incapacity, lack of authority or power, death or disability of Borrower or any other person or entity, or the failure or inability of Lender to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of Borrower or any other person or entity, and Guarantor shall remain liable hereunder regardless of whether Borrower or any other person or entity be found not liable under the Note, any loan document or any of the Obligations, for any reason, and regardless of whether any enforcement action against Borrower or any security for any Obligation be stayed by reason of any bankruptcy or insolvency proceeding; (b) any defense based upon an election of remedies by Lender which destroys or otherwise impairs any subrogation rights of Guarantor or the right of Guarantor to proceed against Borrower for reimbursement, or both; (c) any defense based upon failure of Lender to commence an action against Borrower; (d) any failure on the part of Lender to disclose to Guarantor any facts it may now or hereafter know regarding Borrower; (e) failure to receive acceptance or notice of acceptance of this Guaranty by Lender; (f) failure of Lender to give notice of presentment and demand for payment of any of the indebtedness or performance of any of the Obligations hereby guaranteed; (g) failure of Lender to give protest and notice of dishonor or of default to Guarantor or to any other party with respect to the indebtedness or performance of any of the Obligations hereby guaranteed; (h) failure of Lender to give any and all other notices whatsoever to which Guarantor might otherwise be entitled; (i) any defense based on delay or lack of due diligence by Lender in the enforcement of any of the terms of the Note or any of the Obligations guaranteed hereby or in the collection, protection or realization upon any collateral securing the indebtedness evidenced by the Note or any of said Obligations.

(6) This is a guaranty of payment and not of collection. The liability of Guarantor under this Guaranty shall be primary, not secondary, and shall be direct and immediate and not conditional or contingent upon Guarantor's receipt of any dividends, distributions, cash flow, income or other sums of money from or with respect to Borrower or the mortgaged property (if any), nor upon the pursuit of any remedies against Borrower or any other person, nor upon the foreclosure of or against security or liens available to Lender, its successors, successor-in-title, endorsees or assigns. Should Lender obtain the guaranty of any other person with respect to any or all of the Obligations, Guarantor’s liability hereunder shall be joint and several with such other guarantor(s). Guarantor waives any right to require that an action be brought against Borrower or any other person or to require that resort be had to any security or to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other person. Upon the occurrence of an event of default under the Note, the Obligations or any of them, Lender shall have the right to enforce its rights, powers and remedies thereunder and hereunder and under any other instrument now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note, in any order, and all rights, powers and remedies available to Lender in such event shall be nonexclusive and cumulative of all other rights, powers and remedies provided thereunder or hereunder or by law or in equity. Accordingly, Guarantor hereby authorizes and empowers Lender upon any such event of default, at its sole discretion, and without notice to Guarantor, to exercise any right or remedy which Lender may have, including, but not limited to, judicial foreclosure, exercise of rights of power of sale, acceptance of a deed or assignment in lieu of foreclosure,

appointment of a receiver to collect rents and profits, exercise of remedies against personal property, or enforcement of any assignment of leases, as to any security (whether real, personal, tangible, intangible or mixed). If the Obligations guaranteed hereby are partially paid by reason of election of Lender, its successors, endorsees or assigns, to pursue any of the remedies available to Lender, or if such Obligations are otherwise partially paid, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for the entire balance of the Obligations guaranteed hereby, even though any rights which Guarantor may have against Borrower may be destroyed or diminished by the exercise of any such remedy. Until all of the Obligations have been paid and performed in full, Guarantor shall have no right of subrogation to Lender against Borrower, and Guarantor hereby waives any rights to enforce any remedy which Lender may have against Borrower and any rights to participate in any security for the Obligations or any of them.

(7) Guarantor hereby authorizes Lender, without notice to Guarantor, to apply all payments and credits received from Borrower or from Guarantor or realized from any security in such manner and in such priority as Lender in its sole judgment shall see fit to the indebtedness, obligations and undertakings which are the subject of this Guaranty.

(8) The books and records of Lender showing the accounts between Lender and Borrower shall be admissible in evidence in any action of proceeding hereon as prima facie proof of the items set forth therein.

(9) Guarantor warrants and represents to Lender that all financial statements heretofore delivered by Guarantor to Lender are true and correct in all material respects as of the date hereof.

(10) This Guaranty may not be changed orally or by implication, and no obligation of Guarantor can be released or waived by Lender or any officer or agent of Lender, except by a writing signed by a duly authorized officer of Lender. This Guaranty shall be irrevocable by Guarantor until all Obligations guaranteed hereby have been completely performed and paid and all obligations and undertakings of Borrower under, by reason of, or pursuant to the Note have been completely performed and paid.

(11) The provisions of this Guaranty shall be binding upon Guarantor and her respective successors, successor-in-title, heirs, legal representatives and assigns and shall inure to the benefit of Lender, its successors, successors-in-title, heirs, legal representatives and assigns. This Guaranty shall in no event be released, discharged, modified or in anywise impaired by reason of the death of Borrower or Guarantor, if individuals, or by reason of the dissolution of Borrower or Guarantor, if Borrower or Guarantor is a corporation, limited liability company or partnership, or by reason of any transfer of the interest of any member, partner or shareholder in Borrower or Guarantor (including any transfer of Guarantor's interest in Borrower).

(12) If from any circumstances whatsoever fulfillment of any provisions of this Guaranty, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by any applicable usury statute or any other applicable law as of the date hereof, with regard to obligations of like character and amount, then <u>ipso</u> <u>facto</u> the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Guaranty that is in excess of the limit of such validity as of the date hereof, but such obligation

shall be fulfilled to the limit of such validity. The provisions of this paragraph shall control every other provision of this Guaranty.

(13) This Guaranty is assignable by Lender, and any assignment hereof or any transfer or assignment of the Note or any portion thereof or interest therein by Lender shall operate to vest in any such assignee the rights and powers herein conferred upon and granted to Lender, to the extent of the interest so transferred or assigned.

(14) In the event that any provision of this Guaranty is held to be void or unenforceable, all other provisions hereof shall nevertheless remain unaffected and in full force and effect.

(15) As used herein, the masculine shall include the feminine and neuter, and the singular shall include the plural.

(16) BY THE EXECUTION HEREOF, GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREES THAT: (a) Guarantor shall not seek a jury trial in any lawsuit, proceeding, counterclaim, cross-claim or other action or proceeding arising from or based upon this Guaranty, the Note or any of the Obligations; and (b) Guarantor shall not seek to consolidate any claim as to which a jury trial has been waived with any claim in which a jury trial has not been or cannot be waived.

(17) By the execution hereof, guarantor hereby knowingly, voluntarily, irrevocably and intentionally agrees as follows: Any action, suit or proceeding concerning this Guaranty or the validity, interpretation or enforcement thereof shall be heard, determined and adjudicated only in the state courts of Alabama, and not in any federal court (within or outside the state of Alabama) nor in the state courts of any other state. Accordingly, to the full extent permitted by law, Guarantor and Lender hereby waive any and all rights to file, prosecute or defend any such action, suit or proceeding in any other state or federal court, and without limiting the generality of the foregoing, specifically waive any right to file, prosecute or defend any such action, suit or proceeding in any federal court based upon the diversity of citizenship jurisdiction of the federal courts, it being the intent of the parties that the state courts of Alabama shall have sole and exclusive subject matter jurisdiction of any such action, suit or proceeding.

(18) In all respects, including without limitation matters of construction, validity and performance, this Guaranty and the obligations arising hereunder shall be governed by and construed in accordance with substantive, procedural and constitutional laws of the State of Alabama (excluding the law and principles thereof governing conflicts of laws) and any applicable law of the United States of America.

(19) Guarantor shall indemnify and hold Lender harmless from and against any and all liability, claims, losses, actions, demands, damages, and expenses, including reasonably attorney fees, arising from any defense or affirmative claim which Borrower may assert against Lender in connection with the Obligations.

IN WITNESS WHEREOF, Guarantor has set her hand and seal hereto as of the day and year first above written.

____
CHARLENE W. HABER

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned Notary Public, in and for said County in the said State, do hereby certify that **CHARLENE W. HABER**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal on this ___ day of __________, 2015.

____
NOTARY PUBLIC
My commission expires: ________________
(Notary Seal)

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