

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2010-CP-23-04223

Greer State Bank,.....Appellant,

v.

McKeown Property On Lake Robinson, LLC,
Bruce A. McKeown, Robert M. McKeown,
Cathy J. Lockhart, Rita W. McKeown and
Connie S. Santoro f/k/a Connie McKeown,.....Defendants,

OF WHOM McKeown Property on Lake Robinson,
LLC, Bruce A. McKeown and Rita W. McKeown are.....Respondents.

RECORD ON APPEAL

Thomas W. Traxler (Bar No. 5624)
S. Brook Fowler (Bar No. 66215)
CARTER, SMITH, MERRIAM, ROGERS
& TRAXLER, P.A.
P.O. Box 10828, Greenville, SC 29603
Phone: (864) 242-3566
Attorneys for Appellant

Charles M. Groves (Bar No. 2336)
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PO Box 10224, Greenville, SC 29603
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Attorney for Respondents

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP2304223

2011 AUG -3 P 2:09

Greer State Bank vs. Mckeown Property On Lake Robinson Llc

CHECK ONE:

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

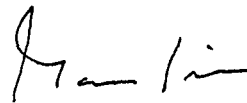
- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ 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: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:

Plaintiff Greer State Bank's Motion to Transfer to Non-Jury docket is respectfully denied. While there was a waiver of jury trial, Greer State Bank waived the rights to enforce the waiver. Moreover, there is currently a compulsory legal counterclaim by one of the defendants, who is not bound by the jury trial waiver. Plaintiff's Motion to Amend to add a cause of action for Conversion is granted. There is ambiguity in South Carolina law concerning conversion of monies in bank accounts. Further development of the facts is warranted to clarify the application of the law to the facts. Defendant can show no material prejudice. See SCRPC. 15(a).

Dated at Greenville, South Carolina, this 2nd day of August 2011.

Court Reporter:



PRESIDING JUDGE - D. GARRISON HILL

This judgment was entered on the 8/3/11, and a copy mailed first class this 8/3/11, to attorneys of record or to parties (when appearing pro se) as follows:

S Brook Fowler Carter Smith Merriam Rogers & Traxler P.O.
Box 10828 Greenville, SC 29603

Charles M. Groves Chapman Harter & Groves, PA P.O. Box
10224 FS Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2304223

FILED-CLERK OF COURT
GREENVILLE CO. SC
PAUL B. WICKENSIMER

Greer State Bank vs. Mckeown Property On Lake Robinson Llc

CHECK ONE:

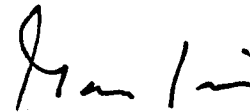
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK 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: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:

Defendant's Motion to Amend their pleadings to allege Breach of Contract Accompanied by a Fraudulent Act is granted.

Dated at Greenville, South Carolina, this 22nd day of July 2011.

Court Reporter: Hollie M. Jenkins



PRESIDING JUDGE - D. GARRISON HILL

This judgment was entered on the 7/25/11, and a copy mailed first class this 7/25/11, to attorneys of record or to parties (when appearing pro se) as follows:

S Brook Fowler Carter Smith Merriam Rogers & Traxler P.O.
Box 10828 Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

Charles M. Groves Chapman Harter & Groves, PA P.O. Box
10224 FS Greenville, SC 29603

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-23-_____

Greer State Bank,

Plaintiff,

vs.

LIS PENDENS

McKeown Property On Lake Robinson,
LLC, Bruce A. McKeown, Robert M.
McKeown, Cathy J. Lockhart, Rita W.
McKeown and Connie S. Santoro f/k/a
Connie S. McKeown,

Defendants.

FILED - CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENS
2010 MAY -4 PM 3:30

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending, or will be commenced within twenty (20) days of the date of filing hereof, in this Court upon complaint of the above-named Plaintiff against the above-named Defendants for the foreclosure of certain mortgages of real estate given by McKeown Property On Lake Robinson, LLC to Greer State Bank dated April 12, 2007 in an amount not to exceed Four Million Seven Hundred Fifty Thousand and 00/100 (\$4,750,000.00) Dollars, which mortgage was filed in the ROD Office for Greenville County on April 12, 2007 in Mortgage Book 4758, Page 1857. The premises covered and affected by said mortgages and by the foreclosure thereof, were, at the time of the making thereof, and at the time of the filing of this notice, described as follows:

All that certain piece, parcel or tract of land, lying and being in the State of South Carolina, County of Greenville, located on the Northeastern side of Groce Meadows Road, being shown and designated as 49.64 Acres on a plat entitled "Boundary Survey for Bruce McKeown", prepared by Freeland-Clinkscales & Associates of NC, Inc., dated March 7, 2005,

recorded in the Office of the Register of Deeds for Greenville County in Plat Book 50-A at Page 26, reference being made to said plat for a more complete metes and bounds description hereof.

LESS AND EXCEPT, HOWEVER:

All those certain pieces, parcels or lots of land, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Lots 17, 18, 26, 27, 38, 51 and 52 on Final Plat, STILLWATER, PHASE I, SHEET I, GREER, SOUTH CAROLINA, by FCA of NC, Surveyor, dated November 15, 2006, and recorded in Plat Book 1024 at Page 41, ROD Office for Greenville County, reference being made to said plat for a more complete metes and bounds description.

ALSO LESS AND EXCEPT:

All those certain pieces, parcels or lots of land, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Lots 44, 45, 46, 47, 49, 70, 74, 85 and 100 on Final Plat, STILLWATER, PHASE I, SHEET II, GREER, SOUTH CAROLINA, by FCA of NC, Surveyor, dated November 15, 2006, and recorded in Plat Book 1025 at Page 20, ROD Office for Greenville County, reference being made to said plat for a more complete metes and bounds description.

ALSO LESS AND EXCEPT:

All those certain pieces, parcels or lots of land, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Lot 5 on Final Plat, STILLWATER, PHASE II, GREER, SOUTH CAROLINA, by FCA of NC, Surveyor, dated November 15, 2006, and recorded in Plat Book 1025 at Page 20, ROD Office for Greenville County, reference being made to said plat for a more complete metes and bounds description.

ALSO LESS AND EXCEPT:

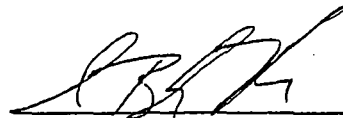
All those certain pieces, parcels or lots of land, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Lots 130, 131, 132, 133, 135 and 136 on Final Plat, STILLWATER, PHASE III, GREER, SOUTH CAROLINA, by FCA of NC, Surveyor, dated November 15, 2006, and recorded in Plat Book 1025 at Page 20, ROD Office for Greenville County, reference being made to said plat for a more complete metes and bounds description.

This is the same property conveyed to the McKeown Property On Lake Robinson, LLC herein by deed of Robert M. McKeown, Cathy J. Lockhart,

Bruce A. McKeown and Connie S. Santoro, formerly known as Connie S. McKeown, dated May 4, 2005, recorded in the Office of the Register of Deeds for Greenville County on June 20, 2005 in Deed Book 2150 at Page 1267; and by deed of Cathy J. Lockhart and William E. Lockhart dated May 20, 2005, recorded in the Office of the Register of Deeds for Greenville County on June 20, 2005 in Deed Book 2150 at Page 1263.

TMS: See attached

Property Addresses: See attached



S. Brook Fowler (Bar No. 66215)
CARTER, SMITH, MERRIAM, ROGERS
& TRAXLER, P.A.
P.O. Box 10828, Greenville, SC 29603
Phone: (864) 242-3566
Fax: (864) 232-1558
E-Mail: brook.fowler@carterlawpa.com
Attorney for Plaintiff

Greenville, South Carolina
May 4, 2010

Tax Map No	Number	Street	Desc/Lot#
0633.01-01-004.00		GROCE MEADOW	NONE
0633.15-01-001.00	928	GROCE MEADOW RD	1
0633.15-01-008.00	200	STILLWATERS BAY DR	8
0633.15-01-009.00	301	FARMERS MARKET ST	9
0633.15-01-010.00	303	FARMERS MARKET ST	10
0633.15-01-011.00	305	FARMERS MARKET ST	11
0633.15-01-012.00	307	FARMERS MARKET ST	12
0633.15-01-013.00	309	FARMERS MARKET ST	13
0633.15-01-014.00	311	FARMERS MARKET ST	14
0633.15-01-015.00	313	FARMERS MARKET ST	15
0633.15-01-016.00	315	FARMERS MARKET ST	16
0633.15-01-019.00	316	FARMERS MARKET ST	19
0633.15-01-020.00	304	FARMERS MARKET ST	20
0633.15-01-021.00	312	FARMERS MARKET ST	21
0633.15-01-022.00	310	FARMERS MARKET ST	22
0633.15-01-023.00	308	FARMERS MARKET ST	23
0633.15-01-024.00	306	FARMERS MARKET ST	24
0633.15-01-025.00	304	FARMERS MARKET ST	25
0633.15-01-028.00	401	YELLOWBIRD ST	28
0633.15-01-029.00	403	YELLOWBIRD ST	29
0633.15-01-030.00	405	YELLOWBIRD ST	30
0633.15-01-031.00	407	YELLOWBIRD ST	31
0633.15-01-032.00	409	YELLOWBIRD ST	32
0633.15-01-033.00	411	YELLOWBIRD ST	33
0633.15-01-034.00	413	YELLOWBIRD ST	34
0633.15-01-035.00	415	YELLOWBIRD ST	35
0633.15-01-036.00	417	YELLOWBIRD ST	36
0633.15-01-037.00	419	YELLOWBIRD ST	37
0633.15-01-039.00	511	COOLWATER DR	39
0633.15-01-040.00	513	COOLWATER DR	40
0633.15-01-041.00	515	COOLWATER DR	41
0633.15-01-042.00	517	COOLWATER DR	42
0633.15-01-043.00	521	COOLWATER DR	43
0633.15-01-048.00	537	COOLWATER DR	48
0633.15-01-050.00	541	COOLWATER DR	50
0633.15-01-053.00	904	BLUE MOON ST	53
0633.15-01-054.00	906	BLUE MOON ST	54
0633.15-01-055.00	908	BLUE MOON ST	55

0633.15-01-056.00	910	BLUE MOON ST	56
0633.15-01-057.00	912	BLUE MOON ST	57
0633.15-01-058.00	914	BLUE MOON ST	58
0633.15-01-059.00	700	KINGS HILL ST	59
0633.15-01-060.00	702	KINGS HILL ST	60
0633.15-01-061.00	704	KINGS HILL ST	61
0633.15-01-062.00	706	KINGS HILL ST	62
0633.15-01-063.00	708	KINGS HILL ST	63
0633.15-01-064.00	710	KINGS HILL ST	64
0633.15-01-065.00	712	KINGS HILL ST	65
0633.15-01-066.00	714	KINGS HILL ST	66
0633.15-01-067.00	716	KINGS HILL ST	67
0633.15-01-068.00	718	KINGS HILL ST	68
0633.15-01-069.00	720	KINGS HILL ST	69
0633.15-01-071.00	626	SEDGE ST	71
0633.15-01-072.00	624	SEDGE ST	72
0633.15-01-073.00	622	SEDGE ST	73
0633.15-01-075.00	618	SEDGE ST	75
0633.15-01-076.00	616	SEDGE ST	76
0633.15-01-077.00	614	SEDGE ST	77
0633.15-01-078.00	612	SEDGE ST	78
0633.15-01-079.00	610	SEDGE ST	79
0633.15-01-080.00	608	SEDGE ST	80
0633.15-01-081.00	606	SEDGE ST	81
0633.15-01-082.00	604	SEDGE ST	82
0633.15-01-083.00	602	SEDGE ST	83
0633.15-01-084.00	600	SEDGE ST	84
0633.15-01-086.00	516	COOLWATER DR	86
0633.15-01-087.00	518	COOLWATER DR	87
0633.15-01-088.00	520	COOLWATER DR	88
0633.15-01-089.00	522	COOLWATER DR	89
0633.15-01-090.00	524	COOLWATER DR	90
0633.15-01-091.00	526	COOLWATER DR	91
0633.15-01-092.00	528	COOLWATER DR	92
0633.15-01-093.00	530	COOLWATER DR	93
0633.15-01-094.00	532	COOLWATER DR	94
0633.15-01-095.00	534	COOLWATER DR	95
0633.15-01-096.00	536	COOLWATER DR	96
0633.15-01-097.00	538	COOLWATER DR	97

0633.15-01-098.00	540	COOLWATER DR	98
0633.15-01-099.00	542	COOLWATER DR	99
0633.15-01-156.00		KINGS HILL ST	ROADS/COMMON
0633.15-01-157.00	205	STILLWATERS BAY DR	2
0633.15-01-158.00	209	STILLWATERS BAY DR	3
0633.15-01-159.00	213	STILLWATERS BAY DR	4
0633.15-01-161.00	208	STILLWATERS BAY DR	6
0633.15-01-162.00	204	STILLWATERS BAY DR	7
0633.15-01-163.00	25	WATERSIDE LN	124
0633.15-01-164.00	23	WATERSIDE LN	125
0633.15-01-165.00	21	WATERSIDE LN	126
0633.15-01-166.00	19	WATERSIDE LN	127
0633.15-01-167.00	17	WATERSIDE LN	128
0633.15-01-168.00	15	WATERSIDE LN	129
0633.15-01-173.00	3	WATERSIDE LN	134
0633.15-01-176.00	122	HARBOR MASTER LN	137
0633.15-01-177.00	120	HARBOR MASTER LN	138
0633.15-01-178.00	118	HARBOR MASTER LN	139
0633.15-01-179.00	116	HARBOR MASTER LN	140
0633.15-01-180.00	114	HARBOR MASTER LN	141
0633.15-01-181.00	112	HARBOR MASTER LN	142
0633.15-01-182.00	110	HARBOR MASTER LN	143
0633.15-01-183.00	108	HARBOR MASTER LN	144
0633.15-01-184.00	106	HARBOR MASTER LN	145
0633.15-01-185.00	104	HARBOR MASTER LN	146
0633.15-01-186.00	102	HARBOR MASTER LN	147
0633.15-01-187.00	100	HARBOR MASTER LN	148
0633.15-01-188.00	101	HARBOR MASTER LN	149
0633.15-01-189.00	103	HARBOR MASTER LN	150
0633.15-01-190.00	105	HARBOR MASTER LN	151

FILED CLERK OF COURT
GREENVILLE, S.C.
MAY 24 2010

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
CASE NO: 2010-CP-23- 4223

Greer State Bank,)
)
Plaintiff,)
)
vs.)
)
McKeown Property On Lake Robinson,)
LLC, Bruce A. McKeown, Robert M.)
McKeown, Cathy J. Lockhart, Rita W.)
McKeown and Connie S. Santoro f/k/a)
Connie S. McKeown,)
)
Defendants.)

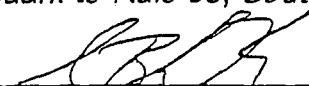
SUMMONS AND NOTICE
Foreclosure of Real Estate Mortgage
(Deficiency Demanded as to McKeown Property
on Lake Robinson, LLC, Bruce A. McKeown
and Rita W. McKeown)
(Non-Jury)

**Non-Eligible Under The Home
Affordable Modification Program**

TO: DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 900 East North Street, (P.O. Box 10828, 29603) Greenville, South Carolina 29601, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to do so judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an Order of Reference or that the Court may issue a general Order of Reference of this action to a master, special master, or special referee, pursuant to Rule 53, *South Carolina Rules of Civil Procedure*.



S. Brook Fowler, Bar No. 066215
CARTER, SMITH, MERRIAM, ROGERS
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E-Mail: brook.fowler@carterlawpa.com
Attorneys for Plaintiff

Greenville, South Carolina
May 24, 2010

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKHAMER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
2010 MAY 24 P 3:51 CASE NO.: 2010-CP-23- 4223

Greer State Bank,

Plaintiff,

vs.

McKeown Property On Lake Robinson,
LLC, Bruce A. McKeown, Robert M.
McKeown, Cathy J. Lockhart, Rita W.
McKeown and Connie S. Santoro f/k/a
Connie S. McKeown,

Defendants.

COMPLAINT

Foreclosure of Real Estate Mortgage
(Deficiency Demanded as to McKeown Property
on Lake Robinson, LLC, Bruce A. McKeown
and Rita W. McKeown)
(Non-Jury)

**Non-Eligible Under The Home
Affordable Modification Program**

1. Plaintiff, Greer State Bank, is a corporation organized and existing under the laws of the State of South Carolina and doing business in South Carolina with its principal place of business in the County of Greenville, State of South Carolina.

2. On information and belief, Defendant McKeown Property on Lake Robinson, LLC is a limited liability company duly organized and existing under the laws of the State of South Carolina and transacts business in the County of Greenville, State of South Carolina.

3. On information and belief, Defendant Rita W. McKeown is a citizen and resident of the State of Georgia; Robert M. McKeown is a citizen and resident the State of North Carolina; Brue A. McKeown and Cathy J. Lockhart are citizens and residents of the State of South Carolina; and Connie S. Santoro f/k/a Connie S. McKeown is a citizen and resident of the State of Florida.

4. Defendants Robert M. McKeown, Cathy J. Lockhart, Bruce A. McKeown and Connie S. Santoro f/k/a Connie S. McKeown are made parties to this action by virtue of a mortgage given by McKeown Property on Lake Robinson, LLC to Robert M. Keown, Cathy J. Lockhart, Bruce A. McKeown and Connie S. Santoro, f/k/a Connie S. McKeown recorded on June 20, 2005 in the ROD Office for Greenville County, South Carolina in Book 4380, Page 1582. A Subordination Agreement subordinating this mortgage to Plaintiff's mortgage was filed on April 12, 2007 in Mortgage Book 4758, Page 1866. Any claim asserted by these Defendants is junior and subordinate to the claim of Plaintiff set forth more fully below.

5. On information and belief, no Defendants are in the military service of the United States of America as contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.

6. The real property which is the subject of this foreclosure action and which is described more particularly hereinafter is situate and lying within the County of Greenville, State of South Carolina.

**FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)**

7. The allegations of the preceding paragraphs are incorporated herein by reference.

8. Plaintiff is currently the owner and holder of a Note (Note 1) executed by McKeown Property on Lake Robinson, LLC and delivered to Plaintiff on or about October 28, 2008 in the amount of \$4,750,000.00, together with interest thereon from at a variable rate of 1.00% above the Wall Street Journal Prime Rate.

9. A complete and accurate copy of Note 1 is attached as Exhibit A, and is

incorporated herein by reference.

10. Plaintiff is currently the owner and holder of a Note (Note 2) executed by McKeown Property on Lake Robinson, LLC and delivered to Plaintiff on or about April 24, 2008 in the amount of \$200,000.00, together with interest thereon from at a variable rate of 0.500% above the Wall Street Journal Prime Rate. An Extension Agreement Disclosure Statement was executed on April 28, 2009 extending the maturity date until May 24, 2009.

11. A complete and accurate copy of Note 2 and Extension Agreement and Disclosure Statement (collectively referred to as "Note 2") is attached as Exhibit B, and is incorporated herein by reference.

12. In order to secure payment of Notes 1 and 2, McKeown Property on Lake Robinson, LLC made, executed and delivered a Mortgage to Plaintiff on April 12, 2007, up to a maximum principal amount of \$4,750,000.00 with interest upon the terms and conditions as set forth in the Note 1. Said Mortgage was duly filed and recorded in the ROD Office for Greenville County, South Carolina on April 12, 2007 in Mortgage Book 4758, Page 1857 and constitutes a first lien and encumbrance on the real property described herein below.

13. A complete and accurate copy of said Mortgage is attached as Exhibit C, and incorporated herein by reference.

14. McKeown Property on Lake Robinson, LLC is the current owner and holder of the subject real estate, the legal description of which appears in the above referenced mortgage and herein below as follows:

All that certain piece, parcel or tract of land, lying and being in the State of South Carolina, County of Greenville, located on the Northeastern side of

Groce Meadows Road, being shown and designated as 49.64 Acres on a plat entitled "Boundary Survey for Bruce McKeown", prepared by Freeland-Clinkscales & Associates of NC, Inc., dated March 7, 2005, recorded in the Office of the Register of Deeds for Greenville County in Plat Book 50-A at Page 26, reference being made to said plat for a more complete metes and bounds description hereof.

LESS AND EXCEPT, HOWEVER:

All those certain pieces, parcels or lots of land, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Lots 17, 18, 26, 27, 38, 51 and 52 on Final Plat, STILLWATER, PHASE I, SHEET I, GREER, SOUTH CAROLINA, by FCA of NC, Surveyor, dated November 15, 2006, and recorded in Plat Book 1024 at Page 41, ROD Office for Greenville County, reference being made to said plat for a more complete metes and bounds description.

ALSO LESS AND EXCEPT:

All those certain pieces, parcels or lots of land, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Lots 44, 45, 46, 47, 49, 70, 74, 85 and 100 on Final Plat, STILLWATER, PHASE I, SHEET II, GREER, SOUTH CAROLINA, by FCA of NC, Surveyor, dated November 15, 2006, and recorded in Plat Book 1025 at Page 20, ROD Office for Greenville County, reference being made to said plat for a more complete metes and bounds description.

ALSO LESS AND EXCEPT:

All those certain pieces, parcels or lots of land, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Lot 5 on Final Plat, STILLWATER, PHASE II, GREER, SOUTH CAROLINA, by FCA of NC, Surveyor, dated November 15, 2006, and recorded in Plat Book 1025 at Page 20, ROD Office for Greenville County, reference being made to said plat for a more complete metes and bounds description.

ALSO LESS AND EXCEPT:

All those certain pieces, parcels or lots of land, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Lots 130, 131, 132, 133, 135 and 136 on Final Plat, STILLWATER, PHASE III, GREER, SOUTH CAROLINA, by FCA of NC, Surveyor, dated November 15, 2006, and recorded in Plat Book 1025 at Page 20, ROD Office for Greenville County, reference being made to said plat for a more complete metes and bounds description.

This is the same property conveyed to the McKeown Property On Lake Robinson, LLC herein by deed of Robert M. McKeown, Cathy J. Lockhart, Bruce A. McKeown and Connie S. Santoro, formerly known as Connie S. McKeown, dated May 4, 2005, recorded in the Office of the Register of Deeds for Greenville County on June 20, 2005 in Deed Book 2150 at Page 1267; and by deed of Cathy J. Lockhart and William E. Lockhart dated May 20, 2005, recorded in the Office of the Register of Deeds for Greenville County on June 20, 2005 in Deed Book 2150 at Page 1263.

Tax Map Numbers and Property Addresses are attached as Exhibit D.

15. The terms and conditions of said Note 1 and Mortgage have been breached by failure and neglect to pay to Plaintiff the balance due on April 30, 2010. No payment having been made to Plaintiff since December 30, 2009, said payment being applied to interest through December 28, 2009.

16. The terms and conditions of said Note 2 and have been breached by failure and neglect to pay to Plaintiff the balance due on April 30, 2010. No payment having been made to Plaintiff since March 31, 2010, said payment being applied to the interest through March 31, 2010.

17. As a result of the failure to pay the balance due on Plaintiff's Notes and Mortgage, Plaintiff is entitled to demand the immediate payment of all amounts due and owing under the Notes and Mortgage. Plaintiff hereby exercises said right and demands payment of the entire outstanding balance on the Notes, principal, accrued interest, and any and all applicable late fees and/or penalties.

18. The terms and conditions of said Note 1 and Mortgage have been broken and there is a principal balance due on said Note 1 in the amount of \$4,433,837.56, together with late charges, and continuing interest in the amount of \$738.9729 per day from and including December 29, 2009.

19. The terms and conditions of said Note 2 have been broken and there is a principal balance due on said Note 2 in the amount of \$196,485.08, together with late charges, and continuing interest in the amount of \$32.7475 per day from and including April 1, 2010.

20. According to the terms and conditions of the aforementioned Notes and Mortgage, if the same should be placed in the hands of an attorney for collection all costs of collection, including a reasonable attorney's fee shall become an obligation to be secured thereby. Further, under the terms and conditions of the aforementioned Notes and Mortgage it was agreed that taxes, insurance premiums, appropriate assessments, and governmental or municipal charges, fines or impositions against the mortgaged premises would be paid and upon failure to do so, Plaintiff might pay the same, which amount, together with interest thereon, would be secured by said Mortgage.

21. In addition to amounts due and payable as set forth above, is the amount to be incurred as the costs and disbursements of this action, including attorney's fees.

22. Plaintiff has heretofore served Defendants with all notices to which they are entitled, if any, pursuant to said Notes and Mortgage and the applicable law.

23. Plaintiff is entitled to have its Mortgage foreclosed with the equity of redemption barred, and the mortgaged premises sold at public sale (subject to all taxes due), with the proceeds of said sale applied to the payment of the costs of this action, including attorney's fees, and then to the payment of the amount due on Plaintiff's Notes and Mortgage.

24. Plaintiff does not waive but specifically demands judgment against

Defendant McKeown Property on Lake Robinson, LLC for the full amount found to be due Plaintiff under the Notes and Mortgage held by Plaintiff with the right to enter judgment against McKeown Property on Lake Robinson, LLC for any deficiency in this action remaining after the sale of the real property.

25. Said Mortgage is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac, and is not held by a servicer who is participating in the Home Affordable Modification Program. Therefore, the Home Affordable Modification Program is inapplicable.

**FOR A SECOND CAUSE OF ACTION
AS TO BRUCE A. McKEOWN AND RITA W. McKEOWN
(Collection on Guaranties)**

26. The allegations of the preceding paragraphs are incorporated herein by referenced.

27. In order to induce Plaintiff to loan monies and/or credit to Defendant McKeown Property on Lake Robinson, LLC as set forth hereinabove, Bruce A. McKeown and Rita W. McKeown executed personal guaranties of payment promising Plaintiff payment and performance of the debt, liability or obligation of Defendant McKeown Property on Lake Robinson, LLC as such relates to the Notes. In reliance upon the Notes and personal guaranties of Bruce A. McKeown and Rita W. McKeown, Plaintiff loaned Defendant McKeown Property on Lake Robinson, LLC the amounts shown in the above referenced Cause of Action.

28. A complete and accurate copy of said Guaranties executed by Bruce A. McKeown and Rita W. McKeown are attached hereto as Exhibit E and incorporated herein by reference.

29. Defendants Bruce A. McKeown and Rita W. McKeown, having executed personal guaranties, are personally liable to Plaintiff, and Plaintiff demands judgment against them, jointly and severally, for all amounts due, including principal balance, interest, late fees and penalties, past due taxes, attorney's fees and costs, as set forth hereinabove, all in an amount to be determined by the Court.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that the Court inquire into the matters set forth herein in that:

A. As to Plaintiff's First Cause of Action:

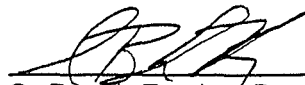
1. The amount of indebtedness due unto Plaintiff on its Notes herein, including principal, interest, taxes, attorney's fees and costs, be determined by this Court.
2. Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes which may be due or which may be or have been paid by Plaintiff, with reasonable attorney's fees and for the costs of this action.
3. The Court make a determination as to the priority of liens and mortgages.
4. Plaintiff's Mortgage herein be foreclosed, the equity of redemption forever barred, and the real property covered by said Mortgage sold after due advertisement on some suitable sales day as provided by law subject only to taxes due and those mortgages which are prior in right to Plaintiff; that the proceeds derived from said sale be first applied to the payment of the costs and expenses of this action; including reasonable fees for Plaintiff's attorney, and the balance be applied next to the payment of the amount due on Plaintiff's Notes and Mortgage and that should any funds remain

after the payment of all these items, this sum shall be held pending further order of this Court.

5. For an Order directing and empowering the Sheriff of Greenville County, South Carolina, to place the successful purchase at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

B. As to Plaintiff's Second Cause of Action, for judgment in an amount to be determined by the Court.

C. For such other and further relief as the Court may deem just and proper.



S. Brook Fowler, Bar No. 066215
CARTER, SMITH, MERRIAM, ROGERS
& TRAXLER, P.A.
P.O. Box 10828, Greenville, SC 29603
Phone: (864) 242-3566
Fax: (864) 232-1558
E-Mail: brook.fowler@carterlawpa.com
Attorneys for Plaintiff

Greenville, South Carolina
May 24, 2010

COMMERCIAL PROMISSORY NOTE

GREER STATE BANK
PO BOX 1029
GREER, South Carolina 29652
(864)877-2000

LOAN NUMBER	NOTE DATE	PRINCIPAL AMOUNT	LOAN TERM	MATURITY DATE
C-08-10-000048	October 28, 2008	\$4,750,000.00	12 months	October 28, 2009
LOAN PURPOSE: RENEWAL OF NOTE #100882				

BORROWER INFORMATION

MCKEOWN PROPERTY ON LAKE ROBINSON, LLC
928 GROCE MEADOW ROAD
TAYLORS, SC 29687

NOTE. This Commercial Promissory Note will be referred to in this document as the "Note".

LENDER. "Lender" means GREER STATE BANK whose address is PO BOX 1029, GREER, South Carolina 29652, its successors and assigns.

BORROWER. "Borrower" means each person or legal entity who signs this Note.

PROMISE TO PAY. For value received, receipt of which is hereby acknowledged, on or before the Maturity Date, the Borrower promises to pay the principal amount of Four Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$4,750,000.00) or such lesser amount as shall have been advanced by Lender, from time to time, to or on behalf of Borrower under the terms of this Note, and all interest and any other charges, including service charges, to the order of Lender at its office at the address noted above or at such other place as Lender may designate in writing. The Borrower will make all payments in lawful money of the United States of America.

PAYMENT SCHEDULE. This loan will be paid according to the following schedule: 11 consecutive payments of interest only beginning on November 28, 2008 and continuing on the same day of each month thereafter. One final balloon payment shall be due on the Maturity Date in an amount equal to the then unpaid principal and accrued and unpaid interest. All payments received by the Lender from the Borrower for application to the Loan may be applied to the Borrower's obligations under the Loan in such order as determined by the Lender.

INTEREST RATE AND SCHEDULED PAYMENT CHANGES. The initial variable interest rate on this Note will be 6.000% per annum. This interest rate may change on October 29, 2008, and every day thereafter. Each date on which the interest rate may change is called the "Change Date." Beginning with the first Change Date, Lender will calculate the new interest rate based on WALL STREET JOURNAL PRIME in effect on the Change Date (the "Index") plus 1.000 percentage points (the "Margin"). If the Index is not available at that time, Lender will choose a new Index which is based on comparable information. The Index is used solely to establish a base from which the actual rate of interest payable under this Note will be calculated, and is not a reference to any actual rate of interest charged by any lender to any particular borrower. The interest rate will never be greater than 8.750% or less than 6.000%.

Nothing contained herein shall be construed as to require the Borrower to pay interest at a greater rate than the maximum allowed by law. If, however, from any circumstances, Borrower pays interest at a greater rate than the maximum allowed by law, the obligation to be fulfilled will be reduced to an amount computed at the highest rate of interest permissible under applicable law and if, for any reason whatsoever, Lender ever receives interest in an amount which would be deemed unlawful under applicable law, such interest shall be automatically applied to amounts owed, in Lender's sole discretion, or as otherwise allowed by applicable law. A change in the interest rates may result in a change in your payment amount. Interest on this Note is calculated on a 365/360 day basis. The unpaid balance of this loan after Maturity, whether by acceleration or otherwise, shall be subject to a Post-Maturity Rate of interest equal to the same fixed or variable rate basis in effect before maturity.

LATE PAYMENT CHARGE. If any required payment is more than 10 days late, then at Lender's option, Lender will assess a late payment charge of 5% of the amount past due.

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

ADVANCES. The Borrower and Lender agree that the Borrower may borrow up to the maximum amount of principal only one time. Subject to the terms of this Note and all of the related agreements, advances under this Note are obligatory. Regardless of the obligatory nature of this Note, principal advances will be made to the Borrower provided none of the following conditions exist.

- Maximum amount on this Note is outstanding.
- Undersigned has breached any of the terms, provisions, representations, requirements or promises contained in this Note or any other agreement.
- Undersigned makes a request for an advance after the Conversion Date.
- The Note or any other agreement relating to the extension of credit is in default.
- The Lender has deemed itself insecure or there has been a material adverse change of conditions.
- The Lender is precluded by law from making the advance.

Advances under this Note may be requested orally or in writing by the Borrower or by an authorized person.

The total of any advance requested and unpaid principal cannot exceed the available principal amount. The available principal amount refers to the principal amount minus the aggregate amount of outstanding advances.

All advances will be charged to a loan account in Borrower's name on Lender's books, and the Lender shall debit in such account the amount of each advance made to, and credit to such account the amount of each repayment made by Borrower. The Lender shall provide to Borrower periodic statements of Borrower's loan account, which shall be deemed to be correct, accepted by, and binding upon Borrower unless Lender receives a written statement of exception from Borrower within 10 days after such statement is furnished.

Other Condition for Advances: BASED ON TERMS AS OUTLINED IN COMMITMENT LETTER DATED MARCH 27, 2007.

SECURITY TO NOTE. Security (the "Collateral") for this Note is granted pursuant to the following security document(s):

- Mortgage - 49.7 ACRES GROCE MEADOW RD & LAKE ROBINSON GREER SC 29650 in the amount of \$4,750,000.00, dated April 12, 2007.

GUARANTY. In support of this transaction, a Guaranty dated October 28, 2008 has been executed by BRUCE A MCKEOWN; and a Guaranty dated October 28, 2008 has been executed by RITA W MCKEOWN.

RIGHT OF SET OFF. To the extent permitted by law, Borrower agrees that Lender has the right to set off any amount due and payable under this Note, whether matured or unmatured, against any amount owing by Lender to Borrower including any or all of Borrower's accounts with Lender. This shall include all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. Such right of set off may be exercised by Lender against Borrower or against any assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor of Borrower, or against anyone else claiming through or against Borrower of such assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor, notwithstanding the fact that such right of setoff has not been exercised by Lender prior to the making, filing or issuance or service upon Lender of, or of notice of, assignment for the benefit of creditors, appointment or application for the appointment of a receiver, or issuance of execution, subpoena or order or warrant.

DEFAULT. Upon the occurrence of any one of the following events (each, an "Event of Default" or "default" or "event of default"), Lender's obligations, if any, to make any advances will, at Lender's option, immediately terminate and Lender, at its option, may declare all indebtedness of Borrower to Lender under this Note to be immediately due and payable without further notice of any kind notwithstanding anything to the contrary in this Note or any other agreement: (a) Borrower's failure to make any payment on time or in the amount due; (b) any default by Borrower under the terms of this Note or any other agreement, security agreement executed in connection with this Note (individually, a "Loan Document" and collectively, the "Loan Documents"); (c) any default by Borrower under the terms of any other loan agreement, security agreement, mortgage or other document in favor of Lender; (d) the death, dissolution, or termination of existence of Borrower or any guarantor; (e) Borrower is generally not paying Borrower's debts as such debts become due; (f) the commencement of any proceeding under bankruptcy or insolvency laws by or against Borrower or any guarantor or the appointment of a receiver; (g) any default under the terms of any other indebtedness of Borrower to any other creditor; (h) any writ of attachment, garnishment, execution, tax lien or similar instrument is issued against any collateral securing the loan, if any, or any of Borrower's property or any judgment is entered against Borrower or any guarantor; (i) any part of Borrower's business is sold to or merged with any other business, individual, or entity; (j) any representation or warranty made by Borrower to Lender in any of the Loan Documents or any financial statement delivered to Lender proves to have been false in any material respect as of the time when made or given; (k) if any guarantor, or any other party to any agreement or instrument with or in favor of Lender entered into or delivered in connection with the Loan terminates, attempts to terminate or defaults under any such agreement or instrument; (l) Lender has deemed itself insecure or there has been a material adverse change of condition of the financial prospects of Borrower or any collateral securing the obligations owing to Lender by Borrower.

OTHER APPLICABLE AGREEMENTS. If this Note is secured by a security agreement, mortgage, deed of trust, trust deed, security deed or loan agreement of even or previous date, it is subject to all the terms thereof.

GENERAL WAIVERS. To the extent permitted by law, the Borrower severally waives any required notice of presentment, demand, acceleration, intent to accelerate, protest and any other notice and defense due to extensions of time or other indulgence by Lender or to any substitution or release of collateral. No failure or delay on the part of Lender, and no course of dealing between Borrower and Lender, shall operate as a waiver of such power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right.

JOINT AND SEVERAL LIABILITY. If permitted by law, each Borrower executing this Note is jointly and severally bound.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Note is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Note without invalidating the remainder of either the affected provision or this Note.

SURVIVAL. The rights and privileges of the Lender hereunder shall inure to the benefits of its successors and assigns, and this Note shall be binding on all heirs, executors, administrators, assigns and successors of Borrower.

ASSIGNABILITY. Lender may assign, pledge or otherwise transfer this Note or any of its rights and powers under this Note without notice, with all or any of the obligations owing to Lender by Borrower, and in such event the assignee shall have the same rights as if originally named herein in place of Lender. Borrower may not assign this Note or any benefit accruing to it hereunder without the express written consent of the Lender.

ORAL AGREEMENTS DISCLAIMER. This Note represents 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.

GOVERNING LAW. This Note is governed by the laws of the state of South Carolina except to the extent that federal law controls.



HEADING AND GENDER. The headings preceding text in this Note are for general convenience in identifying subject matter, but have no limiting impact on the text which follows any particular heading. All words used in this Note shall be construed to be of such gender or number as the circumstances require.

ATTORNEYS' FEES AND OTHER COSTS. If legal proceedings are instituted to enforce the terms of this Note, Borrower agrees to pay all costs of the Lender in connection therewith, including reasonable attorneys' fees, to the extent permitted by law.

ADDITIONAL PROVISIONS. A RESERVE ACCOUNT IN THE NAME OF MCKEOWN PROPERTY AT LAKE ROBINSON, LLC, A/C #1508075 AT GREER STATE BANK WILL BE REQUIRED TO FACILITATE FUNDS FOR THE PURPOSE OF INSUFFICIENT CASH FLOW TO SERVICE THIS DEBT. THE RESERVE ACCOUNT FUNDS CAN/WILL BE APPLIED TO THE LOAN BALANCE AS PRINCIPAL AND/OR INTEREST PAYMENTS. THIS ACCOUNT WILL BE RESTRICTED FOR WITHDRAWALS AT THE BANK'S DISCRETION UNTIL THE LOAN IS SATISFIED. UPON SATISFACTION OF THE PRINCIPAL AND INTEREST BALANCE, ALL RESTRICTIONS WILL BE RELEASED.

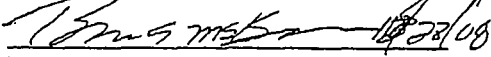
LOT RELEASES SHALL BE APPLIED AS OUTLINED IN COMMITMENT LETTER DATED MARCH 27, 2007.

LOT RELEASE FEE IS \$100 PER LOT. THIS FEE WILL BE REDUCED TO \$25 A LOT SHOULD GREER STATE BANK PROVIDE FINANCING FOR THE PURCHASE AND/OR CONSTRUCTION OF SAID LOT.

WAIVER OF JURY TRIAL. All parties to this Note hereby waive, to the fullest extent permitted by law, any right to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship established between them in this Note or any other instrument, document, or agreement executed or delivered in connection herewith or the transaction related hereto.

By signing this Note, Borrower acknowledges reading, understanding, and agreeing to all its provisions and receipt thereof.

MCKEOWN PROPERTY ON LAKE ROBINSON, LLC



By: BRUCE A MCKEOWN

Date

Its: Managing Member

WILL #200

COMMERCIAL LINE OF CREDIT
AGREEMENT AND NOTE

GREER STATE BANK
PO BOX 1029
GREER, South Carolina 29652
(864)877-2000

R 95000268

LOAN NUMBER	AGREEMENT DATE	LOAN TERM	LINE OF CREDIT LIMIT	DRAW EXPIRATION DATE	MATURITY DATE
95000268	April 24, 2008	12 months	\$200,000.00	April 24, 2009	April 24, 2009
LOAN PURPOSE: RENEWAL OF NOTE 95000268					

BORROWER INFORMATION

MCKEOWN PROPERTY ON LAKE ROBINSON LLC
928 GROCE MEADOW ROAD
TAYLORS, SC 29687

LINE OF CREDIT AGREEMENT AND NOTE. This Commercial Line of Credit Agreement and Note will be referred to in this document as the "Agreement".

LENDER. "Lender" means GREER STATE BANK whose address is PO BOX 1029, GREER, South Carolina 29652, its successors and assigns.

BORROWER. "Borrower" means each person or legal entity who signs this Agreement.

PROMISE TO PAY. For value received, receipt of which is hereby acknowledged, on or before the Maturity Date, the Borrower promises to pay the principal amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) or such lesser amount as shall have been advanced by Lender, from time to time, to or on behalf of Borrower under this Agreement, and all interest and any other charges, including service charges, to the order of Lender at its office at the address noted above or at such other place as Lender may designate in writing. The Borrower will make all payments in lawful money of the United States of America.

PAYMENT SCHEDULE. This Agreement will be paid according to the following required payment schedule: Beginning on May 24, 2008, monthly payments of accrued and unpaid interest. All payments received by the Lender from the Borrower for application to the Line of Credit may be applied to the Borrower's obligations under the Line of Credit in such order as determined by the Lender.

ADVANCES BY LENDER. Advances of principal, repayment, and readvances may be made under this Agreement from time to time, but Lender, in its sole discretion and subject to provisions related to obligatory and discretionary advances, may refuse to make advances or readvances hereunder during any period(s) this Agreement is in default. All advances made will be charged to a loan account in Borrower's name on Lender's books, and the Lender shall debit such account for the amount of each advance made to, and credit to such account the amount of each repayment made by Borrower. If the Lender furnishes the Borrower with a statement of Borrower's loan account, such statement shall be deemed to be correct, accepted by, and binding upon Borrower, unless Lender receives a written statement exception from Borrower within 10 days after such statement has been furnished.

INTEREST RATE AND SCHEDULED PAYMENT CHANGES. The initial variable interest rate on this Agreement will be 5.750% per annum. This interest rate may change on April 25, 2008, and every day thereafter. Each date on which the interest rate may change is called the "Change Date." Beginning with the first Change Date, Lender will calculate the new interest rate based on WALL STREET JOURNAL PRIME in effect on the Change Date (the "Index") plus 0.500 percentage points (the "Margin"). If the Index is not available at that time, Lender will choose a new Index which is based on comparable information. The Index is used solely to establish a base from which the actual rate of interest payable under this Agreement will be calculated, and is not a reference to any actual rate of interest charged by any lender to any particular borrower.

Nothing contained herein shall be construed as to require the Borrower to pay interest at a greater rate than the maximum allowed by law. If, however, from any circumstances, Borrower pays interest at a greater rate than the maximum allowed by law, the obligation to be fulfilled will be reduced to an amount computed at the highest rate of interest permissible under applicable law and if, for any reason whatsoever, Lender ever receives interest in an amount which would be deemed unlawful under applicable law, such interest shall be automatically applied to amounts owed, in Lender's sole discretion, or as otherwise allowed by applicable law. An increase in the interest rates will result in a higher payment amount. Interest on this Agreement is calculated on a 360/360 day basis. The unpaid balance of this loan after Maturity, whether by acceleration or otherwise, shall be subject to a Post-Maturity Rate of interest equal to the same fixed or variable rate basis in effect before maturity.

LATE PAYMENT CHARGE. If any required payment is more than 10 days late, then at Lender's option, Lender will assess a late payment charge of 5% of the amount past due.

LINE OF CREDIT TERMS. At any time prior to the Maturity Date, the Borrower and Lender agree that the Borrower may request an advance under this Agreement up to a maximum amount equal to the Line of Credit Limit if before and after the request:

- The outstanding borrowings under this Agreement are not in excess of the Line of Credit Limit.
- An Event of Default does not exist

- The Lender is not precluded by law from making the advance.

Advances.

- Advances under this Agreement may be requested orally or in writing by the Borrower or by an authorized person.
- The total of any advance requested and unpaid principal cannot exceed Two Hundred Thousand and 00/100 Dollars (\$200,000.00).
- All advances made will be charged to a loan account in Borrower's name on Lender's books, and the Lender shall debit such account the amount of each advance made to, and credit to such account the amount of each repayment made by Borrower. Lender shall provide to Borrower periodic statements of Borrower's loan account, which shall be deemed to be correct, accepted by, and binding upon Borrower unless Lender receives a written statement of exception from Borrower within 10 days after such statement is furnished.

Other Condition for Advances: BASED UPON BORROWER REQUEST

Suspension and Termination. Advances under this Agreement will be available until the earlier to occur of (a) April 24, 2009; (b) the date the Line of Credit is cancelled by Borrower; or (c) the date the Line of Credit is cancelled by the Lender due to an occurrence of an Event of Default (the "Draw Expiration Date"). From and after the Draw Expiration Date, no further advances will be made available to Borrower. The date this Line of Credit expires is on the earlier to occur of (a) April 24, 2009; (b) the date the Line of Credit is cancelled by Borrower; or (c) the date the Line of Credit is cancelled by the Lender due to an occurrence of an Event of Default (the "Maturity Date").

Loan Type Conversion. Provided no default or event of default shall have occurred, the Borrower may, at its option, apply for conversion of this Agreement into a Term loan 30 days prior to the Maturity Date. However, the Lender shall have no obligation to approve the Borrower's application.

GUARANTY. In support of this transaction, a Guaranty dated April 24, 2008 has been executed by BRUCE A MCKEOWN.

RIGHT OF SET OFF. To the extent permitted by law, Borrower agrees that Lender has the right to set off any amount due and payable under this Agreement, whether matured or unmatured, against any amount owing by Lender to Borrower including any or all of Borrower's accounts with Lender. This shall include all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. Such right of set off may be exercised by Lender against Borrower or against any assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor of Borrower, or against anyone else claiming through or against Borrower of such assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor, notwithstanding the fact that such right of setoff has not been exercised by Lender prior to the making, filing or issuance or service upon Lender of, or of notice of, assignment for the benefit of creditors, appointment or application for the appointment of a receiver, or issuance of execution, subpoena or order or warrant.

DEFAULT. Upon the occurrence of any one of the following events (each, an "Event of Default" or "default" or "event of default"), Lender's obligations, if any, to make any advances will, at Lender's option, immediately terminate and Lender, at its option, may declare all indebtedness of Borrower to Lender under this Agreement to be immediately due and payable without further notice of any kind notwithstanding anything to the contrary in this Agreement or any other agreement: (a) Borrower's failure to make any payment on time or in the amount due; (b) any default by Borrower under the terms of this Agreement or any other agreement, security agreement executed in connection with this Agreement (individually, a "Loan Document" and collectively, the "Loan Documents"); (c) any default by Borrower under the terms of any other loan agreement, security agreement, mortgage or other document in favor of Lender; (d) the death, dissolution, or termination of existence of Borrower or any guarantor; (e) Borrower is generally not paying Borrower's debts as such debts become due; (f) the commencement of any proceeding under bankruptcy or insolvency laws by or against Borrower or any guarantor or the appointment of a receiver; (g) any default under the terms of any other indebtedness of Borrower to any other creditor; (h) any writ of attachment, garnishment, execution, tax lien or similar instrument is issued against any collateral securing the loan, if any, or any of Borrower's property or any judgment is entered against Borrower or any guarantor; (i) any part of Borrower's business is sold to or merged with any other business, individual, or entity; (j) any representation or warranty made by Borrower to Lender in any of the Loan Documents or any financial statement delivered to Lender proves to have been false in any material respect as of the time when made or given; (k) if any guarantor, or any other party to any agreement or instrument with or in favor of Lender entered into or delivered in connection with the Loan terminates, attempts to terminate or defaults under any such agreement or instrument; (l) Lender has deemed itself insecure or there has been a material adverse change of condition of the financial prospects of Borrower or any collateral securing the obligations owing to Lender by Borrower.

OTHER APPLICABLE AGREEMENTS. If this Agreement is secured by a security agreement, mortgage, deed of trust, trust deed, security deed or loan agreement of even or previous date, it is subject to all the terms thereof.

GENERAL WAIVERS. To the extent permitted by law, the Borrower severally waives any required notice of presentment, demand, acceleration, intent to accelerate, protest and any other notice and defense due to extensions of time or other indulgence by Lender or to any substitution or release of collateral. No failure or delay on the part of Lender, and no course of dealing between Borrower and Lender, shall operate as a waiver of such power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right.

JOINT AND SEVERAL LIABILITY. If permitted by law, each Borrower executing this Agreement is jointly and severally bound.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Agreement is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Agreement without invalidating the remainder of either the affected provision or this Agreement.

SURVIVAL. The rights and privileges of the Lender hereunder shall inure to the benefits of its successors and assigns, and this Agreement shall be binding on all heirs, executors, administrators, assigns and successors of Borrower.

ASSIGNABILITY. Lender may assign, pledge or otherwise transfer this Agreement or any of its rights and powers under this Agreement without notice, with all or any of the obligations owing to Lender by Borrower, and in such event the assignee shall have the same rights as if originally named herein in place of Lender. Borrower may not assign this Agreement or any benefit accruing to it hereunder without the express written consent of the Lender.

ORAL AGREEMENTS DISCLAIMER. This Note represents 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.

GOVERNING LAW. This Agreement is governed by the laws of the state of South Carolina except to the extent that federal law controls.

HEADING AND GENDER. The headings preceding text in this Agreement are for general convenience in identifying subject matter, but have no limiting impact on the text which follows any particular heading. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require.

ATTORNEYS' FEES AND OTHER COSTS. If legal proceedings are instituted to enforce the terms of this Agreement, Borrower agrees to pay all costs of the Lender in connection therewith, including reasonable attorneys' fees, to the extent permitted by law.

ADDITIONAL PROVISIONS. THIS NOTE IS SECURED BY MORTGAGE DATED APRIL 12, 2007 RECORDED IN GREENVILLE COUNTY ON APRIL 12, 2007 IN BOOK 4758 PAGE 1857

WAIVER OF JURY TRIAL. All parties to this Agreement hereby waive, to the fullest extent permitted by law, any right to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship established between them in this Agreement or any other instrument, document, or agreement executed or delivered in connection herewith or the transaction related hereto.

By signing this Agreement, Borrower acknowledges reading, understanding, and agreeing to all its provisions and receipt thereof.

MCKEOWN PROPERTY ON LAKE ROBINSON LLC



By: BRUCE A MCKEOWN

4/24/08
Date

Its: MEMBER

WSH
#200

GREER STATE BANK

Extension Agreement and Disclosure Statement

Original Note #95000268

Date of Note: 4-20-2007

NAICS Code: 236115

Original Terms: 12 months

Original Principal Amount: \$200,000.00

Name: McKeown Property on Lake Robinson LLC

Current Principal Balance: \$196,485.08

Payment Amount: Interest monthly

APR on Loan: wsjp + .50%

Current Due Date: 4-24-09

Reason for Extension Request: additional time needed to prepare financials

Payment paid today: \$709.48 Principal: \$ Interest: \$634.48 Renewal Fee: \$75.00

Greer State Bank agrees to extend the maturity of said Note, and/or Security Agreement for 30 days from April 24, 2009 to May 24, 2009.

Customer shall pay interest at the rate as provided in said Note and/or Security Agreement, and shall further keep and perform all covenants and agreements contained in said note. The undersigned also, in consideration of the extension of time and payment and the forbearance of Bank agrees to and accepts this extension upon the terms herein stated.

In case of default in the payment of any interest or principal payments, and in case of failure to keep or perform and of the covenants and agreement in said Note and/or Security Agreement, this agreement shall at once become null and void at the option of Greer State Bank, and the said Note and/or Security Agreement, and the entire indebtedness evidenced thereby shall at once become due and payable and may be collected without notice together with accrued interest, anything hereinabove contained to the contrary notwithstanding. The right or recourse to recover the amount of said Note and/or Security Agreement, against an endorser, comaker or guarantor is hereby explicitly reserved.

Should your loan have credit life insurance or credit life and credit disability insurance, this extension does not extend the insurance coverage on the payment(s).

Where applicable, the borrower will be responsible to continue to maintain collision and liability insurance throughout the term of the agreement, including the deferral period.

The borrower agrees that the original note and security agreement, except as expressly modified, altered or extended by this Extension Agreement, shall be and remain in full force and effect and Borrower hereby ratifies and reaffirms all of the terms and conditions and covenants contained in said note and security agreement.

Greer State Bank is the owner and holder of the Note.

Bernard McKeown

4/22/09
Date

Wade H. Hannon
Approved by: Loan Officer

#200
Officer #

For Bank Use Only:

System Renewal Date: 5/1/09

Processed by CM



2007035799 MTC
9 PGS
Book: MO 4758 Page: 1857-1865

April 12, 2007 12:39:08
Rec: \$15.00 Cnty Tax: \$0.00 State Tax: \$0.00

This document was prepared by (name, address, phone):
GREER STATE BANK
P.O. BOX 1029
GREER, SC 29650-1029

FILED IN GREENVILLE COUNTY, SC

100882

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is Apr 12, 2007 and the parties and their addresses are as follows:

MORTGAGOR:

MCKEOWN PROPERTY ON LAKE ROBINSON, LLC, a South Carolina limited liability
928 GROCE MEADOW ROAD company
TAYLORS, SC 29687

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER:

GREER STATE BANK
1111 WEST POINSETT STREET GREER, SC 29650

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

SEE ATTACHED EXHIBIT A

The property is located in Greenville at APPRX 49.7 AC
(County)

GROCE MEADOW RD & LAKE ROBINSON, GREER, South Carolina 29650
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property; however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT
(NOT FOR FNMA, FHLMC, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES)

Expire: © 1004, 2001 BankOne Systems, Inc., St. Cloud, MN Form AOCU-REB-SC 1/21/2003

VMP -C595(SC) (03071.01)

VMP Mortgage Solutions (800)521-7201

(page 1 of 8)

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 4,750,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt): *(e.g., borrower's name, note amount, interest rate, maturity date):* **NOTE DATED APRIL 12, 2007 IN THE NAME OF MCKEOWN PROPERTY ON LAKE ROBINSON, LLC IN THE AMT OF \$4,750,000.00. THIS MORTGAGE HAS A MATURITY DATE OF APRIL 12, 2027.**

B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.

C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.

E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.

6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.

7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.

8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgage is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which

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has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guarantied, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

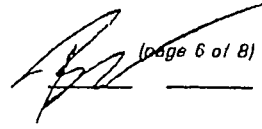
25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- ☐ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☐ **Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

 (page 6 of 8)

- ☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- ☒ **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 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.
- ☐ **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- ☐ **Additional Terms.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

☐ Actual authority was granted to the parties signing below by resolution signed and dated _____.

Entity Name: MCKEOWN PROPERTY ON LAKE ROBINSON, LLC
a South Carolina limited liability company

Entity Name: _____

By: Bruce A. Mckeown 4-12-07
(Signature) BRUCE A. MCKEOWN, MANAGER (Date)

(Signature) (Date)

Signed, Sealed and delivered in the presence of:

x Sandra Henderson
(Witness)

Sandra Henderson
(Witness)

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF GREENVILLE) ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 12th day

of April, 2007

Landra G. Henderson
Notary Public for South Carolina

Sharon Lee

My commission expires: 9-3-12

EXHIBIT A

PROPERTY DESCRIPTION

All that certain piece, parcel or tract of land, lying and being in the State of South Carolina, County of Greenville, located on the Northeastern side of Groce Meadows Road, being shown and designated as 49.64 Acres on a plat entitled "Boundary Survey for Bruce McKeown", prepared by Freeland-Clinkscales & Associates of NC, Inc., dated March 7, 2005, recorded in the Office of the Register of Deeds for Greenville County in Plat Book 50-A at Page 26, reference being made to said plat for a more complete metes and bounds description hereof.

LESS AND EXCEPT, HOWEVER:

All those certain pieces, parcels or lots of land, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Lots 17, 18, 26, 27, 51 and 52 on Final Plat, STILLWATER, PHASE I, SHEET I, GREER, SOUTH CAROLINA, by FCA of NC, Surveyor, dated November 15, 2006, and recorded in Plat Book 1024 at Page 41, ROD Office for Greenville County, reference being made to said plat for a more complete metes and bounds description.

ALSO LESS AND EXCEPT:

All those certain pieces, parcels or lots of land, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Lots 44, 45, 46, 47, 49, 70 and 74 on Final Plat, STILLWATER, PHASE I, SHEET II, GREER, SOUTH CAROLINA, by FCA of NC, Surveyor, dated November 15, 2006, and recorded in Plat Book 1025 at Page 20, ROD Office for Greenville County, reference being made to said plat for a more complete metes and bounds description.

This is the same property conveyed to the Mortgagor herein by deed of Robert M. McKeown, Cathy J. Lockhart, Bruce A. McKeown and Connie S. Santoro, formerly known as Connie S. McKeown, dated May 4, 2005, recorded in the Office of the Register of Deeds for Greenville County on June 20, 2005 in Deed Book 2150 at Page 1267; and by deed of Cathy J. Lockhart and William E. Lockhart dated May 20, 2005, recorded in the Office of the Register of Deeds for Greenville County on June 20, 2005 in Deed Book 2150 at Page 1263.

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2007035799 Book: NO 4758 Page: 1857-1865
APR 11 12, 2007 12:39:08
Timothy J. Ramsey

Tax Map No	Number	Street	Desc/Lot#
0633.01-01-004.00		GROCE MEADOW	NONE
0633.15-01-001.00	928	GROCE MEADOW RD	1
0633.15-01-008.00	200	STILLWATERS BAY DR	8
0633.15-01-009.00	301	FARMERS MARKET ST	9
0633.15-01-010.00	303	FARMERS MARKET ST	10
0633.15-01-011.00	305	FARMERS MARKET ST	11
0633.15-01-012.00	307	FARMERS MARKET ST	12
0633.15-01-013.00	309	FARMERS MARKET ST	13
0633.15-01-014.00	311	FARMERS MARKET ST	14
0633.15-01-015.00	313	FARMERS MARKET ST	15
0633.15-01-016.00	315	FARMERS MARKET ST	16
0633.15-01-019.00	316	FARMERS MARKET ST	19
0633.15-01-020.00	304	FARMERS MARKET ST	20
0633.15-01-021.00	312	FARMERS MARKET ST	21
0633.15-01-022.00	310	FARMERS MARKET ST	22
0633.15-01-023.00	308	FARMERS MARKET ST	23
0633.15-01-024.00	306	FARMERS MARKET ST	24
0633.15-01-025.00	304	FARMERS MARKET ST	25
0633.15-01-028.00	401	YELLOWBIRD ST	28
0633.15-01-029.00	403	YELLOWBIRD ST	29
0633.15-01-030.00	405	YELLOWBIRD ST	30
0633.15-01-031.00	407	YELLOWBIRD ST	31
0633.15-01-032.00	409	YELLOWBIRD ST	32
0633.15-01-033.00	411	YELLOWBIRD ST	33
0633.15-01-034.00	413	YELLOWBIRD ST	34
0633.15-01-035.00	415	YELLOWBIRD ST	35
0633.15-01-036.00	417	YELLOWBIRD ST	36
0633.15-01-037.00	419	YELLOWBIRD ST	37
0633.15-01-039.00	511	COOLWATER DR	39
0633.15-01-040.00	513	COOLWATER DR	40
0633.15-01-041.00	515	COOLWATER DR	41
0633.15-01-042.00	517	COOLWATER DR	42
0633.15-01-043.00	521	COOLWATER DR	43
0633.15-01-048.00	537	COOLWATER DR	48
0633.15-01-050.00	541	COOLWATER DR	50
0633.15-01-053.00	904	BLUE MOON ST	53
0633.15-01-054.00	906	BLUE MOON ST	54
0633.15-01-055.00	908	BLUE MOON ST	55

0633.15-01-056.00	910	BLUE MOON ST	56
0633.15-01-057.00	912	BLUE MOON ST	57
0633.15-01-058.00	914	BLUE MOON ST	58
0633.15-01-059.00	700	KINGS HILL ST	59
0633.15-01-060.00	702	KINGS HILL ST	60
0633.15-01-061.00	704	KINGS HILL ST	61
0633.15-01-062.00	706	KINGS HILL ST	62
0633.15-01-063.00	708	KINGS HILL ST	63
0633.15-01-064.00	710	KINGS HILL ST	64
0633.15-01-065.00	712	KINGS HILL ST	65
0633.15-01-066.00	714	KINGS HILL ST	66
0633.15-01-067.00	716	KINGS HILL ST	67
0633.15-01-068.00	718	KINGS HILL ST	68
0633.15-01-069.00	720	KINGS HILL ST	69
0633.15-01-071.00	626	SEDGE ST	71
0633.15-01-072.00	624	SEDGE ST	72
0633.15-01-073.00	622	SEDGE ST	73
0633.15-01-075.00	618	SEDGE ST	75
0633.15-01-076.00	616	SEDGE ST	76
0633.15-01-077.00	614	SEDGE ST	77
0633.15-01-078.00	612	SEDGE ST	78
0633.15-01-079.00	610	SEDGE ST	79
0633.15-01-080.00	608	SEDGE ST	80
0633.15-01-081.00	606	SEDGE ST	81
0633.15-01-082.00	604	SEDGE ST	82
0633.15-01-083.00	602	SEDGE ST	83
0633.15-01-084.00	600	SEDGE ST	84
0633.15-01-086.00	516	COOLWATER DR	86
0633.15-01-087.00	518	COOLWATER DR	87
0633.15-01-088.00	520	COOLWATER DR	88
0633.15-01-089.00	522	COOLWATER DR	89
0633.15-01-090.00	524	COOLWATER DR	90
0633.15-01-091.00	526	COOLWATER DR	91
0633.15-01-092.00	528	COOLWATER DR	92
0633.15-01-093.00	530	COOLWATER DR	93
0633.15-01-094.00	532	COOLWATER DR	94
0633.15-01-095.00	534	COOLWATER DR	95
0633.15-01-096.00	536	COOLWATER DR	96
0633.15-01-097.00	538	COOLWATER DR	97

0633.15-01-056.00	910	BLUE MOON ST	56
0633.15-01-057.00	912	BLUE MOON ST	57
0633.15-01-058.00	914	BLUE MOON ST	58
0633.15-01-059.00	700	KINGS HILL ST	59
0633.15-01-060.00	702	KINGS HILL ST	60
0633.15-01-061.00	704	KINGS HILL ST	61
0633.15-01-062.00	706	KINGS HILL ST	62
0633.15-01-063.00	708	KINGS HILL ST	63
0633.15-01-064.00	710	KINGS HILL ST	64
0633.15-01-065.00	712	KINGS HILL ST	65
0633.15-01-066.00	714	KINGS HILL ST	66
0633.15-01-067.00	716	KINGS HILL ST	67
0633.15-01-068.00	718	KINGS HILL ST	68
0633.15-01-069.00	720	KINGS HILL ST	69
0633.15-01-071.00	626	SEDGE ST	71
0633.15-01-072.00	624	SEDGE ST	72
0633.15-01-073.00	622	SEDGE ST	73
0633.15-01-075.00	618	SEDGE ST	75
0633.15-01-076.00	616	SEDGE ST	76
0633.15-01-077.00	614	SEDGE ST	77
0633.15-01-078.00	612	SEDGE ST	78
0633.15-01-079.00	610	SEDGE ST	79
0633.15-01-080.00	608	SEDGE ST	80
0633.15-01-081.00	606	SEDGE ST	81
0633.15-01-082.00	604	SEDGE ST	82
0633.15-01-083.00	602	SEDGE ST	83
0633.15-01-084.00	600	SEDGE ST	84
0633.15-01-086.00	516	COOLWATER DR	86
0633.15-01-087.00	518	COOLWATER DR	87
0633.15-01-088.00	520	COOLWATER DR	88
0633.15-01-089.00	522	COOLWATER DR	89
0633.15-01-090.00	524	COOLWATER DR	90
0633.15-01-091.00	526	COOLWATER DR	91
0633.15-01-092.00	528	COOLWATER DR	92
0633.15-01-093.00	530	COOLWATER DR	93
0633.15-01-094.00	532	COOLWATER DR	94
0633.15-01-095.00	534	COOLWATER DR	95
0633.15-01-096.00	536	COOLWATER DR	96
0633.15-01-097.00	538	COOLWATER DR	97

0633.15-01-098.00	540	COOLWATER DR	98
0633.15-01-099.00	542	COOLWATER DR	99
0633.15-01-156.00		KINGS HILL ST	ROADS/COMMON
0633.15-01-157.00	205	STILLWATERS BAY DR	2
0633.15-01-158.00	209	STILLWATERS BAY DR	3
0633.15-01-159.00	213	STILLWATERS BAY DR	4
0633.15-01-161.00	208	STILLWATERS BAY DR	6
0633.15-01-162.00	204	STILLWATERS BAY DR	7
0633.15-01-163.00	25	WATERSIDE LN	124
0633.15-01-164.00	23	WATERSIDE LN	125
0633.15-01-165.00	21	WATERSIDE LN	126
0633.15-01-166.00	19	WATERSIDE LN	127
0633.15-01-167.00	17	WATERSIDE LN	128
0633.15-01-168.00	15	WATERSIDE LN	129
0633.15-01-173.00	3	WATERSIDE LN	134
0633.15-01-176.00	122	HARBOR MASTER LN	137
0633.15-01-177.00	120	HARBOR MASTER LN	138
0633.15-01-178.00	118	HARBOR MASTER LN	139
0633.15-01-179.00	116	HARBOR MASTER LN	140
0633.15-01-180.00	114	HARBOR MASTER LN	141
0633.15-01-181.00	112	HARBOR MASTER LN	142
0633.15-01-182.00	110	HARBOR MASTER LN	143
0633.15-01-183.00	108	HARBOR MASTER LN	144
0633.15-01-184.00	106	HARBOR MASTER LN	145
0633.15-01-185.00	104	HARBOR MASTER LN	146
0633.15-01-186.00	102	HARBOR MASTER LN	147
0633.15-01-187.00	100	HARBOR MASTER LN	148
0633.15-01-188.00	101	HARBOR MASTER LN	149
0633.15-01-189.00	103	HARBOR MASTER LN	150
0633.15-01-190.00	105	HARBOR MASTER LN	151

COMMERCIAL LOAN GUARANTY

GREER STATE BANK
PO BOX 1029
GREER, South Carolina 29652
(864)877-2000

LOAN NUMBER	GUARANTY DATE
95000268	April 24, 2008

GUARANTOR INFORMATION

BRUCE A MCKEOWN
928 GROCE MEADOW ROAD
TAYLORS, SC 29687

Type of Entity: Individual
State of Residence: South Carolina

BORROWER INFORMATION

MCKEOWN PROPERTY ON LAKE ROBINSON LLC
928 GROCE MEADOW ROAD
TAYLORS, SC 29687

Type of Business Entity: Limited Liability Company
State of Organization/Formation: South Carolina

NOTICE TO GUARANTOR. Each undersigned Guarantor is being asked to guarantee the Borrower's specific transaction obligation described below. If Borrower does not pay, any Guarantor may be required to do so. In addition, any Guarantor may be required to pay collection expenses and costs. Lender can require any Guarantor to pay without first attempting to collect from the Borrower or any other Guarantor.

GUARANTY OF SPECIFIC TRANSACTION. The undersigned, jointly and severally called the "Guarantor", in order to induce the Lender to extend financial accommodations to the Borrower as evidenced by a note or agreement payable to the Lender dated April 24, 2008, and executed by Borrower in the principal amount of \$200,000.00, plus interest, charges, and fees as provided for, collectively referred to as the "Obligation of Borrower", hereby guarantees to the Lender the full and prompt payment of the Obligation of Borrower, including all extensions and renewals thereof, until the Obligation of Borrower is fully paid.

This is a guaranty of payment and not of collection. The Guarantor agrees to pay all Lender's costs incurred to enforce this Guaranty, including reasonable attorneys' fees.

JOINT AND SEVERAL LIABILITY. If this Guaranty is signed by more than one person, each person having executed the Guaranty acknowledges that his or her obligation hereunder shall be joint and several. Each Guarantor expressly authorizes the Lender to proceed, in its sole and absolute discretion, against each or any Guarantor, and further agrees that if the Lender proceeds against any one of them, the others waive any defense of election of remedies and agree to continue to be liable under the terms of this Guaranty for any amount remaining owing to Lender from Borrower.

CONSENT. The Guarantor consents to all extensions, renewals, and modifications made by the Lender for, or on account of, any indebtedness of Borrower to Lender. Lender may proceed directly against Guarantor in the event of any default by Borrower without resorting to any other persons, to the assets of Borrower, to any collateral security granted by Borrower to Lender, or the liquidation of any collateral security given hereunder to secure this Guaranty. Furthermore, to the extent permitted by law, Guarantor hereby agrees and consents that the Lender may from time to time without notice to Guarantor and without affecting the liability of Guarantor (a) release, impair, sell or otherwise dispose of any security or collateral, (b) release or agree not to sue any guarantor or surety, (c) fail to perfect its security interest in or realize upon any security or collateral, (d) fail to realize upon any of the obligations of Borrower or to proceed against Borrower or any guarantor or surety, (e) renew or extend the time of payment, (f) increase or decrease the rate of interest, (g) accept additional security or collateral, (h) determine the allocation and application of payments and credits and accept partial payments, (i) determine what, if anything, may at any time be done with reference to any security or collateral, and (j) settle or compromise the amount due or owing or claimed to be due or owing from any Borrower, guarantor or surety, which settlement or compromise shall not affect the undersigned's liability for the full amount of the guaranteed obligations. To the extent permitted by law, Guarantor expressly consents to and waives notice of all of the above.

REPRESENTATIONS. Guarantor acknowledges and agrees that Lender (a) has not made any representations or warranties with respect to, (b) does not assume any responsibility to Guarantor for, and (c) has no duty to provide information to the undersigned regarding, the enforceability of any of the indebtedness or the financial condition of any Borrower or any other guarantor. Guarantor has independently determined the creditworthiness of Borrower and the enforceability of the obligations of Borrower to Lender and until such obligations are paid in full in accordance with this Guaranty, Guarantor will independently and without reliance on Lender continue to make such determinations.

GENERAL WAIVERS. Guarantor hereby waives notice of acceptance of this Guaranty, all notices hereunder, and all notices of demand, presentment, notice of dishonor, intention to accelerate, acceleration, notice of any adverse information which Lender may have, and all notices of protest, default, and nonpayment. Guarantor waives all defenses of suretyship. Guarantor waives any defense that could be asserted by

Borrower, including defenses arising out of failure of consideration, breach of warranty, fraud, payment, statute of frauds, bankruptcy, lack of capacity, statute of limitations, lender liability, unenforceability of any loan document, accord and satisfaction, or usury.

SURVIVAL. This Guaranty shall be binding upon Guarantor, Guarantor's heirs, successors, and estate representatives, until all such indebtedness shall be fully paid to Lender.

EXERCISE OF LENDER'S RIGHTS. Any delay or failure of the Lender in exercising any of its rights under this Guaranty does not operate as a waiver of the Lender's ability to exercise all of its rights. The Lender may choose to partially exercise rights under this Guaranty, but that does not prevent the Lender from fully exercising these rights.

ASSIGNABILITY. This Guaranty shall inure to the benefit of the Lender and its successors and assigns, including every holder of any of the indebtedness here guaranteed. In the event that any person other than the Lender shall become a holder of any of the indebtedness, the reference to the Lender shall be construed to refer to each such holder.

RIGHT OF SETOFF. To the extent permitted by law, Guarantor gives Lender the right to setoff any of Guarantor's money or property which may be in Lender's possession against any amount owed under this Guaranty. This right of setoff does not extend to any Keogh account, IRA, or similar tax deferred deposit. Further, the Lender shall have available all remedies under applicable state and federal laws, including the garnishment of wages, to the extent permitted by law.

WAIVER OF JURY TRIAL. All parties to this Guaranty knowingly and voluntarily waive, to the fullest extent permitted by law, all rights to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, between Guarantor and Lender arising out of, in connection with, related to, or incidental to the relationship established in connection with this Guaranty or made pursuant to any other note or other instrument, document, or agreement executed or delivered by Borrower or Guarantor in connection with this Guaranty or the related transactions.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Guaranty is invalid or prohibited by applicable law, that term or provision will be ineffective, but only to the extent required to make it lawful. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Guaranty without invalidating the remainder of the provisions of this Guaranty.

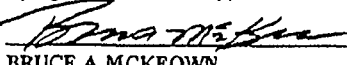
GOVERNING LAW. This Guaranty will be governed by and construed in accordance with the laws of the state of South Carolina except to the extent that federal law controls.

HEADINGS AND GENDER. The headings in this Guaranty are for convenience in identifying subject matter. The headings have no limiting effect on the text that follows any particular heading. All words used in this Guaranty are read to be of whatever gender or number is appropriate under the circumstances.

ORAL AGREEMENTS DISCLAIMER. This Agreement represents 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.

ACKNOWLEDGMENT. This Guaranty is freely and voluntarily given to the Lender by Guarantor, without duress or coercion, and after Guarantor has either consulted with legal counsel or has been given an opportunity to do so, and Guarantor has fully and carefully read and understands all of the terms and provisions of the Guaranty.

By signing this Guaranty, Guarantor acknowledges reading, understanding, and agreeing to all its provisions.


BRUCE A MCKEOWN

4/24/08
Date

Individually

COMMERCIAL LOAN GUARANTY

GREER STATE BANK
PO BOX 1029
GREER, South Carolina 29652
(864)877-2000

LOAN NUMBER	GUARANTY DATE
C-08-10-000048	October 28, 2008

GUARANTOR INFORMATION

BRUCE A MCKEOWN
2495 POWDER RIDGE
Roswell, GA 30076

Type of Entity: Individual
State of Residence: Georgia

BORROWER INFORMATION

MCKEOWN PROPERTY ON LAKE ROBINSON, LLC
928 GROCE MEADOW ROAD
TAYLORS, SC 29687

Type of Business Entity: Limited Liability Company
State of Organization/Formation: South Carolina

NOTICE TO GUARANTOR. Each undersigned Guarantor is being asked to guarantee the Borrower's specific transaction obligation described below. If Borrower does not pay, any Guarantor may be required to do so. In addition, any Guarantor may be required to pay collection expenses and costs. Lender can require any Guarantor to pay without first attempting to collect from the Borrower or any other Guarantor.

GUARANTY OF SPECIFIC TRANSACTION. The undersigned, jointly and severally called the "Guarantor", in order to induce the Lender to extend financial accommodations to the Borrower as evidenced by a note or agreement payable to the Lender dated October 28, 2008, and executed by Borrower in the principal amount of \$4,750,000.00, plus interest, charges, and fees as provided for, collectively referred to as the "Obligation of Borrower", hereby guarantees to the Lender the full and prompt payment of the Obligation of Borrower, including all extensions and renewals thereof, until the Obligation of Borrower is fully paid.

This is a guaranty of payment and not of collection. The Guarantor agrees to pay all Lender's costs incurred to enforce this Guaranty, including reasonable attorneys' fees.

JOINT AND SEVERAL LIABILITY. If this Guaranty is signed by more than one person, each person having executed the Guaranty acknowledges that his or her obligation hereunder shall be joint and several. Each Guarantor expressly authorizes the Lender to proceed, in its sole and absolute discretion, against each or any Guarantor, and further agrees that if the Lender proceeds against any one of them, the others waive any defense of election of remedies and agree to continue to be liable under the terms of this Guaranty for any amount remaining owing to Lender from Borrower.

CONSENT. The Guarantor consents to all extensions, renewals, and modifications made by the Lender for, or on account of, any indebtedness of Borrower to Lender. Lender may proceed directly against Guarantor in the event of any default by Borrower without resorting to any other persons, to the assets of Borrower, to any collateral security granted by Borrower to Lender, or the liquidation of any collateral security given hereunder to secure this Guaranty. Furthermore, to the extent permitted by law, Guarantor hereby agrees and consents that the Lender may from time to time without notice to Guarantor and without affecting the liability of Guarantor (a) release, impair, sell or otherwise dispose of any security or collateral, (b) release or agree not to sue any guarantor or surety, (c) fail to perfect its security interest in or realize upon any security or collateral, (d) fail to realize upon any of the obligations of Borrower or to proceed against Borrower or any guarantor or surety, (e) renew or extend the time of payment, (f) increase or decrease the rate of interest, (g) accept additional security or collateral, (h) determine the allocation and application of payments and credits and accept partial payments, (i) determine what, if anything, may at any time be done with reference to any security or collateral, and (j) settle or compromise the amount due or owing or claimed to be due or owing from any Borrower, guarantor or surety, which settlement or compromise shall not affect the undersigned's liability for the full amount of the guaranteed obligations. To the extent permitted by law, Guarantor expressly consents to and waives notice of all of the above.

REPRESENTATIONS. Guarantor acknowledges and agrees that Lender (a) has not made any representations or warranties with respect to, (b) does not assume any responsibility to Guarantor for, and (c) has no duty to provide information to the undersigned regarding, the enforceability of any of the indebtedness or the financial condition of any Borrower or any other guarantor. Guarantor has independently determined the creditworthiness of Borrower and the enforceability of the obligations of Borrower to Lender and until such obligations are paid in full in accordance with this Guaranty, Guarantor will independently and without reliance on Lender continue to make such determinations.

GENERAL WAIVERS. Guarantor hereby waives notice of acceptance of this Guaranty, all notices hereunder, and all notices of demand, presentment, notice of dishonor, intention to accelerate, acceleration, notice of any adverse information which Lender may have, and all notices of protest, default, and nonpayment. Guarantor waives all defenses of suretyship. Guarantor waives any defense that could be asserted by Borrower, including defenses arising out of failure of consideration, breach of warranty, fraud, payment, statute of frauds, bankruptcy, lack of capacity, statute of limitations, lender liability, unenforceability of any loan document, accord and satisfaction, or usury.

SURVIVAL. This Guaranty shall be binding upon Guarantor, Guarantor's heirs, successors, and estate representatives, until all such indebtedness shall be fully paid to Lender.

EXERCISE OF LENDER'S RIGHTS. Any delay or failure of the Lender in exercising any of its rights under this Guaranty does not operate as a waiver of the Lender's ability to exercise all of its rights. The Lender may choose to partially exercise rights under this Guaranty, but that does not prevent the Lender from fully exercising these rights.

ASSIGNABILITY. This Guaranty shall inure to the benefit of the Lender and its successors and assigns, including every holder of any of the indebtedness here guaranteed. In the event that any person other than the Lender shall become a holder of any of the indebtedness, the reference to the Lender shall be construed to refer to each such holder.

RIGHT OF SETOFF. To the extent permitted by law, Guarantor gives Lender the right to setoff any of Guarantor's money or property which may be in Lender's possession against any amount owed under this Guaranty. This right of setoff does not extend to any Keogh account, IRA, or similar tax deferred deposit. Further, the Lender shall have available all remedies under applicable state and federal laws, including the garnishment of wages, to the extent permitted by law.

WAIVER OF JURY TRIAL. All parties to this Guaranty knowingly and voluntarily waive, to the fullest extent permitted by law, all rights to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, between Guarantor and Lender arising out of, in connection with, related to, or incidental to the relationship established in connection with this Guaranty or made pursuant to any other note or other instrument, document, or agreement executed or delivered by Borrower or Guarantor in connection with this Guaranty or the related transactions.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Guaranty is invalid or prohibited by applicable law, that term or provision will be ineffective, but only to the extent required to make it lawful. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Guaranty without invalidating the remainder of the provisions of this Guaranty.

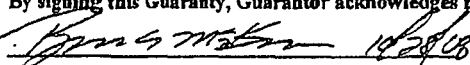
GOVERNING LAW. This Guaranty will be governed by and construed in accordance with the laws of the state of South Carolina except to the extent that federal law controls.

HEADINGS AND GENDER. The headings in this Guaranty are for convenience in identifying subject matter. The headings have no limiting effect on the text that follows any particular heading. All words used in this Guaranty are read to be of whatever gender or number is appropriate under the circumstances.

ORAL AGREEMENTS DISCLAIMER. This Agreement represents 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.

ACKNOWLEDGMENT. This Guaranty is freely and voluntarily given to the Lender by Guarantor, without duress or coercion, and after Guarantor has either consulted with legal counsel or has been given an opportunity to do so, and Guarantor has fully and carefully read and understands all of the terms and provisions of the Guaranty.

By signing this Guaranty, Guarantor acknowledges reading, understanding, and agreeing to all its provisions.


BRUCE A MCKEOWN
Individually

Date

GUARANTY

GREER

SC

(City)

(State)

04/12/2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce GREER STATE BANK (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of MCKEOWN PROPERTY ON LAKE ROBINSON, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: NOTE DATED 04/12/07 INO MCKEOWN PROPERTY ON LAKE ROBINSON, LLC and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all Indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 4,750,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____; ☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

RITA W MCKEOWN

Mandy Alvarado

Witness

Rita W. McKeown

Undersigned shall refer to all persons who sign this guaranty, severally and jointly

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under § 111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration; and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
CASE NO: 2010-CP-23-4223

Greer State Bank,

2010 OCT -5 P 3:17

Plaintiff,

vs.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
CARTER, SMITH, MERRIAM, ROGERS
& TRAXLER, P.A.

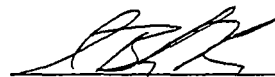
AFFIDAVIT OF DEFAULT

McKeown Property On Lake Robinson,
LLC, Bruce A. McKeown, Robert M.
McKeown, Cathy J. Lockhart, Rita W.
McKeown and Connie S. Santoro f/k/a
Connie S. McKeown,

(As to Robert M. McKeown Cathy J. Lockhart
and Connie S. Santoro f/k/a Connie S. McKeown)

Defendants.

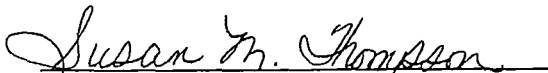
PERSONALLY appeared before me, S. Brook Fowler, and on oath states that he is the Attorney for the Plaintiff in the above-captioned action; and that a copy of the Lis Pendens, Civil Coversheet, Certificate of Exemption/Withdrawal from Arbitration and Mediation, Summons and Notice and Complaint, were served on (a) Defendants **Cathy J. Lockhart and Connie S. Santoro f/k/a Connie S. McKeown** as shown by the Affidavits of Service filed with this Court in the above-referenced case and (b) **Robert M. McKeown** as shown by the Affidavit of Publication filed with this Court in the above-referenced case; that more than thirty (30) days have elapsed since the dates of said service and no responsive pleading has been received by or served upon the Plaintiff, or its said attorneys by or on behalf of said Defendants, and said named Defendants are now in default.



S. Brook Fowler (Bar No. 66215)
CARTER, SMITH, MERRIAM, ROGERS
& TRAXLER, P.A.
P.O. Box 10828, Greenville, SC 29603
Phone: (864) 242-3566
Fax: (864) 232-1558
Attorney for Plaintiff

SWORN TO BEFORE ME THIS

5th DAY OF October, 2010.



Notary Public for South Carolina
My Commission Expires: 3/2/2017

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE C.A. NO.: 2010-CP-23-4223

Greer State Bank,

2010 AUG -4 P 3:02

Plaintiff,

vs.

SUMMONS AND NOTICE

McKeown Property On Lake

Robinson, LLC, Bruce A. McKeown,

(JURY TRIAL DEMANDED)

Robert M. McKeown, Cathy J.

Lockhart, Rita W. McKeown and

Connie S. Santoro f/k/a Connie S.

McKeown,

Defendants.

TO: THE PLAINTIFF, GREER STATE BANK AND ITS ATTORNEY AND COUNSEL OF
RECORD, S. BROOK FOWLER:

YOUR ARE HEREBY SUMMONED AND REQUIRED to reply to the Counterclaim in
this action, a copy of which is herewith served upon you, and to serve a copy of your Reply to the
said Counterclaim upon the subscriber at his office located at 1012 East Washington Street,
Greenville, South Carolina 29601 (mailing address: Post Office Box 10224 F.S., Greenville,
South Carolina 29603), within thirty (30) days from the date of such service, exclusive of the
date of service; and if you fail to reply to said Counterclaim within the time aforesaid, judgment
by default will be rendered against you for the relief demanded in the Counterclaim.

CHAPMAN HARTER & GROVES, P.A.

BY:

Charles M. Groves

1012 East Washington Street (29601)

Post Office Box 10224 F.S. (29603)

Greenville, South Carolina

(864) 233-4500

Greenville, South Carolina

August 4, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C.A. NO.: 2010-CP-23-4223
PAUL B. WICKENS

Greer State Bank,

2010 AUG -4 } P 3: 02

Plaintiff,

vs.

ANSWER AND COUNTERCLAIM
OF DEFENDANTS

McKeown Property On Lake

Robinson, LLC, Bruce A. McKeown,

(JURY TRIAL DEMANDED)

Robert M. McKeown, Cathy J.

Lockhart, Rita W. McKeown and

Connie S. Santoro f/k/a Connie S.

McKeown,

Defendants.

The Defendants, McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown, answering the Complaint of the Plaintiff would show this Honorable Court as follows:

1. That all allegations of this Complaint not hereinafter admitted, modified or explained are denied with strict proof demanded thereof.

FOR A FIRST DEFENSE
(General Denial)

2. That the allegations of Paragraphs 1 and 2 are admitted.

3. That so much of Paragraph 3 is admitted as alleges that the Defendant Rita W. McKeown is a citizen and resident of the State of Georgia. That the remaining allegations of Paragraph 3 are denied.

4. That answering the allegations of Paragraph 4 the Defendants would admit any matter that are matters of public record. That all remaining allegations are denied.

5. That the allegations of Paragraph 5 and 6 are admitted.
6. That answering Paragraph 7, the Defendants repeat those responses to all previous paragraphs the same as repeated herein verbatim.
7. That answering the allegations of Paragraph 8, the Defendants admit the execution of Note 1 by Defendant McKeown Property on Lake Robinson, LLC and described therein, the terms of which speak for themselves.
8. That as to the allegations of Paragraph 9, the Defendants admit that a copy of Note 1 as described in Paragraph 8 of Plaintiff's Complaint is attached to said Complaint.
9. That answering the allegations of Paragraph 10, the Defendants admit the execution of Note 2 by McKeown Property on Lake Robinson, LLC and described therein, the terms of which speak for themselves. Further, the Defendants admit that an Extension Agreement was executed by the Plaintiff, the terms of which speak for themselves.
10. That as to the allegations of Paragraph 11, the Defendants admit that a copy of Note 2 and the Extension Agreement as described in Paragraph 10 of Plaintiff's Complaint are attached to said Complaint.
11. That answering the allegations of Paragraph 12, the Defendants admit the execution of the mortgage described therein, the terms of which speak for themselves.
12. That as to the allegations of Paragraph 13, the Defendants admit that a copy of the Mortgage as described in Paragraph 12 of Plaintiff's Complaint is attached to said Complaint.
13. That answering the allegations of Paragraph 14 the Defendants would admit only so much of said Paragraph as are matters of public record.
14. That answering the allegations of Paragraphs 15, 16, 17, 18, 19, 20 and 21, the

Defendants crave reference to the Notes and Mortgage for the terms of said instruments. That the remaining allegations of said Paragraphs are denied.

15. That answering Paragraph 22, the Defendants are not certain if all such required notices have been given and, therefore, same is denied with strict proof demanded thereof.

16. That the allegations of Paragraph 23 are denied; that Defendants McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown have been attempting for many months to rework the loan with the Plaintiff; that Defendants deny that Defendants McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown are in default.

17. That the allegations of Paragraph 24 are denied.

18. That answering Paragraph 25, the Defendants are uncertain if they may avail themselves of any government statute or program, and, therefore, same is denied with strict proof demanded thereof.

19. That answering Paragraph 26, the Defendants repeat those responses to all previous paragraphs the same as repeated herein verbatim.

20. That answering the allegations of Paragraph 27, the Defendants Bruce A. McKeown and Rita W. McKeown admit the execution of the Personal Guaranties described therein, the terms of which speak for themselves. All other allegations of said Paragraph are denied.

21. That the Defendants would admit so much of Paragraph 28 as alleges that a copy of the guaranties described in Paragraph of 27 of Plaintiff's Complaint are attached thereto.

22. That the allegations of Paragraph 29 are denied.

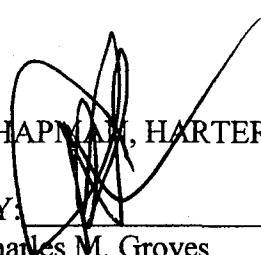
FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM
(Demand For An Accounting)

23. That the allegations of Paragraph 1-21 above, not inconsistent herewith, are realleged as if again fully set forth in their entirety.

24. In further answering the Plaintiff's Complaint and by way of Counterclaim, the Defendants demand an itemized accounting of the debt set forth in the Complaint.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants pray as follows:

- a. For the dismissal of the Plaintiff's Complaint in its entirety;
- b. For an itemized accounting of the debt set forth in the Plaintiff's Complaint; and
- c. For such other and further relief as this Court may deem just and proper.


CHAPMAN, HARTER & GROVES, P.A.

BY: _____
Charles M. Groves
1012 East Washington Street (29601)
Post Office Box 10224 F.S. (29603)
Greenville, South Carolina
(864) 233-4500
cmgro@chglawsc.com
Attorney for Defendants

Greenville, South Carolina
July 28, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C.A. NO.: 2010-CP-23-4223
FILED - CLERK OF COURT
GREENVILLE CO S C.
PAUL D. WICKENS

Greer State Bank,

Plaintiff,

vs.

McKeown Property On Lake

Robinson, LLC, Bruce A. McKeown,

Robert M. McKeown, Cathy J.

Lockhart, Rita W. McKeown and

Connie S. Santoro f/k/a Connie S.

McKeown,

Defendants.

AMENDED ANSWER AND
COUNTERCLAIM OF DEFENDANTS

(JURY TRIAL DEMANDED)

The Defendants, McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown, answering the Complaint of the Plaintiff would show this Honorable Court as follows:

FOR A FIRST DEFENSE
(General Denial)

1. That all allegations of this Complaint not hereinafter admitted, modified or explained are denied with strict proof demanded thereof.
2. That the allegations of Paragraphs 1 and 2 are admitted.
3. That so much of Paragraph 3 is admitted as alleges that the Defendant Rita W. McKeown is a citizen and resident of the State of Georgia. That the remaining allegations of Paragraph 3 are denied.
4. That answering the allegations of Paragraph 4 the Defendants, McKeown Property On Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown (hereinafter "McKeown

Defendants”) would admit any matter that are matters of public record. That all remaining allegations are denied.

5. That the allegations of Paragraph 5 and 6 are admitted.

6. That answering Paragraph 7, the McKeown Defendants repeat those responses to all previous paragraphs the same as repeated herein verbatim.

7. That answering the allegations of Paragraph 8, the McKeown Defendants admit the execution of Note 1 by Defendant McKeown Property on Lake Robinson, LLC and described therein, the terms of which speak for themselves.

8. That as to the allegations of Paragraph 9, the McKeown Defendants admit that a copy of Note 1 as described in Paragraph 8 of Plaintiff’s Complaint is attached to said Complaint.

9. That answering the allegations of Paragraph 10, the McKeown Defendants admit the execution of Note 2 by McKeown Property on Lake Robinson, LLC and described therein, the terms of which speak for themselves. Further, the McKeown Defendants admit that an Extension Agreement was executed by the Plaintiff, the terms of which speak for themselves.

10. That as to the allegations of Paragraph 11, the McKeown Defendants admit that a copy of Note 2 and the Extension Agreement as described in Paragraph 10 of Plaintiff’s Complaint are attached to said Complaint.

11. That answering the allegations of Paragraph 12, the McKeown Defendants admit the execution of the mortgage described therein, the terms of which speak for themselves.

12. That as to the allegations of Paragraph 13, the McKeown Defendants admit that a copy of the Mortgage as described in Paragraph 12 of Plaintiff’s Complaint is attached to said Complaint.

13. That answering the allegations of Paragraph 14 the McKeown Defendants would admit only so much of said Paragraph as are matters of public record.

14. That answering the allegations of Paragraphs 15, 16, 17,18,19, 20 and 21, the McKeown Defendants crave reference to the Notes and Mortgage for the terms of said instruments. That the remaining allegations of said Paragraphs are denied.

15. That answering Paragraph 22, the McKeown Defendants are not certain if all such required notices have been given and, therefore, same is denied with strict proof demanded thereof.

16. That the allegations of Paragraph 23 are denied; that Defendants McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown allege the Plaintiff failed to properly fund the Notes which the mortgage secures; that the McKeown Defendants deny that Defendants McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown are in default.

17. That the allegations of Paragraph 24 are denied.

18. That answering Paragraph 25, the McKeown Defendants are uncertain if they may avail themselves of any government statute or program, and, therefore, same is denied with strict proof demanded thereof.

19. That answering Paragraph 26, the McKeown Defendants repeat those responses to all previous paragraphs the same as repeated herein verbatim.

20. That answering the allegations of Paragraph 27, the Defendants Bruce A. McKeown and Rita W. McKeown admit the execution of the Personal Guaranties described therein, the terms of which speak for themselves. All other allegations of said Paragraph are denied.

21. That the McKeown Defendants would admit so much of Paragraph 28 as alleges that a copy of the guaranties described in Paragraph of 27 of Plaintiff's Complaint are attached thereto.

22. That the allegations of Paragraph 29 are denied.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM
(Demand For An Accounting)

23. That the allegations of Paragraph 1-21 above, not inconsistent herewith, are realleged as if again fully set forth in their entirety.

24. In further answering the Plaintiff's Complaint and by way of Counterclaim, the Defendants demand an itemized accounting of the debt set forth in the Complaint.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Wrongful Foreclosure)

25. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as repeated verbatim.

26. That Plaintiff instituted and proceeded with a foreclosure action that was wrongful in that the loan or loans which are the subject of said action were never properly funded.

27. That as a result of the Plaintiff's wrongful conduct, the foreclosure action is not supported by any legal basis, and should be therefore dismissed.

28. That as a proximate result of Plaintiff's conduct, the McKeown Defendants have sustained damages, both actual and punitive, in an amount to be determined by the trier of fact.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract)

29. That the McKeown Defendants incorporate by reference each of the proceeding

paragraphs not inconsistent herewith, the same as repeated verbatim.

30. That beginning in late 2004 and throughout 2005 Defendant Bruce McKeown began negotiating with Plaintiff to provide financing for a real estate subdivision to be located in Greenville County, South Carolina, and known as “Stillwaters”.

31. That the “Stillwaters” project began taking shape and by the fall of 2005, the Plaintiff made the first of several loans to the McKeown Defendants for the ultimate development of this subdivision.

32. That all parties contemplated at the beginning of the “Stillwaters” project that the Plaintiff would be the sole lender to provide funding of this subdivision.

33. That the McKeown Defendants with each new loan obtained from Plaintiff, continued to work diligently in not only developing “Stillwaters” but in seeing that the repayment of these loans were timely made.

34. That by the fall of 2008, the subdivision was substantially complete, and the Plaintiff, who had already funded several millions of dollars in loans for the “Stillwaters” project, once again, made the McKeown Defendants an additional loan in the amount of \$4,750,000.00 and \$200,000.00. (Identified as Note 1 and Note 2 in Plaintiff’s Complaint, respectively.) These loans were never properly or fully funded by the Plaintiff.

35. That unfortunately and through no fault of the McKeown Defendants, the economy of the United States, and certainly South Carolina, in late 2008 and continuing until the present time began experiencing extreme hardships resulting arguably in the worst economic times since the 1930s and The Great Depression.

36. That the Plaintiff, in part because of the economic uncertainty, required that

\$500,000.00 of this Note 1 be set aside and utilized for interest accruing on the Note. The interest set aside in Note 1 of \$500,000.00 would be sufficient to carry this loan well past its maturity date even if none of the "Stillwaters" lots sold during such period of time.

37. That although this loan (Note 1) was extended on October 27, 2009, for six months, all changed in early 2010 relative to the Plaintiff's relationship with the McKeown Defendants.

38. That contrary to the terms of Note 1 and Note 2 and the extension thereof, the Plaintiff failed to properly fund the Notes and perform in accordance with agreement of the parties.

39. That although the bank had at least a two and one-half to three million dollar equity cushion in the "Stillwaters" project, and had given the Defendant Bruce McKeown oral assurances that it would continue funding this project through the fall of 2010, it abruptly began in the winter of 2009 and spring of 2010, refraining from properly funding the loans in such a way that harmed the McKeown Defendants.

40. That in breach of its contract with the McKeown Defendants it failed to deal with them in good faith and fair dealings while administering the loans, and, in fact for no explainable reason other than wanting this loan to go into default, Plaintiff failed to fund it.

41. That as a result of Plaintiff's breach of contract, the McKeown Defendants have been damaged in an amount to be determined by the trier of fact.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Implied Covenant of Good Faith and Fair Dealing)

42. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

43. That all of the agreements between Plaintiff and the McKeown Defendants, whether oral or written, contained an implied covenant of good faith and fair dealing, which provided that each party would deal fairly with the other, and neither party would do anything to deprive the other party of the agreements.

44. That Plaintiff acting through its officers and agents breached the implied covenant of fair dealings by its conduct, including but not limited to the following:

- [a] deliberately, unjustifiably and unreasonably failing to properly fund the Promissory Notes which are the subject of Plaintiff's foreclosure action;
- [b] deliberately, unjustifiably and unreasonably refusing to inform the McKeown Defendants of potential purchasers of the "Stillwaters" Subdivision;
- [c] deliberately, unjustifiably and unreasonably marketing and selling homes in the "Stillwaters" Subdivision owned by Plaintiff at a price point Plaintiff absolutely knew would prevent the McKeown Defendants from competing with and realizing sales at a critical time in the life of the subdivision;
- [d] in instituting a foreclosure action on loans that the Plaintiff had not fully funded, thus, stigmatizing "Stillwaters" as a failed development;
- [e] in failing to continue funding this four year old project beyond April 2010, when no loan had ever been in default, the McKeown Defendants had sufficient interest set aside in Note 1 to fund the project beyond said date, and Plaintiff had given the Defendant Bruce McKeown assurance that the Plaintiff would fund the loans beyond April 2010;
- [f] otherwise improperly taking advantage of the McKeown Defendants.

45. As a proximate result of Plaintiff's wrongful conduct, the McKeown Defendants suffered and will continue to suffer damage in the future in an amount to be determined by the trier of fact.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Fiduciary Duty)

46. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

47. That the Plaintiff with each passing year of the "Stillwaters" project began exercising more and more control over same such that by early 2009 Plaintiff for all intents and purposes was exercising excessive, if not exclusive, control over all decisions of the "Stillwaters" project.

48. That by 2009, the Plaintiff was in a joint venture with the McKeown Defendants, in that Plaintiff owned several homes in the subdivision which they exclusively controlled the pricing of which in turn totally dictated whether the McKeown Defendants would be able to sell and develop any lots.

49. That Plaintiff, acting through its agents, breached its fiduciary duty by their conduct, including, but not limited to:

- [a] failing to properly fund the loans it made to the McKeown Defendants;
- [b] failing to market all of the lots of "Stillwaters" in a way and manner that would be advantageous to the McKeown Defendants.
- [c] failing to continue funding the "Stillwaters" project, which it had orally assured the Defendant Bruce McKeown it would do.
- [d] failing to advise the McKeown Defendants of potential purchasers of the "Stillwaters" Subdivision.
- [e] failing to act in the best interest of the McKeown Defendants.
- [f] otherwise improperly obtaining benefits at the expense of the McKeown Defendants and improperly taking advantage of the McKeown's trust in Plaintiff.

50. That as a proximate result of Plaintiff's breach of fiduciary duty, the McKeown Defendants have been damaged, both actual and punitive, in an amount to be determined by the trier of fact.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligence)

51. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

52. That the Plaintiff had a duty to use an appropriate level of skill, prudence and diligence in discharging their duties, including administering disbursements relative to loans made to the McKeown Defendants.

53. That Plaintiff was required to use due care in the marketing of the "Stillwaters" project when its conduct as herein alleged went beyond the scope of mere lender.

54. That Plaintiff failed to exercise such care and as a proximate result thereof Plaintiff's wrongdoing, the McKeown Defendants have been damaged, both actual and punitive, in an amount to be determined by the trier of fact.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Unclean Hands)

55. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

56. That because of the conduct on the part of the Plaintiff as is set forth hereinabove, the McKeown Defendants allege Plaintiff has unclean hands and, therefore, may not seek any equitable or legal relief from this Court.

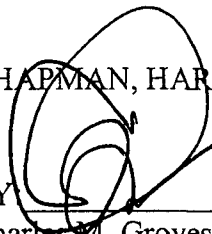
57. That the McKeown Defendants specifically plead the affirmative defense of unclean

hands.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants pray as follows:

- a. For the dismissal of the Plaintiff's Complaint in its entirety;
- b. For an itemized accounting of the debt set forth in the Plaintiff's Complaint;
- c. For damages, actual, punitive, and special, as made be determined by the trier of fact;
- d. For a judicial determination setting aside the foreclosure action;
- e. For costs of suit incurred herein;
- f. For such other and further relief as this Court may deem just and proper.

CHAPMAN, HARTER & GROVES, P.A.

BY 

Charles M. Groves

1012 East Washington Street (29601)

Post Office Box 10224 F.S. (29603)

Greenville, South Carolina

(864) 233-4500

cmgro@chglawsc.com

Attorney for Defendants McKeown Property

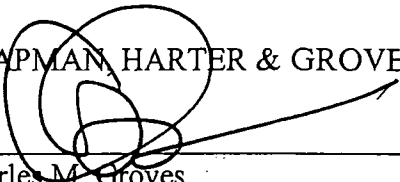
On Lake Robinson, LLC, Bruce A. McKeown

and Rita W. McKeown

DEMAND FOR JURY TRIAL

Defendants demand a trial by jury of all issues to triable in this action.

CHAPMAN, HARTER & GROVES, P.A.

BY: 

Charles M. Groves

1012 East Washington Street (29601)

Post Office Box 10224 F.S. (29603)

Greenville, South Carolina

Attorney for Defendants McKeown Property

On Lake Robinson, LLC, Bruce A. McKeown

and Rita W. McKeown

Greenville, South Carolina

September 13, 2010

2010 OCT 19 PM

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S. C.
PAUL E. BRYANT

Plaintiff,

**PLAINTIFF'S REPLY TO AMENDED
ANSWER AND COUNTERCLAIM OF
McKEOWN PROPERTY ON LAKE
ROBINSON, LLC, BRUCE A.
McKEOWN AND RITA W. MCKEOWN**

Defendants.)

which secure the mortgages giving rise to this action and further denies that it engaged in any improper or wrongful conduct.

3. Answering the allegations of Paragraph 23 of the McKeown Defendants' Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

4. Answering the allegations of Paragraph of 24 of the McKeown Defendants' Amended Answer and Counterclaim, Plaintiff admits that the McKeown Defendants are entitled to an accounting of the debt and will provide an accounting to them.

5. Answering the allegations of Paragraph 25 of the McKeown Defendants' Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

6. The allegations of Paragraphs 26 – 28 of McKeown Defendants' Amended Answer and Counterclaim are denied.

7. Answering the allegations of Paragraph 29 of the McKeown Defendants' Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

8. The allegations of Paragraph 30 of the McKeown Defendants' Amended Answer and Counterclaim are admitted.

9. Answering the allegations of Paragraph 31 of the McKeown Defendants' Amended Answer and Counterclaim, Plaintiff admits that it made a loan to McKeown Property on Lake Robinson, LLC in the Fall of 2005, which was subsequently modified and/or renewed. The remaining allegations of Paragraph 31 are denied for lack of information.

10. The allegations of Paragraph 32 of the McKeown Defendants' Amended Answer and Counterclaim are denied

11. Answering the allegations of Paragraph 33 of the McKeown Defendants' Amended Answer and Counterclaim, Plaintiff denies for lack of information that the McKeown Defendants worked diligently in developing Stillwaters. Plaintiff admits that due to the nature of the loans, the loans were timely paid for a time, but would show that the loans were not timely repaid necessitating the commencement of the instant action. The remaining allegations of Paragraph 33 are denied.

12. Answering the allegations of Paragraph 34 of the McKeown Defendants' Amended Answer and Counterclaim, Plaintiff admits on information and belief that by the Fall of 2008 the Stillwaters subdivision was substantially complete. Plaintiff denies that it made an "additional" loan to the McKeown Defendants in the Fall 2008, but would show that in April 2007 it renewed a then existing loan to the McKeown Defendants (with an increase in the loan amount to \$4,750,000.00); that the April 2007 loan matured in October of 2008 resulting in a renewal of the \$4,750,000.00 loan in the Fall of 2008. Plaintiff further admits that it issued a line of credit to McKeown Property on Lake Robinson, LLC in the amount of \$200,000.00. The remaining allegations of Paragraph 34 are denied.

13. Answering the allegations of Paragraph 35 of the McKeown Defendants' Amended Answer and Counterclaim, Plaintiff is informed and believes that the McKeown Defendants are not solely responsible for the economy of the United States and/or South Carolina. The McKeown Defendants characterization of the economy from late 2008 to the present does not require a response.

14. Answering the allegations of Paragraph 36 of the McKeown Defendants'

Amended Answer and Counterclaim, Plaintiff admits that a portion of Note 1 was set aside as an interest reserve to pay interest until maturity thereof in April 2010. Plaintiff further admits that the amount of the interest reserve was sufficient to make the interest payments due on Note 1 past the date of maturity thereof. Plaintiff denies that it agreed, or was otherwise obligated, to renew Note 1 upon maturity. The remaining allegations of Paragraph 36 are denied.

15. Answering the allegations of Paragraph 37 of the McKeown Defendants' Amended Answer and Counterclaim, Plaintiff admits that Note 1 was extended on October 27, 2009 for period of six months. The remaining allegations of Paragraph 37 are denied.

16. The allegations of Paragraphs 38 – 41 of the McKeown Defendants' Amended Answer and Counterclaim are denied.

17. Answering the allegations of Paragraph 42 of the McKeown Defendants' Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

18. The allegations of Paragraph 43 of the McKeown Defendants' Amended Answer and Counterclaim constitute conclusions of law which does not require a response from Plaintiff. To the extent a response is required, Plaintiff would show that it has at all times acted in good faith and fair dealing, and pursuant to the terms and conditions of the loan documents, with the McKeown Defendants. Any allegation to the contrary is expressly denied.

19. The allegations of Paragraphs 44 and 45 of the McKeown Defendants' Amended Answer and Counterclaim are denied.

20. Answering the allegations of Paragraph 46 of the McKeown Defendants'

Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

21. The allegations of Paragraphs 47 – 50 of the McKeown Defendants Amended Answer and Counterclaim, Plaintiff admits that it owns homes in the Stillwaters subdivision. The remaining allegations of Paragraphs 47-50 of the Amended Answer and Counterclaim are denied.

22. Answering the allegations of Paragraph 51 of the McKeown Defendants' Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

23. The allegations of Paragraph 52 of the McKeown Defendants' Amended Answer and Counterclaim constitute a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies that it engaged in any inappropriate or wrongful conduct.

24. The allegations of Paragraph 53 of the McKeown Defendants' Amended Answer and Counterclaim are denied. Plaintiff expressly denies that it at any time engaged in any conduct or took any actions which "went beyond the scope of mere lender" as alleged therein.

25. The allegations of Paragraph 54 of the McKeown Defendants' Amended Answer and Counterclaim are denied.

26. Answering the allegations of Paragraph 55 of the McKeown Defendants' Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

27. The allegations of Paragraphs 56 and 57 of the McKeown Defendants' Amended Answer and Counterclaim are denied.

**FOR A SECOND DEFENSE
(Rule 12(b)(6), *SCRCP*)**

28. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

29. The McKeown Defendants Amended Answer and Counterclaim, in whole or in part, fails to state facts sufficient to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6), *SCRCP*.

**FOR A THIRD DEFENSE
(Statute of Frauds)**

30. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

31. To the extent the McKeown Defendants Counterclaim is based in whole or in part upon alleged oral agreements or representations of Plaintiff, the same being expressly denied, such claim is barred by the applicable statute of frauds.

**FOR A THIRD DEFENSE
(Comparative Negligence)**

32. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

33. As to the McKeown Defendants' Cause of Action for negligence set forth in Paragraphs 51 – 54 of their Amended Answer and Counterclaim, Plaintiff denies any negligence on its part. In the event it is determined that Plaintiff acted negligently, the same being expressly denied, any injuries or damages sustained by the McKeown Defendants were due to and caused by the negligence, gross negligence, recklessness,

willfulness, and wantonness of the McKeown Defendants, combining, concurring, and contributing with the negligence of Plaintiff, if any, without which contributory negligence of the McKeown Defendants, the McKeown Defendants' alleged damages would not have been incurred or sustained. Should the negligence of the McKeown Defendants be determined to be greater than that of Plaintiff, if any, the McKeown Defendants are entitled to no recovery. Should the negligence of the McKeown Defendants be determined not to be greater than that of Plaintiff, if any, the McKeown Defendants recovery should be reduced by the percentage of the McKeown Defendants' fault.

**FOR A FOURTH DEFENSE
(Estoppel)**

34. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

35. The McKeown Defendants' claims are barred by the equitable doctrine of Estoppel.

**FOR A FIFTH DEFENSE
(Condonation and Ratification)**

36. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

37. Plaintiff expressly denies that it has engaged in any wrongful or improper conduct. The McKeown Defendants were duly and fully informed of all acts engaged in by Plaintiff, and all facts related thereto, and the McKeown Defendants condoned and ratified each and every matter of which it now alleges as a wrong in its Counterclaims.

**FOR A SIXTH DEFENSE
(Failure to Mitigate Damages)**

38. Plaintiff incorporates herein by reference the preceding allegations as if

repeated herein verbatim.

39. The McKeown Defendants failed to mitigate their damages, if any.

**FOR A SEVENTH DEFENSE
(Unclean Hands)**

40. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

41. The McKeown Defendants' claims are barred by the equitable doctrine of Unclean Hands.

**FOR AN EIGHTH DEFENSE
(Consent)**

42. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

43. The McKeown Defendants were duly and fully informed of all acts of Plaintiff, and facts related thereto, and consented to the same.

**FOR AN NINTH DEFENSE
(Waiver)**

44. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

45. The McKeown Defendants, having been duly and fully informed of all acts and decisions of Plaintiff, and having consented to the same, have waived any claim they had, the same being denied.

46. The McKeown Defendants claims are barred by the doctrine of waiver

**FOR A TENTH DEFENSE
(Justification)**

47. Plaintiff incorporates herein by reference the preceding allegations as if

repeated herein verbatim.

48. Plaintiff denies that it was highly involved, or was an active participant, in the construction, management, and/or marketing of the Stillwaters subdivision. Plaintiff further denies that it exerted any undue control over the McKeown Defendants or the Stillwaters subdivision as any action by Plaintiff was limited, consented to by the McKeown Defendants, and necessary for the legitimate purpose of protecting Plaintiff's multi-million dollar loan.

49. Plaintiff hereby pleads the defense of justification as a complete bar to the claims of the McKeown Defendants.

**FOR AN ELEVENTH DEFENSE
(Offset)**

50. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

51. In the event that Plaintiff is found to be liable to the McKeown Defendants, the same being expressly denied, then Plaintiff is entitled to offset any such amount against all amounts for which the McKeown Defendants may be found liable to Plaintiff.

**FOR A TWELFTH DEFENSE
(Constitutional Limitation on Punitive Damages)**

52. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

53. Any award of punitive damages must comport with the restraints placed upon such damages by the United States Constitution and the Constitution of the State of South Carolina.

**FOR A THIRTEENTH DEFENSE
(Non-Jury)**

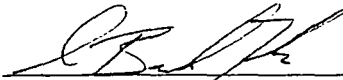
54. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

55. Plaintiff denies that the McKeown Defendants are entitled to trial by jury as this matter involves foreclosure a mortgage on real property and is properly referred to the Master-in-Equity for Greenville County as provided for in the *South Carolina Rules of Civil Procedure*.

WHEREFORE, having fully replied to the Amended Answer and Counterclaim of Defendants McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown, Plaintiff prays as follows:

- (A) That the relief sought in the Complaint be granted,
- (B) That Defendants' Amended Answer and Counterclaim be dismissed with prejudice, and
- (C) For such other and further relief as this Court may deem just and proper.

Greenville, South Carolina
October 18, 2010


S. Brook Fowler, Bar No. 066215
CARTER, SMITH, MERRIAM, ROGERS
& TRAXLER, P.A.
P.O. Box 10828, Greenville, SC 29603
Phone: (864) 242-3566
Fax: (864) 232-1558
E-Mail: brook.fowler@carterlawpa.com
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

2010 OCT 18 PM 3:10

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-23-4223

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS

Greer State Bank,

Plaintiff,

vs.

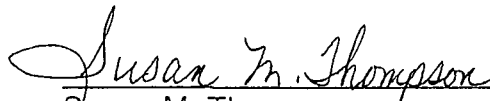
CERTIFICATE OF SERVICE

McKeown Property On Lake Robinson,
LLC, Bruce A. McKeown, Robert M.
McKeown, Cathy J. Lockhart, Rita W.
McKeown and Connie S. Santoro f/k/a
Connie S. McKeown,

Defendants.

I, the undersigned paralegal of the law offices of CARTER, SMITH, MERRIAM, ROGERS & TRAXLER, P.A., attorneys for Plaintiff do hereby certify that on the 18th day of October, 2010, I served Defendant(s) and or their counsel in this action with a copy Plaintiff's Reply to Amended Answer and Counterclaim of McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown by having the same hand-delivered to the following address:

Mr. Charles M. Groves
CHAPMAN HARTER & GROVES, P.A.
1012 East Washington Street
Greenville, South Carolina 29601


Susan M. Thompson
Paralegal to S. Brook Fowler

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2010-CP-23-4223 5 PM 4: 39

Greer State Bank,)
)
Plaintiff,)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. STEPHENSON

vs.)

AMENDED SUMMONS

McKeown Property On Lake)
Robinson, LLC, Bruce A. McKeown,)
Robert M. McKeown, Cathy J.)
Lockhart, Rita W. McKeown and)
Connie S. Santoro f/k/a Connie S.)
McKeown,)
)
Defendants.)

(JURY TRIAL DEMANDED)

TO: THE PLAINTIFF, GREER STATE BANK AND ITS ATTORNEY AND COUNSEL OF
RECORD, S. BROOK FOWLER:

YOUR ARE HEREBY SUMMONED AND REQUIRED to reply to the Amended
Counterclaim in this action, a copy of which is herewith served upon you, and to serve a copy of
your Reply to the said Amended Counterclaim upon the subscriber at his office located at 1012
East Washington Street, Greenville, South Carolina 29601 (mailing address: Post Office Box
10224 F.S., Greenville, South Carolina 29603), within fifteen (15) days from the date of such
service, exclusive of the date of service; and if you fail to reply to said Amended Counterclaim
within the time aforesaid, judgment by default will be rendered against you for the relief
demanded in the Amended Counterclaim.

CHAPMAN, HARTER & GROVES, P.A.

BY:

Charles M. Groves
1012 East Washington Street (29601)
Post Office Box 10224 F.S. (29603)
Greenville, South Carolina
(864) 233-4500

Greenville, South Carolina
September 13, 2010

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2010-CP-23-4223

Greer State Bank,)

Plaintiff,)

vs.)

McKeown Property On Lake)

Robinson, LLC, Bruce A. McKeown,))

Robert M. McKeown, Cathy J.)

Lockhart, Rita W. McKeown and)

Connie S. Santoro f/k/a Connie S.)

McKeown,)

Defendants.)

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

SECOND AMENDED ANSWER AND
COUNTERCLAIM OF DEFENDANTS

(JURY TRIAL DEMANDED)

The Defendants, McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown, answering the Complaint of the Plaintiff would show this Honorable Court as follows:

FOR A FIRST DEFENSE
(General Denial)

1. That all allegations of this Complaint not hereinafter admitted, modified or explained are denied with strict proof demanded thereof.

2. That the allegations of Paragraphs 1 and 2 are admitted.

3. That so much of Paragraph 3 is admitted as alleges that the Defendant Rita W. McKeown is a citizen and resident of the State of Georgia. That the remaining allegations of Paragraph 3 are denied.

4. That answering the allegations of Paragraph 4 the Defendants, McKeown Property On Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown (hereinafter "McKeown

Defendants”) would admit any matter that are matters of public record. That all remaining allegations are denied.

5. That the allegations of Paragraph 5 and 6 are admitted.

6. That answering Paragraph 7, the McKeown Defendants repeat those responses to all previous paragraphs the same as repeated herein verbatim.

7. That answering the allegations of Paragraph 8, the McKeown Defendants admit the execution of Note 1 by Defendant McKeown Property on Lake Robinson, LLC and described therein, the terms of which speak for themselves.

8. That as to the allegations of Paragraph 9, the McKeown Defendants admit that a copy of Note 1 as described in Paragraph 8 of Plaintiff’s Complaint is attached to said Complaint.

9. That answering the allegations of Paragraph 10, the McKeown Defendants admit the execution of Note 2 by McKeown Property on Lake Robinson, LLC and described therein, the terms of which speak for themselves. Further, the McKeown Defendants admit that an Extension Agreement was executed by the Plaintiff, the terms of which speak for themselves.

10. That as to the allegations of Paragraph 11, the McKeown Defendants admit that a copy of Note 2 and the Extension Agreement as described in Paragraph 10 of Plaintiff’s Complaint are attached to said Complaint.

11. That answering the allegations of Paragraph 12, the McKeown Defendants admit the execution of the mortgage described therein, the terms of which speak for themselves.

12. That as to the allegations of Paragraph 13, the McKeown Defendants admit that a copy of the Mortgage as described in Paragraph 12 of Plaintiff’s Complaint is attached to said Complaint.

13. That answering the allegations of Paragraph 14 the McKeown Defendants would admit only so much of said Paragraph as are matters of public record.

14. That answering the allegations of Paragraphs 15, 16, 17, 18, 19, 20 and 21, the McKeown Defendants crave reference to the Notes and Mortgage for the terms of said instruments. That the remaining allegations of said Paragraphs are denied.

15. That answering Paragraph 22, the McKeown Defendants are not certain if all such required notices have been given and, therefore, same is denied with strict proof demanded thereof.

16. That the allegations of Paragraph 23 are denied; that Defendants McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown allege the Plaintiff failed to properly fund the Notes which the mortgage secures; that the McKeown Defendants deny that Defendants McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown are in default.

17. That the allegations of Paragraph 24 are denied.

18. That answering Paragraph 25, the McKeown Defendants are uncertain if they may avail themselves of any government statute or program, and, therefore, same is denied with strict proof demanded thereof.

19. That answering Paragraph 26, the McKeown Defendants repeat those responses to all previous paragraphs the same as repeated herein verbatim.

20. That answering the allegations of Paragraph 27, the Defendants Bruce A. McKeown and Rita W. McKeown admit the execution of the Personal Guaranties described therein, the terms of which speak for themselves. All other allegations of said Paragraph are denied.

21. That the McKeown Defendants would admit so much of Paragraph 28 as alleges that a copy of the guaranties described in Paragraph of 27 of Plaintiff's Complaint are attached thereto.

22. That the allegations of Paragraph 29 are denied.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM
(Demand For An Accounting)

23. That the allegations of Paragraph 1-21 above, not inconsistent herewith, are realleged as if again fully set forth in their entirety.

24. In further answering the Plaintiff's Complaint and by way of Counterclaim, the Defendants demand an itemized accounting of the debt set forth in the Complaint.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract)

25. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as repeated verbatim.

26. That beginning in late 2004 and throughout 2005 Defendant Bruce McKeown began negotiating with Plaintiff to provide financing for a real estate subdivision to be located in Greenville County, South Carolina, and known as "Stillwaters".

27. That the "Stillwaters" project began taking shape and by the fall of 2005, the Plaintiff made the first of several loans to the McKeown Defendants for the ultimate development of this subdivision.

28. That all parties contemplated at the beginning of the "Stillwaters" project that the Plaintiff would be the sole lender to provide funding of this subdivision.

29. That the McKeown Defendants with each new loan obtained from Plaintiff,

continued to work diligently in not only developing "Stillwaters" but in seeing that the repayment of these loans were timely made.

30. That by the fall of 2008, the subdivision was substantially complete, and the Plaintiff, who had already funded several millions of dollars in loans for the "Stillwaters" project, once again, made the McKeown Defendants an additional loan in the amount of \$4,750,000.00 and \$200,000.00. (Identified as Note 1 and Note 2 in Plaintiff's Complaint, respectively.) These loans were never properly or fully funded by the Plaintiff.

31. That unfortunately and through no fault of the McKeown Defendants, the economy of the United States, and certainly South Carolina, in late 2008 and continuing until the present time began experiencing extreme hardships resulting arguably in the worst economic times since the 1930s and The Great Depression.

32. That the Plaintiff, in part because of the economic uncertainty, required that \$500,000.00 of this Note 1 be set aside and utilized for interest accruing on the Note. The interest set aside in Note 1 of \$500,000.00 would be sufficient to carry this loan well past its maturity date even if none of the "Stillwaters" lots sold during such period of time.

33. That although this loan (Note 1) was extended on October 27, 2009, for six months, all changed in early 2010 relative to the Plaintiff's relationship with the McKeown Defendants.

34. That contrary to the terms of Note 1 and Note 2 and the extension thereof, the Plaintiff failed to properly fund the Notes and perform in accordance with agreement of the parties.

35. That although the bank had at least a two and one-half to three million dollar equity cushion in the "Stillwaters" project, and had given the Defendant Bruce McKeown oral

assurances that it would continue funding this project through the fall of 2010, it abruptly began in the winter of 2009 and spring of 2010, refraining from properly funding the loans in such a way that harmed the McKeown Defendants.

36. That in breach of its contract with the McKeown Defendants it failed to deal with them in good faith and fair dealings while administering the loans, and, in fact for no explainable reason other than wanting this loan to go into default, Plaintiff failed to fund it.

37. That as a result of Plaintiff's breach of contract, the McKeown Defendants have been damaged in an amount to be determined by the trier of fact.

FOR A FOURTH DEFENSE

(Breach of Implied Covenant of Good Faith and Fair Dealing)

38. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

39. That all of the agreements between Plaintiff and the McKeown Defendants, whether oral or written, contained an implied covenant of good faith and fair dealing, which provided that each party would deal fairly with the other, and neither party would do anything to deprive the other party of the agreements.

40. That Plaintiff acting through its officers and agents breached the implied covenant of fair dealings by its conduct, including but not limited to the following:

- [a] deliberately, unjustifiably and unreasonably failing to properly fund the Promissory Notes which are the subject of Plaintiff's foreclosure action;
- [b] deliberately, unjustifiably and unreasonably refusing to inform the McKeown Defendants of potential purchasers of the "Stillwaters" Subdivision;
- [c] deliberately, unjustifiably and unreasonably marketing and selling homes

in the "Stillwaters" Subdivision owned by Plaintiff at a price point Plaintiff absolutely knew would prevent the McKeown Defendants from competing with and realizing sales at a critical time in the life of the subdivision;

- [d] in instituting a foreclosure action on loans that the Plaintiff had not fully funded, thus, stigmatizing "Stillwaters" as a failed development;
- [e] in failing to continue funding this four year old project beyond April 2010, when no loan had ever been in default, the McKeown Defendants had sufficient interest set aside in Note 1 to fund the project beyond said date, and Plaintiff had given the Defendant Bruce McKeown assurance that the Plaintiff would fund the loans beyond April 2010;
- [f] otherwise improperly taking advantage of the McKeown Defendants.

41. That the Defendants specifically plead the affirmative defense of implied covenant of good faith and fair dealings.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Fiduciary Duty)

42 That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

43. That the Plaintiff with each passing year of the "Stillwaters" project began exercising more and more control over same such that by early 2009 Plaintiff for all intents and purposes was exercising excessive, if not exclusive, control over all decisions of the "Stillwaters" project.

44. That by 2009, the Plaintiff was in a joint venture with the McKeown Defendants, in that Plaintiff owned several homes in the subdivision which they exclusively controlled the pricing of which in turn totally dictated whether the McKeown Defendants would be able to sell and develop any lots.

45. That Plaintiff, acting through its agents, breached its fiduciary duty by their conduct, including, but not limited to:

- [a] failing to properly fund the loans it made to the McKeown Defendants;
- [b] failing to market all of the lots of "Stillwaters" in a way and manner that would be advantageous to the McKeown Defendants.
- [c] failing to continue funding the "Stillwaters" project, which it had orally assured the Defendant Bruce McKeown it would do.
- [d] failing to advise the McKeown Defendants of potential purchasers of the "Stillwaters" Subdivision.
- [e] failing to act in the best interest of the McKeown Defendants.
- [f] otherwise improperly obtaining benefits at the expense of the McKeown Defendants and improperly taking advantage of the McKeown's trust in Plaintiff.

46. That as a proximate result of Plaintiff's breach of fiduciary duty, the McKeown Defendants have been damaged, both actual and punitive, in an amount to be determined by the trier of fact.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligence)

47. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

48. That the Plaintiff had a duty to use an appropriate level of skill, prudence and diligence in discharging their duties, including administering disbursements relative to loans made to the McKeown Defendants.

49. That Plaintiff was required to use due care in the marketing of the "Stillwaters" project when its conduct as herein alleged went beyond the scope of mere lender.

50. That Plaintiff failed to exercise such care and as a proximate result thereof Plaintiff's wrongdoing, the McKeown Defendants have been damaged, both actual and punitive, in an amount to be determined by the trier of fact.

FOR AN SEVENTH DEFENSE
(Unclean Hands)

51. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

52. That because of the conduct on the part of the Plaintiff as is set forth hereinabove, the McKeown Defendants allege Plaintiff has unclean hands and, therefore, may not seek any equitable or legal relief from this Court.

53. That the McKeown Defendants specifically plead the affirmative defense of unclean hands.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Conversion)

54. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

55. That during the first quarter of 2010, the Defendant McKeown, LLC made certain payments on its Note 1 with Plaintiff. These payments included a payment made on January 28, 2010, in the amount of \$22,732.88 and a payment made on March 2, 2010, in the amount of \$22,987.97.

56. That the Plaintiff provided the Defendants with receipts by mail evidencing such payments and reflecting that such payments had been credited to the Defendants' account.

57. That under the terms of the promissory note these payment entries were to be deemed correct, accepted by and binding on the parties unless the Plaintiff received a written statement of exception from the borrowers within ten days after such statement was furnished. The Defendants believe the statements were correct and proper and so no exception was ever taken.

58. That at no time before the filing of this lawsuit did the Plaintiff ever inform the Defendants that these payments made by the Defendants were no longer credited to its account.

59. That the Plaintiff surreptitiously, sometime during March or April of 2010, removed the payment credits for the January 2010 and February 2010 payments made by the Defendants.

60. That the payments that were made on January 28, 2010 and March 2, 2010, were with funds which belonged to the Defendants and Plaintiff had no legal right whatsoever to remove or reverse such payments.

61. That such actions taken by the bank make it appear as though this loan was in a delinquent status with the last payment having been made on December 30, 2009.

62. That the acts described herein on the part of the Plaintiff constitute a wrongful and illegal misuse of Defendants' funds and amounted to a misappropriation of the same for the Plaintiff's own use and benefit.

63. That the Plaintiff's conversion of the Defendants' funds was completely without the Defendants' permission or knowledge and was done intentionally, recklessly and with a conscious indifference of the Defendants' rights.

64. That these wrongful actions on the part of the Plaintiff constitute a willful and intentional taking of Defendants' monies and Defendants allege they are entitled to compensatory

damages, both actual and special, as well as punitive damages.

FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract Accompanied by a Fraudulent Act)

65. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

66. As is set forth hereinabove, the Plaintiff and Defendants entered into a loan agreement whereby the Defendant LLC pledged real estate to secure loans made by the Plaintiff to it.

67. Upon information and belief, during the first four months of 2010, the Plaintiff failed to properly fund Note 1, and, thereby breached the said contract and the implied covenant of good faith and fair dealings contained therein.

68. At or near the time of the breach, the Plaintiff engaged in fraudulent conduct toward the Defendant and the breach was committed with fraudulent intent and was accompanied by fraudulent acts in that the bank engineered a default of Note 1 so that it could stop any further funding required under the agreement, in part, by misappropriating over \$40,000 of Defendants' funds which resulted in the loan status going from being current to being delinquent. The Plaintiff failed to ever inform the Defendants of its actions, but, to the contrary, sent the Defendants receipts indicating loan payments were being timely made, that such fraudulent conduct was separate and apart from the breach.

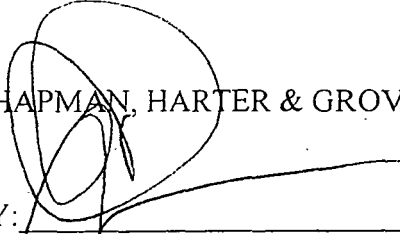
69. The Plaintiff's conduct as described herein accompanied the breach of contract and entitles the Defendants to recover compensatory damages, both actual and special, from the Plaintiff in an amount to be proven at the trial.

70. The Defendants are also entitled to recover punitive damages from the Plaintiff in an amount to be proven at trial based on the Plaintiff's intentional and deceptive conduct.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants pray as follows:

- a. For the dismissal of the Plaintiff's Complaint in its entirety;
- b. For an itemized accounting of the debt set forth in the Plaintiff's Complaint;
- c. For damages, actual, punitive, and special, as made be determined by the trier of fact;
- d. For costs of suit incurred herein;
- e. For such other and further relief as this Court may deem just and proper.

CHAPMAN, HARTER & GROVES, P.A.

BY: 

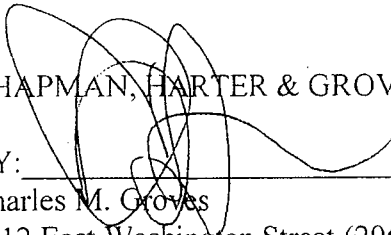
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On Lake Robinson, LLC, Bruce A. McKeown
and Rita W. McKeown

Greenville, South Carolina
July 1, 2011

DEMAND FOR JURY TRIAL

Defendants demand a trial by jury of all issues to triable in this action.

CHAPMAN, HARTER & GROVES, P.A.

BY: 

Charles M. Groves

1012 East Washington Street (29601)

Post Office Box 10224 F.S. (29603)

Greenville, South Carolina

Attorney for Defendants McKeown Property
On Lake Robinson, LLC, Bruce A. McKeown
and Rita W. McKeown

Greenville, South Carolina
July 1, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-23-4223
2011 AUG 12 P 3:12

Greer State Bank,)
) FILED-CLERK OF COURT
) GREENVILLE CO. S.C.
) PLAINTIFF
) vs.)
) PLAINTIFF'S REPLY TO SECOND
) AMENDED ANSWER AND
) COUNTERCLAIM OF
) McKEOWN PROPERTY ON LAKE
) ROBINSON, LLC, BRUCE A.
) McKEOWN AND RITA W. McKEOWN
) McKeown Property On Lake Robinson,)
) LLC, Bruce A. McKeown, Robert M.)
) McKeown, Cathy J. Lockhart, Rita W.)
) McKeown and Connie S. Santoro f/k/a)
) Connie S. McKeown,)
) Defendants.)
_____)

Plaintiff, Greer State Bank, by and through its undersigned attorneys, and by way of Reply to the Second Amended Answer and Counterclaim of Defendants McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown (hereinafter referred to as the "McKeown Defendants"), would show unto this Court as follows:

1. Each and every allegation of the McKeown Defendants' Second Amended Answer and Counterclaim not admitted, modified or explained is expressly denied and strict proof demanded thereof.

2. The allegations of Paragraphs 1 – 22 of the McKeown Defendants' Second Amended Answer and Counterclaim constitute the McKeown Defendants' Answer to the Complaint and, therefore, no response is required. To the extent a response is necessary or desirable, Plaintiff denies any allegation of Paragraphs 1 – 22

of the Second Amended Answer and Counterclaim that is in addition to or contrary to the allegations of Plaintiff's Complaint. Specifically, Plaintiff denies that it failed to properly fund the Notes which secure the mortgages giving rise to this action and further denies that it engaged in any improper or wrongful conduct.

3. Answering the allegations of Paragraph 23 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

4. Answering the allegations of Paragraph of 24 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff admits that the McKeown Defendants are entitled to an accounting of the debt and has provided an accounting to them.

5. Answering the allegations of Paragraph 25 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

6. The allegations of Paragraph 26 of the McKeown Defendants' Second Amended Answer and Counterclaim are admitted.

7. Answering the allegations of Paragraph 27 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff admits that it made a loan to McKeown Property on Lake Robinson, LLC in the Fall of 2005, which was subsequently modified and/or renewed. The remaining allegations of Paragraph 27 are denied for lack of information.

8. The allegations of Paragraph 28 of the McKeown Defendants' Second Amended Answer and Counterclaim are denied

9. Answering the allegations of Paragraph 29 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff denies for lack of information that the McKeown Defendants worked diligently in developing Stillwaters. Plaintiff admits that due to the nature of the loans, the loans were timely paid for a time, but would show that the loans were not timely repaid necessitating the commencement of the instant action. The remaining allegations of Paragraph 29 are denied.

10. Answering the allegations of Paragraph 30 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff admits on information and belief that by the Fall of 2008 the Stillwaters subdivision was substantially complete. Plaintiff denies that it made an "additional" loan to the McKeown Defendants in the Fall 2008, but would show that in April 2007 it renewed a then existing loan to the McKeown Defendants (with an increase in the loan amount to \$4,750,000.00); that the April 2007 loan matured in October of 2008 resulting in a renewal of the \$4,750,000.00 loan in the Fall of 2008. Plaintiff further admits that it issued a line of credit to McKeown Property on Lake Robinson, LLC in the amount of \$200,000.00. The remaining allegations of Paragraph 30 are denied.

11. Answering the allegations of Paragraph 31 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff is informed and believes that the McKeown Defendants are not solely responsible for the economy of the United States and/or South Carolina. The McKeown Defendants characterization of the economy from late 2008 to the present does not require a response.

12. Answering the allegations of Paragraph 32 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff admits that a portion of Note 1

was set aside as an interest reserve to pay interest until maturity thereof in April 2010. Plaintiff further admits that the amount of the interest reserve was sufficient to make the interest payments due on Note 1 past the date of maturity thereof. Plaintiff denies that it agreed, or was otherwise obligated, to renew Note 1 upon maturity. The remaining allegations of Paragraph 32 are denied.

13. Answering the allegations of Paragraph 33 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff admits that Note 1 was extended on October 27, 2009 for period of six months. The remaining allegations of Paragraph 33 are denied.

14. The allegations of Paragraphs 34 – 37 of the McKeown Defendants' Second Amended Answer and Counterclaim are denied.

15. Answering the allegations of Paragraph 38 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

16. The allegations of Paragraph 39 of the McKeown Defendants' Second Amended Answer and Counterclaim constitute conclusions of law which does not require a response from Plaintiff. To the extent a response is required, Plaintiff would show that it has at all times acted in good faith and fair dealing, and pursuant to the terms and conditions of the loan documents, with the McKeown Defendants. Any allegation to the contrary is expressly denied.

17. The allegations of Paragraphs 40 and 41 of the McKeown Defendants' Second Amended Answer and Counterclaim are denied.

18. Answering the allegations of Paragraph 42 of the McKeown Defendants'

Second Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

19. The allegations of Paragraphs 43 – 46 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff admits that it owned homes in the Stillwaters subdivision. The remaining allegations of Paragraphs 43-46 of the Second Amended Answer and Counterclaim are denied.

20. Answering the allegations of Paragraph 47 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

21. The allegations of Paragraph 48 of the McKeown Defendants' Second Amended Answer and Counterclaim constitute a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies that it engaged in any inappropriate or wrongful conduct.

22. The allegations of Paragraph 49 of the McKeown Defendants' Second Amended Answer and Counterclaim are denied. Plaintiff expressly denies that it at any time engaged in any conduct or took any actions which "went beyond the scope of mere lender" as alleged therein.

23. The allegations of Paragraph 50 of the McKeown Defendants' Second Amended Answer and Counterclaim are denied.

24. Answering the allegations of Paragraph 51 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

25. The allegations of Paragraphs 52 and 53 of the McKeown Defendants'

Second Amended Answer and Counterclaim are denied.

26. Answering the allegations of Paragraph 54 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

27. The allegations of Paragraph 55 are denied.

28. The allegations of Paragraph 56 are denied except that the Plaintiff alleges that it sent statements to the Defendant McKeown Property on Lake Robinson, LLC in early 2010 reflecting that the loan under Note 1 had utilized the loan to move the accrued interest that the Defendant McKeown Property on Lake Robinson, LLC had not paid to the principal amount. The balance due by the Defendants did not change.

29. The allegations of Paragraph 57 are denied. The terms of the promissory note speak for themselves.

30. The allegations of Paragraph 58-64 are denied.

31. Answering the allegations of Paragraph 65 of the McKeown Defendants' Second Amended Answer and Counterclaim, Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

32. The allegations of Paragraph 66 are admitted only to the extent that they allege that the Plaintiff and the Defendant McKeown Property on Lake Robinson, LLC entered into a loan agreement whereby the Defendant McKeown Property on Lake Robinson, LLC pledged real estate to secure loans made by the Plaintiff to it. The remaining Defendants on the Second Amended Answer and Counterclaim were mere guarantors of such loan agreement and the other loan agreement at issue in this case and did not pledge real estate.

33. The allegations of Paragraphs 67-70 are denied.

**FOR A SECOND DEFENSE
(Rule 12(b)(6), *SCRCP*)**

34. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

35. The McKeown Defendants Second Amended Answer and Counterclaim, in whole or in part, fails to state facts sufficient to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6), *SCRCP*.

**FOR A THIRD DEFENSE
(Statute of Frauds)**

36. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

37. To the extent the McKeown Defendants' Counterclaims are based in whole or in part upon alleged oral agreements or representations of Plaintiff, the same being expressly denied, such claims are barred by the applicable statute of frauds.

**FOR A THIRD DEFENSE
(Comparative Negligence)**

38. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

39. As to the McKeown Defendants' Cause of Action for negligence set forth in Paragraphs 47-50 of their Second Amended Answer and Counterclaim, Plaintiff denies any negligence on its part. In the event it is determined that Plaintiff acted negligently, the same being expressly denied, any injuries or damages sustained by the McKeown Defendants were due to and caused by the negligence, gross negligence,

recklessness, willfulness, and wantonness of the McKeown Defendants, combining, concurring, and contributing with the negligence of Plaintiff, if any, without which contributory negligence of the McKeown Defendants, the McKeown Defendants' alleged damages would not have been incurred or sustained. Should the negligence of the McKeown Defendants be determined to be greater than that of Plaintiff, if any, the McKeown Defendants are entitled to no recovery. Should the negligence of the McKeown Defendants be determined not to be greater than that of Plaintiff, if any, the McKeown Defendants recovery should be reduced by the percentage of the McKeown Defendants' fault.

**FOR A FOURTH DEFENSE
(Estoppel)**

40. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

41. The McKeown Defendants' claims are barred by the equitable doctrine of Estoppel.

**FOR A FIFTH DEFENSE
(Condonation and Ratification)**

42. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

43. Plaintiff expressly denies that it has engaged in any wrongful or improper conduct. The McKeown Defendants were duly and fully informed of all acts engaged in by Plaintiff, and all facts related thereto, and the McKeown Defendants condoned and ratified each and every matter of which it now alleges as a wrong in its Counterclaims.

FOR A SIXTH DEFENSE
(Failure to Mitigate Damages)

44. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

45. The McKeown Defendants failed to mitigate their damages, if any.

FOR A SEVENTH DEFENSE
(Unclean Hands)

46. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

47. The McKeown Defendants' claims are barred by the equitable doctrine of Unclean Hands.

FOR AN EIGHTH DEFENSE
(Consent)

48. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

49. The McKeown Defendants were duly and fully informed of all acts of Plaintiff, and facts related thereto, and consented to the same.

FOR AN NINTH DEFENSE
(Waiver)

50. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

51. The McKeown Defendants, having been duly and fully informed of all acts and decisions of Plaintiff, and having consented to the same, have waived any claim they had, the same being denied.

52. The McKeown Defendants claims are barred by the doctrine of waiver

**FOR A TENTH DEFENSE
(Justification)**

53. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

54. Plaintiff denies that it was highly involved, or was an active participant, in the construction, management, and/or marketing of the Stillwaters subdivision. Plaintiff further denies that it exerted any undue control over the McKeown Defendants or the Stillwaters subdivision as any action by Plaintiff was limited, consented to by the McKeown Defendants, and necessary for the legitimate purpose of protecting Plaintiff's multi-million dollar loan.

55. Plaintiff hereby pleads the defense of justification as a complete bar to the claims of the McKeown Defendants.

**FOR AN ELEVENTH DEFENSE
(Offset)**

56. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

57. In the event that Plaintiff is found to be liable to the McKeown Defendants, the same being expressly denied, then Plaintiff is entitled to offset any such amount against all amounts for which the McKeown Defendants may be found liable to Plaintiff.

**FOR A TWELFTH DEFENSE
(Constitutional Limitation on Punitive Damages)**

58. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

59. Any award of punitive damages must comport with the restraints placed

upon such damages by the United States Constitution and the Constitution of the State of South Carolina.

**FOR A THIRTEENTH DEFENSE
(Non-Jury)**

60. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

61. Plaintiff denies that the McKeown Defendants are entitled to trial by jury as this matter involves foreclosure a mortgage on real property and is properly referred to the Master-in-Equity for Greenville County as provided for in the *South Carolina Rules of Civil Procedure*. Further the Defendants McKeown Property on Lake Robinson, LLC and Bruce A. McKeown expressly contracted with the Plaintiff that each party waived the right to a trial by jury. Therefore, all claims and counterclaims of the parties are to be determined by a nonjury trial.

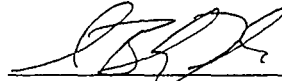
**FOR A FOURTEENTH DEFENSE
(Standing)**

62. Plaintiff incorporates herein by reference the preceding allegations as if repeated herein verbatim.

63. The Defendants generically refer to themselves as "Defendants" in their various Counterclaims. While the Plaintiff denies any liability to any Defendants in this matter in any respect, nonetheless, it affirmatively pleads lack of standing in that the individual Defendants do not have standing to assert such claims.

WHEREFORE, having fully replied to the Second Amended Answer and Counterclaim of Defendants McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown, Plaintiff prays as follows:

- (A) That the relief sought in the Complaint be granted,
- (B) That Defendants' Second Amended Answer and Counterclaim be dismissed with prejudice, and
- (C) For such other and further relief as this Court may deem just and proper.



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Greenville, South Carolina
August 12, 2011

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-23-4223

Greer State Bank,

Plaintiff,

vs.

McKeown Property On Lake Robinson,
LLC, Bruce A. McKeown, Robert M.
McKeown, Cathy J. Lockhart, Rita W.
McKeown and Connie S. Santoro f/k/a
Connie S. McKeown,

Defendants.

**MOTION FOR ORDER OF REFERENCE
AND
ORDER OF REFERENCE**

*Save for use
at hearing.*

*Hearing continued indefinitely
per Judge Stilwell 10/4/10*

It appearing that pursuant to Rule 53(b) of the *South Carolina Rules of Civil Procedure*, that the herein action is for foreclosure of Plaintiff's Mortgage lien and is an appropriate action to be referred to Charles B. Simmons, Jr., Master-in-Equity for Greenville County, South Carolina, with authority to enter a final judgment in the case.

NOW, upon Motion of S. Brook Fowler, Attorney for Plaintiff,

IT IS HEREBY ORDERED that this action is referred to the Honorable Charles B. Simmons, Jr., as Master-in-Equity to take testimony and to direct entry of final judgment in this action under Rule 53(b), *SCRCP*, and all matters arising from or reasonably related to such action. The Master-in-Equity shall retain jurisdiction to perform all necessary acts incident to this foreclosure action including issuance of a writ of assistance or issuance of any rule to show cause including but limited to any rule to show cause why a party should not be bound by the judgment of foreclosure. Further the Master-in-Equity shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the *South Carolina Rules of Civil*

Procedure, including but not limited to Rule 60(b). Pursuant to Rule 53(b), *SCRCP*, any appeal from the final judgment by the Master-in-Equity shall be directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

The hearing shall be held in the Office of the Honorable Charles B. Simmons, Jr., Master-in-Equity for Greenville County located at the Greenville County Courthouse, 305 East North Street, Suite 313, Greenville, South Carolina 29601.

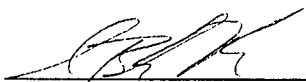
The final report by the Master in Equity shall be filed with the Clerk of Court for Greenville County not later than sixty (60) days after the date of the hearing.

Paul B. Wickensimer
Greenville County Clerk of Court

Greenville, South Carolina

_____, 2010

I SO MOVE:



S. Brook Fowler (Bar No. 66215)
CARTER, SMITH, MERRIAM, ROGERS
& TRAXLER, P.A.
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
JUL - 5 P 3: 30 CASE NO.: 2010-CP-23-4223

Greer State Bank,)

FILED-CLERK OF COURT
(Plaintiff) E.D. S.C.
PAUL B. WICKHAM

**PLAINTIFF'S MOTION FOR TRIAL
BY THE COURT AND TO TRANSFER
MATTER TO NON-JURY DOCKET**

v.)

McKeown Property On Lake)
Robinson, LLC, Bruce A. McKeown,)
Robert M. McKeown, Cathy J.)
Lockhart, Rita W. McKeown and)
Connie S. Santoro f/k/a Connie S.)
McKeown,)

Defendants.)

**TO: DEFENDANTS McKEOWN PROPERTY ON LAKE ROBINSON, LLC, BRUCE
A. MCKEOWN AND RITA W. MCKEOWN; AND CHARLES M. GROVES,
ATTORNEY FOR DEFENDANTS**

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through its undersigned attorneys, will move before the Honorable D. Garrison Hill, on Friday, July 22, 2011 at 10:00 A.M. at the Greenville County Courthouse, Greenville, S.C., pursuant to Rule 39(a), SCRPC, for an Order designating this matter to be tried by the Court, without jury, insofar as Defendants contractually waived any right they may have had to a trial by jury and, therefore, such right to trial by jury does not exist in this action.

Plaintiff commenced this action seeking the foreclosure of its Mortgage, encumbering property owned by McKeown Property of Lake Robinson, LLC (the "LLC"), commonly referred to as the Stillwaters Subdivision. A copy of the Bank's Mortgage is attached as Exhibit 1 (Deposition of Bruce McKeown, v.l, pp. 191-195 and p. 198, authentication, Exhibit 6).

The Mortgage secures a Commercial Promissory Note from the LLC to the Bank, dated October 28, 2008. Pursuant to the terms of the Commercial Promissory Note, the

LLC expressly waived its right to trial by jury on all matters related thereto, including the counterclaims and defenses raised in Defendants' pleadings.

WAIVER OF JURY TRIAL. All parties to this Note hereby waive, to the fullest extent permitted by law, any right to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship established between them in this Note or any other instrument, document, or agreement executed or delivered in connection herewith or the transaction related hereto. (Emphasis in original)

A copy of the aforementioned Commercial Promissory Note is attached hereto as Exhibit 2 (Deposition of Bruce McKeown, v.I, pp. 191-195 and p. 198, authentication, Exhibit 6).

The Commercial Promissory Note was guaranteed by Bruce A. McKeown pursuant to a Commercial Loan Guaranty, dated October 28, 2008. The Commercial Loan Guaranty contains an express waiver of Bruce McKeown's right to trial by jury identical to that quoted in the preceding paragraph. A copy of the Commercial Loan Guaranty is attached as Exhibit 3 (Deposition of Bruce McKeown, v.I, pp. 191-195 and p. 198, authentication, Exhibit 6).

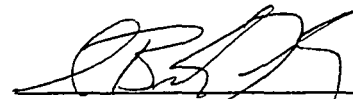
In addition to securing payment of the Commercial Promissory Note, the Mortgage attached hereto as Exhibit A also secures payment of a Commercial Line of Credit, dated April 24, 2008. The Commercial Line of Credit contains an express waiver of the LLC's right to trial by jury identical to that quoted above. A copy of the Commercial Line of Credit is attached as Exhibit 4 (Deposition of Bruce McKeown, v.I, pp. 191-195 and p. 198, authentication, Exhibit 6).

The aforementioned Commercial Line of Credit (Exhibit 4) was further secured by the Commercial Loan Guaranty of Bruce A. McKeown. The Commercial Loan Guaranty contains an express waiver of any right to trial by jury identical to that quoted

hereinabove. A complete and accurate copy of the Commercial Loan Guaranty of Bruce A. McKeown is attached as Exhibit 5 (Deposition of Bruce McKeown, v.l, pp. 191-195 and p. 198, authentication, Exhibit 6).

Having contractually waived their right to trial by jury, Plaintiff is entitled to an Order of this Court ordering the matter be tried by the Court, without a jury, and transferring the matter from the jury trial docket to the non-jury trial docket. See The Beach Company v. Twillman, Ltd., 351 S.C. 56, 566 S.E.2d. 863 (Ct. App. 2002)("A party may waive the right to a jury trial by contract.")

On a related matter, Plaintiff requests that its Motion for Order of Reference, filed and served in September 2010, be heard simultaneously herewith.



S. Brook Fowler (S.C. Bar #66215)
Thomas W. Traxler (S.C. Bar #5624)
CARTER, SMITH, MERRIAM, ROGERS &
TRAXLER, P.A.
P.O. Box 10828, Greenville, SC 29603
Phone: (864) 242-3566
Fax: (864) 232-1558
E-mail: brook.fowler@carterlawpa.com
Attorney for Plaintiff

Greenville, South Carolina
July 5, 2011

The undersigned affirms that prior to filing this motion that he communicated with opposing counsel and has attempted in good faith to resolve the matter contained in the motion but has been unable to do so.



S. Brook Fowler

W5A



2007035799 MTC
9 PGS
Book: MO 4758 Page: 1857-1865

April 12, 2007 12:39:00

Rec: \$15.00 Cnty Tax: \$0.00 State Tax: \$0.00

This document was prepared by (name, address, phone):

GREER STATE BANK

P.O. BOX 1029

GREER, SC 29650-1029

FILED IN GREENVILLE COUNTY, SC

100882

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. DATE AND PARTIES. The date of this Mortgage is Apr 12, 2007 and the parties and their addresses are as follows:

MORTGAGOR:

MCKEOWN PROPERTY ON LAKE ROBINSON, LLC, a South Carolina limited liability company
928 GROCE MEADOW ROAD
TAYLORS, SC 29687

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors.

LENDER:

GREER STATE BANK
1111 WEST POINSETT STREET GREER, SC 29650

2. MORTGAGE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

SEE ATTACHED EXHIBIT A

The property is located in Greenville at APPRX 49.7 AC
(County)

GROCE MEADOW RD & LAKE ROBINSON, GREER, South Carolina 29650
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property; however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT
(NOT FOR FIMA, FHLAC, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES)

Expiry: 10/10/14, 2001 Bankers Systems, Inc., St. Cloud, MN Form AGCO-RED SC 1/21/2003

UMP-C596(SC) (0307).01

VMP Mortgage Solutions (800)621-7201

[Signature] (Page 1 of 8)

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 4,750,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt): *(e.g., borrower's name, note amount, interest rate, maturity date)*: **NOTE DATED APRIL 12, 2007 IN THE NAME OF MCKEOWN PROPERTY ON LAKE ROBINSON, LLC IN THE AMT OF \$4,750,000.00. THIS MORTGAGE HAS A MATURITY DATE OF APRIL 12, 2027.**

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
- C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

- 5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
- 6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
- 7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
- 8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
 - A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
- 9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest in all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

 (page 2 of 3)

10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. **CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. **DEFAULT.** Mortgagor will be in default if any of the following occur:

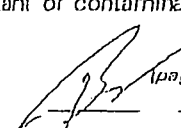
- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

19. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which

 (page 4 of 11)

has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

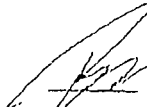
- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

 (page 5 of 8)

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certifications in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guarantied, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

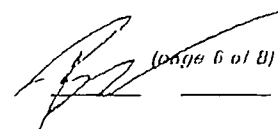
25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- ☐ Construction Loan. This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☐ Fixture Filing. Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☐ Crops; Timber; Minerals; Rents, Issues and Profits. Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

 (page 6 of 8)

☐ Personal Property. Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

☐ Filing As Financing Statement. Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

☐ Line of Credit. The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.

☒ 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 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.

☐ Separate Assignment. The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.

☐ Additional Terms.

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

☐ Actual authority was granted to the parties signing below by resolution signed and dated _____.

Entity Name: MCKEOWN PROPERTY ON LAKE ROBINSON, LLC Entity Name: _____
a South Carolina limited liability company

By: Bruce A. Mckeown 4-12-07
(Signature) BRUCE A MCKEOWN, MANAGER (Date) (Signature) (Date)

Signed, Sealed and delivered in the presence of:

X Sharon J. Lick
(Witness)

Sandra D. Henderson
(Witness)

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF GREENVILLE) ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 12th day

of April, 2007

Samuel H. Anderson
Notary Public for South Carolina

Sharon Lee

My commission expires: 9-3-12

EXHIBIT A

PROPERTY DESCRIPTION

All that certain piece, parcel or tract of land, lying and being in the State of South Carolina, County of Greenville, located on the Northeastern side of Groce Meadows Road, being shown and designated as 49.64 Acres on a plat entitled "Boundary Survey for Bruce McKeown", prepared by Freeland-Clinkscates & Associates of NC, Inc., dated March 7, 2005, recorded in the Office of the Register of Deeds for Greenville County in Plat Book 50-A at Page 26, reference being made to said plat for a more complete metes and bounds description hereof.

LESS AND EXCEPT, HOWEVER:

All those certain pieces, parcels or lots of land, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Lots 17, 18, 26, 27, 51 and 52 on Final Plat, STILLWATER, PHASE I, SHEET I, GREER, SOUTH CAROLINA, by FCA of NC, Surveyor, dated November 15, 2006, and recorded in Plat Book 1024 at Page 41, ROD Office for Greenville County, reference being made to said plat for a more complete metes and bounds description.

ALSO LESS AND EXCEPT:

All those certain pieces, parcels or lots of land, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Lots 44, 45, 46, 47, 49, 70 and 74 on Final Plat, STILLWATER, PHASE I, SHEET II, GREER, SOUTH CAROLINA, by FCA of NC, Surveyor, dated November 15, 2006, and recorded in Plat Book 1025 at Page 20, ROD Office for Greenville County, reference being made to said plat for a more complete metes and bounds description.

This is the same property conveyed to the Mortgagor herein by deed of Robert M. McKeown, Cathy J. Lockhart, Bruce A. McKeown and Connie S. Santoro, formerly known as Connie S. McKeown, dated May 4, 2005, recorded in the Office of the Register of Deeds for Greenville County on June 20, 2005 in Deed Book 2150 at Page 1267; and by deed of Cathy J. Lockhart and William E. Lockhart dated May 20, 2005, recorded in the Office of the Register of Deeds for Greenville County on June 20, 2005 in Deed Book 2150 at Page 1263.

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2007035799 Book: No 4758 Page: 1857-1865
APR 11 12, 2007 12:39:08
Timothy J. Hanney

350
726
COMMERCIAL PROMISSORY NOTE

GREER STATE BANK
PO BOX 1029
GREER, South Carolina 29652
(864)877-2000

LOAN NUMBER	NOTE DATE	PRINCIPAL AMOUNT	LOAN TERM	MATURITY DATE
C-08-10-000048	October 28, 2008	\$4,750,000.00	12 months	October 28, 2009
LOAN PURPOSE: RENEWAL OF NOTE #100882				

BORROWER INFORMATION

MCKEOWN PROPERTY ON LAKE ROBINSON, LLC
928 GROCE MEADOW ROAD
TAYLORS, SC 29687

IMAGED

NOTE. This Commercial Promissory Note will be referred to in this document as the "Note".

LENDER. "Lender" means GREER STATE BANK whose address is PO BOX 1029, GREER, South Carolina 29652, its successors and assigns.

BORROWER. "Borrower" means each person or legal entity who signs this Note.

PROMISE TO PAY. For value received, receipt of which is hereby acknowledged, on or before the Maturity Date, the Borrower promises to pay the principal amount of Four Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$4,750,000.00) or such lesser amount as shall have been advanced by Lender, from time to time, to or on behalf of Borrower under the terms of this Note, and all interest and any other charges, including service charges, to the order of Lender at its office at the address noted above or at such other place as Lender may designate in writing. The Borrower will make all payments in lawful money of the United States of America.

PAYMENT SCHEDULE. This loan will be paid according to the following schedule: 11 consecutive payments of interest only beginning on November 28, 2008 and continuing on the same day of each month thereafter. One final balloon payment shall be due on the Maturity Date in an amount equal to the then unpaid principal and accrued and unpaid interest. All payments received by the Lender from the Borrower for application to the Loan may be applied to the Borrower's obligations under the Loan in such order as determined by the Lender.

INTEREST RATE AND SCHEDULED PAYMENT CHANGES. The initial variable interest rate on this Note will be 6.000% per annum. This interest rate may change on October 29, 2008, and every day thereafter. Each date on which the interest rate may change is called the "Change Date." Beginning with the first Change Date, Lender will calculate the new interest rate based on WALL STREET JOURNAL PRIME in effect on the Change Date (the "Index") plus 1.000 percentage points (the "Margin"). If the Index is not available at that time, Lender will choose a new Index which is based on comparable information. The Index is used solely to establish a base from which the actual rate of interest payable under this Note will be calculated, and is not a reference to any actual rate of interest charged by any lender to any particular borrower. The interest rate will never be greater than 8.750% or less than 6.000%.

Nothing contained herein shall be construed as to require the Borrower to pay interest at a greater rate than the maximum allowed by law. If, however, from any circumstances, Borrower pays interest at a greater rate than the maximum allowed by law, the obligation to be fulfilled will be reduced to an amount computed at the highest rate of interest permissible under applicable law and if, for any reason whatsoever, Lender ever receives interest in an amount which would be deemed unlawful under applicable law, such interest shall be automatically applied to amounts owed, in Lender's sole discretion, or as otherwise allowed by applicable law. A change in the interest rates may result in a change in your payment amount. Interest on this Note is calculated on a 365/360 day basis. The unpaid balance of this loan after Maturity, whether by acceleration or otherwise, shall be subject to a Post-Maturity Rate of interest equal to the same fixed or variable rate basis in effect before maturity.

LATE PAYMENT CHARGE. If any required payment is more than 10 days late, then at Lender's option, Lender will assess a late payment charge of 5% of the amount past due.

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

ADVANCES. The Borrower and Lender agree that the Borrower may borrow up to the maximum amount of principal only one time. Subject to the terms of this Note and all of the related agreements, advances under this Note are obligatory. Regardless of the obligatory nature of this Note, principal advances will be made to the Borrower provided none of the following conditions exist.

- Maximum amount on this Note is outstanding.
- Undersigned has breached any of the terms, provisions, representations, requirements or promises contained in this Note or any other agreement.
- Undersigned makes a request for an advance after the Conversion Date.
- The Note or any other agreement relating to the extension of credit is in default.
- The Lender has deemed itself insecure or there has been a material adverse change of conditions.
- The Lender is precluded by law from making the advance.

Advances under this Note may be requested orally or in writing by the Borrower or by an authorized person.

The total of any advance requested and unpaid principal cannot exceed the available principal amount. The available principal amount refers to the principal amount minus the aggregate amount of outstanding advances.

All advances will be charged to a loan account in Borrower's name on Lender's books, and the Lender shall debit in such account the amount of each advance made to, and credit to such account the amount of each repayment made by Borrower. The Lender shall provide to Borrower periodic statements of Borrower's loan account, which shall be deemed to be correct, accepted by, and binding upon Borrower unless Lender receives a written statement of exception from Borrower within 10 days after such statement is furnished.

Other Condition for Advances: BASED ON TERMS AS OUTLINED IN COMMITMENT LETTER DATED MARCH 27, 2007.

SECURITY TO NOTE. Security (the "Collateral") for this Note is granted pursuant to the following security document(s):

- Mortgage - 49.7 ACRES GROCE MEADOW RD & LAKE ROBINSON GREER SC 29650 in the amount of \$4,750,000.00, dated April 12, 2007.

GUARANTY. In support of this transaction, a Guaranty dated October 28, 2008 has been executed by BRUCE A MCKEOWN; and a Guaranty dated October 28, 2008 has been executed by RITA W MCKEOWN.

RIGHT OF SET OFF. To the extent permitted by law, Borrower agrees that Lender has the right to set off any amount due and payable under this Note, whether matured or unmatured, against any amount owing by Lender to Borrower including any or all of Borrower's accounts with Lender. This shall include all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. Such right of set off may be exercised by Lender against Borrower or against any assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor of Borrower, or against anyone else claiming through or against Borrower of such assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor, notwithstanding the fact that such right of setoff has not been exercised by Lender prior to the making, filing or issuance or service upon Lender of, or of notice of, assignment for the benefit of creditors, appointment or application for the appointment of a receiver, or issuance of execution, subpoena or order or warrant.

DEFAULT. Upon the occurrence of any one of the following events (each, an "Event of Default" or "default" or "event of default"), Lender's obligations, if any, to make any advances will, at Lender's option, immediately terminate and Lender, at its option, may declare all indebtedness of Borrower to Lender under this Note to be immediately due and payable without further notice of any kind notwithstanding anything to the contrary in this Note or any other agreement: (a) Borrower's failure to make any payment on time or in the amount due; (b) any default by Borrower under the terms of this Note or any other agreement, security agreement executed in connection with this Note (individually, a "Loan Document" and collectively, the "Loan Documents"); (c) any default by Borrower under the terms of any other loan agreement, security agreement, mortgage or other document in favor of Lender; (d) the death, dissolution, or termination of existence of Borrower or any guarantor; (e) Borrower is generally not paying Borrower's debts as such debts become due; (f) the commencement of any proceeding under bankruptcy or insolvency laws by or against Borrower or any guarantor or the appointment of a receiver; (g) any default under the terms of any other indebtedness of Borrower to any other creditor; (h) any writ of attachment, garnishment, execution, tax lien or similar instrument is issued against any collateral securing the loan, if any, or any of Borrower's property or any judgment is entered against Borrower or any guarantor; (i) any part of Borrower's business is sold to or merged with any other business, individual, or entity; (j) any representation or warranty made by Borrower to Lender in any of the Loan Documents or any financial statement delivered to Lender proves to have been false in any material respect as of the time when made or given; (k) if any guarantor, or any other party to any agreement or instrument with or in favor of Lender entered into or delivered in connection with the Loan terminates, attempts to terminate or defaults under any such agreement or instrument; (l) Lender has deemed itself insecure or there has been a material adverse change of condition of the financial prospects of Borrower or any collateral securing the obligations owing to Lender by Borrower.

OTHER APPLICABLE AGREEMENTS. If this Note is secured by a security agreement, mortgage, deed of trust, trust deed, security deed or loan agreement of even or previous date, it is subject to all the terms thereof.

GENERAL WAIVERS. To the extent permitted by law, the Borrower severally waives any required notice of presentment, demand, acceleration, intent to accelerate, protest and any other notice and defense due to extensions of time or other indulgence by Lender or to any substitution or release of collateral. No failure or delay on the part of Lender, and no course of dealing between Borrower and Lender, shall operate as a waiver of such power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right.

JOINT AND SEVERAL LIABILITY. If permitted by law, each Borrower executing this Note is jointly and severally bound.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Note is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Note without invalidating the remainder of either the affected provision or this Note.

SURVIVAL. The rights and privileges of the Lender hereunder shall inure to the benefits of its successors and assigns, and this Note shall be binding on all heirs, executors, administrators, assigns and successors of Borrower.

ASSIGNABILITY. Lender may assign, pledge or otherwise transfer this Note or any of its rights and powers under this Note without notice, with all or any of the obligations owing to Lender by Borrower, and in such event the assignee shall have the same rights as if originally named herein in place of Lender. Borrower may not assign this Note or any benefit accruing to it hereunder without the express written consent of the Lender.

ORAL AGREEMENTS DISCLAIMER. This Note represents 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.

GOVERNING LAW. This Note is governed by the laws of the state of South Carolina except to the extent that federal law controls.



HEADING AND GENDER. The headings preceding text in this Note are for general convenience in identifying subject matter, but have no limiting impact on the text which follows any particular heading. All words used in this Note shall be construed to be of such gender or number as the circumstances require.

ATTORNEYS' FEES AND OTHER COSTS. If legal proceedings are instituted to enforce the terms of this Note, Borrower agrees to pay all costs of the Lender in connection therewith, including reasonable attorneys' fees, to the extent permitted by law.

ADDITIONAL PROVISIONS. A RESERVE ACCOUNT IN THE NAME OF MCKEOWN PROPERTY AT LAKE ROBINSON, LLC, A/C #1508075 AT GREER STATE BANK WILL BE REQUIRED TO FACILITATE FUNDS FOR THE PURPOSE OF INSUFFICIENT CASH FLOW TO SERVICE THIS DEBT. THE RESERVE ACCOUNT FUNDS CAN/WILL BE APPLIED TO THE LOAN BALANCE AS PRINCIPAL AND/OR INTEREST PAYMENTS. THIS ACCOUNT WILL BE RESTRICTED FOR WITHDRAWALS AT THE BANK'S DISCRETION UNTIL THE LOAN IS SATISFIED. UPON SATISFACTION OF THE PRINCIPAL AND INTEREST BALANCE, ALL RESTRICTIONS WILL BE RELEASED.

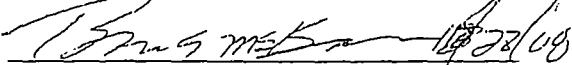
LOT RELEASES SHALL BE APPLIED AS OUTLINED IN COMMITMENT LETTER DATED MARCH 27, 2007.

LOT RELEASE FEE IS \$100 PER LOT. THIS FEE WILL BE REDUCED TO \$25 A LOT SHOULD GREER STATE BANK PROVIDE FINANCING FOR THE PURCHASE AND/OR CONSTRUCTION OF SAID LOT.

WAIVER OF JURY TRIAL. All parties to this Note hereby waive, to the fullest extent permitted by law, any right to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship established between them in this Note or any other instrument, document, or agreement executed or delivered in connection herewith or the transaction related hereto.

By signing this Note, Borrower acknowledges reading, understanding, and agreeing to all its provisions and receipt thereof.

MCKEOWN PROPERTY ON LAKE ROBINSON, LLC



By: BRUCE A MCKEOWN

Date

Its: Managing Member

WILL #200

COMMERCIAL LOAN GUARANTY

GREER STATE BANK
PO BOX 1029
GREER, South Carolina 29652
(864)877-2000

LOAN NUMBER	GUARANTY DATE	
C-08-10-000048	October 28, 2008	

GUARANTOR INFORMATION

BRUCE A MCKEOWN
2495 POWDER RIDGE
Roswell, GA 30076

Type of Entity: Individual
State of Residence: Georgia

BORROWER INFORMATION

MCKEOWN PROPERTY ON LAKE ROBINSON, LLC
928 GROCE MEADOW ROAD
TAYLORS, SC 29687

Type of Business Entity: Limited Liability Company
State of Organization/Formation: South Carolina

NOTICE TO GUARANTOR. Each undersigned Guarantor is being asked to guarantee the Borrower's specific transaction obligation described below. If Borrower does not pay, any Guarantor may be required to do so. In addition, any Guarantor may be required to pay collection expenses and costs. Lender can require any Guarantor to pay without first attempting to collect from the Borrower or any other Guarantor.

GUARANTY OF SPECIFIC TRANSACTION. The undersigned, jointly and severally called the "Guarantor", in order to induce the Lender to extend financial accommodations to the Borrower as evidenced by a note or agreement payable to the Lender dated October 28, 2008, and executed by Borrower in the principal amount of \$4,750,000.00, plus interest, charges, and fees as provided for, collectively referred to as the "Obligation of Borrower", hereby guarantees to the Lender the full and prompt payment of the Obligation of Borrower, including all extensions and renewals thereof, until the Obligation of Borrower is fully paid.

This is a guaranty of payment and not of collection. The Guarantor agrees to pay all Lender's costs incurred to enforce this Guaranty, including reasonable attorneys' fees.

JOINT AND SEVERAL LIABILITY. If this Guaranty is signed by more than one person, each person having executed the Guaranty acknowledges that his or her obligation hereunder shall be joint and several. Each Guarantor expressly authorizes the Lender to proceed, in its sole and absolute discretion, against each or any Guarantor, and further agrees that if the Lender proceeds against any one of them, the others waive any defense of election of remedies and agree to continue to be liable under the terms of this Guaranty for any amount remaining owing to Lender from Borrower.

CONSENT. The Guarantor consents to all extensions, renewals, and modifications made by the Lender for, or on account of, any indebtedness of Borrower to Lender. Lender may proceed directly against Guarantor in the event of any default by Borrower without resorting to any other persons, to the assets of Borrower, to any collateral security granted by Borrower to Lender, or the liquidation of any collateral security given hereunder to secure this Guaranty. Furthermore, to the extent permitted by law, Guarantor hereby agrees and consents that the Lender may from time to time without notice to Guarantor and without affecting the liability of Guarantor (a) release, impair, sell or otherwise dispose of any security or collateral, (b) release or agree not to sue any guarantor or surety, (c) fail to perfect its security interest in or realize upon any security or collateral, (d) fail to realize upon any of the obligations of Borrower or to proceed against Borrower or any guarantor or surety, (e) renew or extend the time of payment, (f) increase or decrease the rate of interest, (g) accept additional security or collateral, (h) determine the allocation and application of payments and credits and accept partial payments, (i) determine what, if anything, may at any time be done with reference to any security or collateral, and (j) settle or compromise the amount due or owing or claimed to be due or owing from any Borrower, guarantor or surety, which settlement or compromise shall not affect the undersigned's liability for the full amount of the guaranteed obligations. To the extent permitted by law, Guarantor expressly consents to and waives notice of all of the above.

REPRESENTATIONS. Guarantor acknowledges and agrees that Lender (a) has not made any representations or warranties with respect to, (b) does not assume any responsibility to Guarantor for, and (c) has no duty to provide information to the undersigned regarding, the enforceability of any of the indebtedness or the financial condition of any Borrower or any other guarantor. Guarantor has independently determined the creditworthiness of Borrower and the enforceability of the obligations of Borrower to Lender and until such obligations are paid in full in accordance with this Guaranty, Guarantor will independently and without reliance on Lender continue to make such determinations.

GENERAL WAIVERS. Guarantor hereby waives notice of acceptance of this Guaranty, all notices hereunder, and all notices of demand, presentment, notice of dishonor, intention to accelerate, acceleration, notice of any adverse information which Lender may have, and all notices of protest, default, and nonpayment. Guarantor waives all defenses of suretyship. Guarantor waives any defense that could be asserted by Borrower, including defenses arising out of failure of consideration, breach of warranty, fraud, payment, statute of frauds, bankruptcy, lack of capacity, statute of limitations, lender liability, unenforceability of any loan document, accord and satisfaction, or usury.

SURVIVAL. This Guaranty shall be binding upon Guarantor, Guarantor's heirs, successors, and estate representatives, until all such indebtedness shall be fully paid to Lender.

EXERCISE OF LENDER'S RIGHTS. Any delay or failure of the Lender in exercising any of its rights under this Guaranty does not operate as a waiver of the Lender's ability to exercise all of its rights. The Lender may choose to partially exercise rights under this Guaranty, but that does not prevent the Lender from fully exercising these rights.

ASSIGNABILITY. This Guaranty shall inure to the benefit of the Lender and its successors and assigns, including every holder of any of the indebtedness here guaranteed. In the event that any person other than the Lender shall become a holder of any of the indebtedness, the reference to the Lender shall be construed to refer to each such holder.

RIGHT OF SETOFF. To the extent permitted by law, Guarantor gives Lender the right to setoff any of Guarantor's money or property which may be in Lender's possession against any amount owed under this Guaranty. This right of setoff does not extend to any Keogh account, IRA, or similar tax deferred deposit. Further, the Lender shall have available all remedies under applicable state and federal laws, including the garnishment of wages, to the extent permitted by law.

WAIVER OF JURY TRIAL. All parties to this Guaranty knowingly and voluntarily waive, to the fullest extent permitted by law, all rights to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, between Guarantor and Lender arising out of, in connection with, related to, or incidental to the relationship established in connection with this Guaranty or made pursuant to any other note or other instrument, document, or agreement executed or delivered by Borrower or Guarantor in connection with this Guaranty or the related transactions.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Guaranty is invalid or prohibited by applicable law, that term or provision will be ineffective, but only to the extent required to make it lawful. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Guaranty without invalidating the remainder of the provisions of this Guaranty.

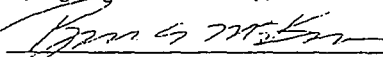
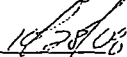
GOVERNING LAW. This Guaranty will be governed by and construed in accordance with the laws of the state of South Carolina except to the extent that federal law controls.

HEADINGS AND GENDER. The headings in this Guaranty are for convenience in identifying subject matter. The headings have no limiting effect on the text that follows any particular heading. All words used in this Guaranty are read to be of whatever gender or number is appropriate under the circumstances.

ORAL AGREEMENTS DISCLAIMER. This Agreement represents 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.

ACKNOWLEDGMENT. This Guaranty is freely and voluntarily given to the Lender by Guarantor, without duress or coercion, and after Guarantor has either consulted with legal counsel or has been given an opportunity to do so, and Guarantor has fully and carefully read and understands all of the terms and provisions of the Guaranty.

By signing this Guaranty, Guarantor acknowledges reading, understanding, and agreeing to all its provisions.

 
BRUCE A MCKEOWN Date

Individually

COMMERCIAL LINE OF CREDIT
AGREEMENT AND NOTE

GREER STATE BANK
PO BOX 1029
GREER, South Carolina 29652
(864)877-2000

R 95000268

LOAN NUMBER	AGREEMENT DATE	LOAN TERM	LINE OF CREDIT LIMIT	DRAW EXPIRATION DATE	MATURITY DATE
95000268	April 24, 2008	12 months	\$200,000.00	April 24, 2009	April 24, 2009
LOAN PURPOSE: RENEWAL OF NOTE 95000268					

BORROWER INFORMATION

MCKEOWN PROPERTY ON LAKE ROBINSON LLC
928 GROCE MEADOW ROAD
TAYLORS, SC 29687

LINE OF CREDIT AGREEMENT AND NOTE. This Commercial Line of Credit Agreement and Note will be referred to in this document as the "Agreement".

LENDER. "Lender" means GREER STATE BANK whose address is PO BOX 1029, GREER, South Carolina 29652, its successors and assigns.

BORROWER. "Borrower" means each person or legal entity who signs this Agreement.

PROMISE TO PAY. For value received, receipt of which is hereby acknowledged, on or before the Maturity Date, the Borrower promises to pay the principal amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) or such lesser amount as shall have been advanced by Lender, from time to time, to or on behalf of Borrower under this Agreement, and all interest and any other charges, including service charges, to the order of Lender at its office at the address noted above or at such other place as Lender may designate in writing. The Borrower will make all payments in lawful money of the United States of America.

PAYMENT SCHEDULE. This Agreement will be paid according to the following required payment schedule: Beginning on May 24, 2008, monthly payments of accrued and unpaid interest. All payments received by the Lender from the Borrower for application to the Line of Credit may be applied to the Borrower's obligations under the Line of Credit in such order as determined by the Lender.

ADVANCES BY LENDER. Advances of principal, repayment, and readvances may be made under this Agreement from time to time, but Lender, in its sole discretion and subject to provisions related to obligatory and discretionary advances, may refuse to make advances or readvances hereunder during any period(s) this Agreement is in default. All advances made will be charged to a loan account in Borrower's name on Lender's books, and the Lender shall debit such account for the amount of each advance made to, and credit to such account the amount of each repayment made by Borrower. If the Lender furnishes the Borrower with a statement of Borrower's loan account, such statement shall be deemed to be correct, accepted by, and binding upon Borrower, unless Lender receives a written statement exception from Borrower within 10 days after such statement has been furnished.

INTEREST RATE AND SCHEDULED PAYMENT CHANGES. The initial variable interest rate on this Agreement will be 5.750% per annum. This interest rate may change on April 25, 2008, and every day thereafter. Each date on which the interest rate may change is called the "Change Date." Beginning with the first Change Date, Lender will calculate the new interest rate based on WALL STREET JOURNAL PRIME in effect on the Change Date (the "Index") plus 0.500 percentage points (the "Margin"). If the Index is not available at that time, Lender will choose a new Index which is based on comparable information. The Index is used solely to establish a base from which the actual rate of interest payable under this Agreement will be calculated, and is not a reference to any actual rate of interest charged by any lender to any particular borrower.

Nothing contained herein shall be construed as to require the Borrower to pay interest at a greater rate than the maximum allowed by law. If, however, from any circumstances, Borrower pays interest at a greater rate than the maximum allowed by law, the obligation to be fulfilled will be reduced to an amount computed at the highest rate of interest permissible under applicable law and if, for any reason whatsoever, Lender ever receives interest in an amount which would be deemed unlawful under applicable law, such interest shall be automatically applied to amounts owed, in Lender's sole discretion, or as otherwise allowed by applicable law. An increase in the interest rates will result in a higher payment amount. Interest on this Agreement is calculated on a 360/360 day basis. The unpaid balance of this loan after Maturity, whether by acceleration or otherwise, shall be subject to a Post-Maturity Rate of interest equal to the same fixed or variable rate basis in effect before maturity.

LATE PAYMENT CHARGE. If any required payment is more than 10 days late, then at Lender's option, Lender will assess a late payment charge of 5% of the amount past due.

LINE OF CREDIT TERMS. At any time prior to the Maturity Date, the Borrower and Lender agree that the Borrower may request an advance under this Agreement up to a maximum amount equal to the Line of Credit Limit if before and after the request:

- The outstanding borrowings under this Agreement are not in excess of the Line of Credit Limit.
- An Event of Default does not exist

- The Lender is not precluded by law from making the advance.

Advances.

- Advances under this Agreement may be requested orally or in writing by the Borrower or by an authorized person.
- The total of any advance requested and unpaid principal cannot exceed Two Hundred Thousand and 00/100 Dollars (\$200,000.00).
- All advances made will be charged to a loan account in Borrower's name on Lender's books, and the Lender shall debit such account the amount of each advance made to, and credit to such account the amount of each repayment made by Borrower. Lender shall provide to Borrower periodic statements of Borrower's loan account, which shall be deemed to be correct, accepted by, and binding upon Borrower unless Lender receives a written statement of exception from Borrower within 10 days after such statement is furnished.

Other Condition for Advances: BASED UPON BORROWER REQUEST

Suspension and Termination. Advances under this Agreement will be available until the earlier to occur of (a) April 24, 2009; (b) the date the Line of Credit is cancelled by Borrower; or (c) the date the Line of Credit is cancelled by the Lender due to an occurrence of an Event of Default (the "Draw Expiration Date"). From and after the Draw Expiration Date, no further advances will be made available to Borrower. The date this Line of Credit expires is on the earlier to occur of (a) April 24, 2009; (b) the date the Line of Credit is cancelled by Borrower; or (c) the date the Line of Credit is cancelled by the Lender due to an occurrence of an Event of Default (the "Maturity Date").

Loan Type Conversion. Provided no default or event of default shall have occurred, the Borrower may, at its option, apply for conversion of this Agreement into a Term loan 30 days prior to the Maturity Date. However, the Lender shall have no obligation to approve the Borrower's application.

GUARANTY. In support of this transaction, a Guaranty dated April 24, 2008 has been executed by BRUCE A MCICEOWN.

RIGHT OF SET OFF. To the extent permitted by law, Borrower agrees that Lender has the right to set off any amount due and payable under this Agreement, whether matured or unmatured, against any amount owing by Lender to Borrower including any or all of Borrower's accounts with Lender. This shall include all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. Such right of set off may be exercised by Lender against Borrower or against any assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor of Borrower, or against anyone else claiming through or against Borrower of such assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor, notwithstanding the fact that such right of setoff has not been exercised by Lender prior to the making, filing or issuance or service upon Lender of, or of notice of, assignment for the benefit of creditors, appointment or application for the appointment of a receiver, or issuance of execution, subpoena or order or warrant.

DEFAULT. Upon the occurrence of any one of the following events (each, an "Event of Default" or "default" or "event of default"), Lender's obligations, if any, to make any advances will, at Lender's option, immediately terminate and Lender, at its option, may declare all indebtedness of Borrower to Lender under this Agreement to be immediately due and payable without further notice of any kind notwithstanding anything to the contrary in this Agreement or any other agreement: (a) Borrower's failure to make any payment on time or in the amount due; (b) any default by Borrower under the terms of this Agreement or any other agreement, security agreement executed in connection with this Agreement (individually, a "Loan Document" and collectively, the "Loan Documents"); (c) any default by Borrower under the terms of any other loan agreement, security agreement, mortgage or other document in favor of Lender; (d) the death, dissolution, or termination of existence of Borrower or any guarantor; (e) Borrower is generally not paying Borrower's debts as such debts become due; (f) the commencement of any proceeding under bankruptcy or insolvency laws by or against Borrower or any guarantor or the appointment of a receiver; (g) any default under the terms of any other indebtedness of Borrower to any other creditor; (h) any writ of attachment, garnishment, execution, tax lien or similar instrument is issued against any collateral securing the loan, if any, or any of Borrower's property or any judgment is entered against Borrower or any guarantor; (i) any part of Borrower's business is sold to or merged with any other business, individual, or entity; (j) any representation or warranty made by Borrower to Lender in any of the Loan Documents or any financial statement delivered to Lender proves to have been false in any material respect as of the time when made or given; (k) if any guarantor, or any other party to any agreement or instrument with or in favor of Lender entered into or delivered in connection with the Loan terminates, attempts to terminate or defaults under any such agreement or instrument; (l) Lender has deemed itself insecure or there has been a material adverse change of condition of the financial prospects of Borrower or any collateral securing the obligations owing to Lender by Borrower.

OTHER APPLICABLE AGREEMENTS. If this Agreement is secured by a security agreement, mortgage, deed of trust, trust deed, security deed or loan agreement of even or previous date, it is subject to all the terms thereof.

GENERAL WAIVERS. To the extent permitted by law, the Borrower severally waives any required notice of presentment, demand, acceleration, intent to accelerate, protest and any other notice and defense due to extensions of time or other indulgence by Lender or to any substitution or release of collateral. No failure or delay on the part of Lender, and no course of dealing between Borrower and Lender, shall operate as a waiver of such power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right.

JOINT AND SEVERAL LIABILITY. If permitted by law, each Borrower executing this Agreement is jointly and severally bound.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Agreement is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Agreement without invalidating the remainder of either the affected provision or this Agreement.

SURVIVAL. The rights and privileges of the Lender hereunder shall inure to the benefits of its successors and assigns, and this Agreement shall be binding on all heirs, executors, administrators, assigns and successors of Borrower.

ASSIGNABILITY. Lender may assign, pledge or otherwise transfer this Agreement or any of its rights and powers under this Agreement without notice, with all or any of the obligations owing to Lender by Borrower, and in such event the assignee shall have the same rights as if originally named herein in place of Lender. Borrower may not assign this Agreement or any benefit accruing to it hereunder without the express written consent of the Lender.

ORAL AGREEMENTS DISCLAIMER. This Note represents 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.

GOVERNING LAW. This Agreement is governed by the laws of the state of South Carolina except to the extent that federal law controls.

HEADING AND GENDER. The headings preceding text in this Agreement are for general convenience in identifying subject matter, but have no limiting impact on the text which follows any particular heading. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require.

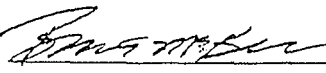
ATTORNEYS' FEES AND OTHER COSTS. If legal proceedings are instituted to enforce the terms of this Agreement, Borrower agrees to pay all costs of the Lender in connection therewith, including reasonable attorneys' fees, to the extent permitted by law.

ADDITIONAL PROVISIONS. THIS NOTE IS SECURED BY MORTGAGE DATED APRIL 12, 2007 RECORDED IN GREENVILLE COUNTY ON APRIL 12, 2007 IN BOOK 4758 PAGE 1857

WAIVER OF JURY TRIAL. All parties to this Agreement hereby waive, to the fullest extent permitted by law, any right to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship established between them in this Agreement or any other instrument, document, or agreement executed or delivered in connection herewith or the transaction related hereto.

By signing this Agreement, Borrower acknowledges reading, understanding, and agreeing to all its provisions and receipt thereof.

MCKEOWN PROPERTY ON LAKE ROBINSON LLC

 4/24/08

By: BRUCE A MCKEOWN

Date

Its: MEMBER

WSJ
#200

COMMERCIAL LOAN GUARANTY

GREER STATE BANK
PO BOX 1029
GREER, South Carolina 29652
(864)877-2000

LOAN NUMBER	GUARANTY DATE	
95000268	April 24, 2008	

GUARANTOR INFORMATION

BRUCE A MCKEOWN
928 GROCE MEADOW ROAD
TAYLORS, SC 29687

Type of Entity: Individual
State of Residence: South Carolina

BORROWER INFORMATION

MCKEOWN PROPERTY ON LAKE ROBINSON LLC
928 GROCE MEADOW ROAD
TAYLORS, SC 29687

Type of Business Entity: Limited Liability Company
State of Organization/Formation: South Carolina

NOTICE TO GUARANTOR. Each undersigned Guarantor is being asked to guarantee the Borrower's specific transaction obligation described below. If Borrower does not pay, any Guarantor may be required to do so. In addition, any Guarantor may be required to pay collection expenses and costs. Lender can require any Guarantor to pay without first attempting to collect from the Borrower or any other Guarantor.

GUARANTY OF SPECIFIC TRANSACTION. The undersigned, jointly and severally called the "Guarantor", in order to induce the Lender to extend financial accommodations to the Borrower as evidenced by a note or agreement payable to the Lender dated April 24, 2008, and executed by Borrower in the principal amount of \$200,000.00, plus interest, charges, and fees as provided for, collectively referred to as the "Obligation of Borrower", hereby guarantees to the Lender the full and prompt payment of the Obligation of Borrower, including all extensions and renewals thereof, until the Obligation of Borrower is fully paid.

This is a guaranty of payment and not of collection. The Guarantor agrees to pay all Lender's costs incurred to enforce this Guaranty, including reasonable attorneys' fees.

JOINT AND SEVERAL LIABILITY. If this Guaranty is signed by more than one person, each person having executed the Guaranty acknowledges that his or her obligation hereunder shall be joint and several. Each Guarantor expressly authorizes the Lender to proceed, in its sole and absolute discretion, against each or any Guarantor, and further agrees that if the Lender proceeds against any one of them, the others waive any defense of election of remedies and agree to continue to be liable under the terms of this Guaranty for any amount remaining owing to Lender from Borrower.

CONSENT. The Guarantor consents to all extensions, renewals, and modifications made by the Lender for, or on account of, any indebtedness of Borrower to Lender. Lender may proceed directly against Guarantor in the event of any default by Borrower without resorting to any other persons, to the assets of Borrower, to any collateral security granted by Borrower to Lender, or the liquidation of any collateral security given hereunder to secure this Guaranty. Furthermore, to the extent permitted by law, Guarantor hereby agrees and consents that the Lender may from time to time without notice to Guarantor and without affecting the liability of Guarantor (a) release, impair, sell or otherwise dispose of any security or collateral, (b) release or agree not to sue any guarantor or surety, (c) fail to perfect its security interest in or realize upon any security or collateral, (d) fail to realize upon any of the obligations of Borrower or to proceed against Borrower or any guarantor or surety, (e) renew or extend the time of payment, (f) increase or decrease the rate of interest, (g) accept additional security or collateral, (h) determine the allocation and application of payments and credits and accept partial payments, (i) determine what, if anything, may at any time be done with reference to any security or collateral, and (j) settle or compromise the amount due or owing or claimed to be due or owing from any Borrower, guarantor or surety, which settlement or compromise shall not affect the undersigned's liability for the full amount of the guaranteed obligations. To the extent permitted by law, Guarantor expressly consents to and waives notice of all of the above.

REPRESENTATIONS. Guarantor acknowledges and agrees that Lender (a) has not made any representations or warranties with respect to, (b) does not assume any responsibility to Guarantor for, and (c) has no duty to provide information to the undersigned regarding, the enforceability of any of the indebtedness or the financial condition of any Borrower or any other guarantor. Guarantor has independently determined the creditworthiness of Borrower and the enforceability of the obligations of Borrower to Lender and until such obligations are paid in full in accordance with this Guaranty, Guarantor will independently and without reliance on Lender continue to make such determinations.

GENERAL WAIVERS. Guarantor hereby waives notice of acceptance of this Guaranty, all notices hereunder, and all notices of demand, presentment, notice of dishonor, intention to accelerate, acceleration, notice of any adverse information which Lender may have, and all notices of protest, default, and nonpayment. Guarantor waives all defenses of suretyship. Guarantor waives any defense that could be asserted by

Borrower, including defenses arising out of failure of consideration, breach of warranty, fraud, payment, statute of frauds, bankruptcy, lack of capacity, statute of limitations, lender liability, unenforceability of any loan document, accord and satisfaction, or usury.

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ASSIGNABILITY. This Guaranty shall inure to the benefit of the Lender and its successors and assigns, including every holder of any of the indebtedness here guaranteed. In the event that any person other than the Lender shall become a holder of any of the indebtedness, the reference to the Lender shall be construed to refer to each such holder.

RIGHT OF SETOFF. To the extent permitted by law, Guarantor gives Lender the right to setoff any of Guarantor's money or property which may be in Lender's possession against any amount owed under this Guaranty. This right of setoff does not extend to any Keogh account, IRA, or similar tax deferred deposit. Further, the Lender shall have available all remedies under applicable state and federal laws, including the garnishment of wages, to the extent permitted by law.

WAIVER OF JURY TRIAL. All parties to this Guaranty knowingly and voluntarily waive, to the fullest extent permitted by law, all rights to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, between Guarantor and Lender arising out of, in connection with, related to, or incidental to the relationship established in connection with this Guaranty or made pursuant to any other note or other instrument, document, or agreement executed or delivered by Borrower or Guarantor in connection with this Guaranty or the related transactions.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Guaranty is invalid or prohibited by applicable law, that term or provision will be ineffective, but only to the extent required to make it lawful. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Guaranty without invalidating the remainder of the provisions of this Guaranty.

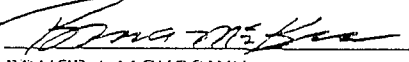
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By signing this Guaranty, Guarantor acknowledges reading, understanding, and agreeing to all its provisions.

 4/24/08
BRUCE A MCKEOWN
Individually Date

COPY

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DEPOSITION OF BRUCE A. MCKEOWN, VOLUME I

JILL BISHOP EDWARDS
VERBATIM REPORTER

DIXY MOORE TURNER ASSOC., INC.
836 SHORESBROOK DRIVE
SPARTANBURG, S.C. 29301-6515
864-574-1313

1 A. OCTOBER OF ---

2 Q. 2008?

3 A. YES.

4 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 21,
5 NOTE, ATTACHED.)

6 EXAMINATION RESUMED BY MR. FOWLER:

7 Q. LET ME SHOW YOU A COMMERCIAL PROMISSORY NOTE, AND I
8 WILL ASK YOU IF THAT IS YOUR SIGNATURE ON PAGE THREE
9 OF THE NOTE?

10 A. YES.

11 Q. AND DOES THE COMMERCIAL PROMISSORY NOTE NOW MARKED
12 AS PLAINTIFF'S EXHIBIT 21, IS IT A COMPLETE AND
13 ACCURATE COPY OF THE NOTE YOU SIGNED AT THAT TIME?

14 A. CAN I - MAY I ASK A QUESTION? I NOTICE ON MANY
15 DOCUMENTS, THE IMAGED. DOES THAT ---

16 Q. THAT'S A FAIR QUESTION. THAT PROBABLY WAS NOT ON
17 THE NOTE AT THE TIME YOU SIGNED IT. THAT IS A STAMP
18 THAT THE BANK PUTS ON THAT AS IT'S ELECTRONICALLY
19 IMAGED FOR RECORD KEEPING.

20 A. THAT WAS - I MEAN, I WASN'T SUGGESTING THAT THERE
21 WAS FOUL PLAY HERE. I JUST ---

22 Q. WELL, FAIR ---

23 A. I WONDERED WHAT THAT MEANT.

24 Q. FAIR QUESTION. THAT JUST MEANS IT'S BEEN
25 ELECTRONICALLY IMAGED BY THE BANK. SO, IS EXHIBIT

1 21 A COMPLETE AND ACCURATE COPY OF THE NOTE YOU
2 SIGNED ON OCTOBER 28, 2008?

3 A. YES.

4 Q. AND AT THAT TIME, DID YOU SIGN A GUARANTY OF THAT
5 NOTE, AS RENEWED ON OCTOBER 28, 2008?

6 A. YES.

7 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 22,
8 GUARANTY, ATTACHED.)

9 EXAMINATION RESUMED BY MR. FOWLER:

10 Q. AND THE COMMERCIAL LOAN GUARANTY, NOW MARKED AS
11 PLAINTIFF'S EXHIBIT 22, IS THAT A COMPLETE AND
12 ACCURATE COPY OF THE GUARANTY YOU SIGNED AT THAT
13 TIME?

14 A. YES.

15 Q. AND I APOLOGIZE IF I ASKED, BUT IS THAT YOUR
16 SIGNATURE ON THE SECOND PAGE?

17 A. YES.

18 Q. AND DO YOU RECALL OBTAINING AN EXTENSION OF THAT
19 NOTE IN OCTOBER OF 2009?

20 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 23,
21 EXTENSION AGREEMENT, ATTACHED.)

22 EXAMINATION RESUMED BY MR. FOWLER:

23 Q. I'LL SHOW YOU AN EXTENSION AGREEMENT AND DISCLOSURE
24 STATEMENT AND ASK YOU IF YOU RECOGNIZE THAT.

25 A. I ASSUME THIS RENEWAL WITH THE DATE ON THE TOP MEANS

1 RENEWAL OF THE 10-28-08 NOTE. IS THAT CORRECT?

2 Q. YES, THAT IS CORRECT.

3 A. YES, I RECOGNIZE IT.

4 Q. AND IS IT A COMPLETE AND ACCURATE COPY OF THE
5 EXTENSION AGREEMENT AND DISCLOSURE STATEMENT YOU
6 SIGNED ON OCTOBER 27, 2009?

7 A. YES.

8 Q. IS THAT YOUR SIGNATURE AT THE BOTTOM OF THE PAGE NOW
9 MARKED PLAINTIFF'S EXHIBIT 23?

10 A. YES.

11 Q. AND IS THAT ALSO YOUR WIFE'S SIGNATURE BELOW YOURS
12 ON PLAINTIFF'S EXHIBIT 23?

13 A. YES.

14 Q. LET'S GO OFF THE RECORD A MINUTE.

15 (OFF THE RECORD)

16 EXAMINATION RESUMED BY MR. FOWLER:

17 Q. DO YOU RECALL ENTERING INTO A LOAN AGREEMENT WITH
18 GREER STATE BANK FOR \$200,000 ON APRIL 20TH OF 2007?
19 WHEN I SAY YOU, OF COURSE, I'M REFERRING TO THE
20 L.L.C.

21 A. YES, I DO.

22 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 24, LOAN
23 AGREEMENT, ATTACHED.)

24 EXAMINATION RESUMED BY MR. FOWLER:

25 Q. AND DOES THE DOCUMENT I'VE HANDED YOU, WHICH HAS NOW

1 BEEN MARKED AS PLAINTIFF'S EXHIBIT 24, TITLED
2 COMMERCIAL LOAN AGREEMENT, IS THAT A COMPLETE AND
3 ACCURATE COPY OF THE LOAN AGREEMENT?

4 A. YES.

5 Q. AND IS THAT YOUR SIGNATURE ON THE THIRD PAGE?

6 A. YES.

7 Q. AND DID YOU ALSO SIGN A PERSONAL GUARANTY OF THE
8 \$200,000 LOAN?

9 A. YES.

10 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 25,
11 GUARANTY, ATTACHED.)

12 EXAMINATION RESUMED BY MR. FOWLER:

13 Q. AND THE COMMERCIAL LOAN GUARANTY THAT I'VE HANDED
14 YOU, WHICH HAS NOW BEEN MARKED PLAINTIFF'S EXHIBIT
15 25, DOES THAT APPEAR TO BE A COMPLETE AND ACCURATE
16 COPY OF YOUR PERSONAL GUARANTY?

17 A. YES.

18 Q. AND IS THAT YOUR SIGNATURE ON THE SECOND PAGE OF
19 EXHIBIT 25?

20 A. YES.

21 Q. DO YOU RECALL IN APRIL OF 2008, RENEWING THAT
22 \$200,000 LINE OF CREDIT?

23 A. YES.

24 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 26, LOAN
25 AGREEMENT, ATTACHED.)

1 EXAMINATION RESUMED BY MR. FOWLER:

2 Q. IS THE DOCUMENT I JUST HANDED YOU, WHICH HAS NOW
3 BEEN MARKED AS PLAINTIFF'S EXHIBIT 26, IS THAT A
4 COMPLETE AND ACCURATE COPY OF THE RENEWAL OF THE
5 \$200,000 LINE OF CREDIT?

6 A. YES.

7 Q. AND IS THAT YOUR SIGNATURE ON THE THIRD PAGE OF
8 PLAINTIFF'S EXHIBIT 26?

9 A. YES.

10 Q. AND AT THAT TIME OF THE RENEWAL OF THE \$200,000
11 LOAN, DID YOU SIGN ANOTHER GUARANTY?

12 A. YES.

13 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 27,
14 GUARANTY, ATTACHED.)

15 EXAMINATION RESUMED BY MR. FOWLER:

16 Q. AND WHAT I'VE HANDED YOU TITLED COMMERCIAL LOAN
17 GUARANTY NOW MARKED AS PLAINTIFF'S EXHIBIT 27, IS
18 THAT A COMPLETE AND ACCURATE COPY OF THE GUARANTY
19 YOU SIGNED ON THAT DATE?

20 A. YES.

21 Q. IS THAT YOUR SIGNATURE ON THE SECOND PAGE OF EXHIBIT
22 27?

23 A. YES.

24 Q. AND DO YOU RECALL EXTENDING THE \$200,000 LINE OF
25 CREDIT, BEGINNING IN APRIL OF 2009 THROUGH APRIL 30,

1 CORRECT OR THAT'S NOT CORRECT FOR THIS PARTICULAR
2 DOCUMENT, YOU LET ME KNOW. AND FOR EXAMPLE, MY
3 FIRST QUESTION IS WITH RESPECT TO THE EXHIBITS THAT
4 HAVE BEEN MARKED SEVEN THROUGH 28, THE NOTE,
5 MORTGAGE, AND RELATED LOAN DOCUMENTS, DID YOU HAVE
6 THE OPPORTUNITY TO READ EACH OF THOSE PRIOR TO
7 SIGNING?

8 A. THAT'S - THIS STACK?

9 Q. YES, SIR, EXHIBITS SEVEN THROUGH 28. I BELIEVE
10 THAT'S ALL THE LOAN DOCUMENTS WE JUST FINISHED
11 MARKING. AND MY QUESTION IS DID YOU HAVE THE
12 OPPORTUNITY TO READ EACH ONE BEFORE SIGNING?

13 A. YES.

14 Q. AND DID YOU UNDERSTAND EACH DOCUMENT PRIOR TO
15 SIGNING?

16 A. YES.

17 Q. DID ANYONE AT GREER STATE BANK FORCE YOU OR COERCE
18 YOU TO SIGN ANY OF THE DOCUMENTS THAT WE'VE MARKED
19 AS PLAINTIFF'S EXHIBITS SEVEN THROUGH 28?

20 A. NOT FORCED OR COERCED. URGED. I WOULD SAY URGED,
21 BUT NOT FORCED OR COERCED.

22 Q. ALL RIGHT. WHICH DOCUMENT WERE YOU URGED TO SIGN BY
23 GREER STATE BANK?

24 A. ONE OF THESE, AND I'M NOT SURE WHICH ONE. WE CAN GO
25 BACK AND DETERMINE, BUT AT ONE POINT, THE PREVIOUS

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

CERTIFICATE OF NOTARY PUBLIC
2010-CP-23-4223

GREER STATE BANK,

PLAINTIFF,

VERSUS

MCKEOWN PROPERTY ON LAKE

ROBINSON, LLC, BRUCE A. MCKEOWN,

ROBERT M. MCKEOWN, CATHY J.

LOCKHART, RITA W. MCKEOWN, AND

CONNIE S. SANTORO F/K/A CONNIE

S. MCKEOWN,

DEFENDANTS.

I, JILL BISHOP EDWARDS, A NOTARY PUBLIC FOR THE
STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED
AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 230 PAGES
REPRESENT A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING
DEPOSITION OF BRUCE A. MCKEOWN TAKEN BY ME ON THE 25TH
DAY OF MARCH, 2011.

THAT THE DEPONENT WAS DULY PLACED UNDER OATH AND
ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL
TESTIMONY WAS DULY TAKEN AND TRANSCRIBED AS TO THE
QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL OFFERED EXHIBITS, STIPULATIONS AND
OBJECTIONS, IF ANY, INVOLVED IN THIS CAUSE ARE DULY
ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL
SEAL THIS 13TH DAY OF APRIL, 2011.

Jill B. Edwards

JILL BISHOP EDWARDS
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 7/14/2020

*THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2010-CP-23-4223

Greer State Bank,)
)
Plaintiff,)

vs.)

McKeown Property On Lake)
Robinson, LLC, Bruce A. McKeown,)
Robert M. McKeown, Cathy J.)
Lockhart, Rita W. McKeown and)
Connie S. Santoro f/k/a Connie S.)
McKeown,)
)
Defendants.)

MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR TRIAL BY
THE COURT AND TO TRANSFER
MATTER TO NON-JURY DOCKET

TO: PLAINTIFF AND THEIR ATTORNEYS AND COUNSEL OF RECORD: S. BROOK
FOWLER AND THOMAS W. TRAXLER:

BACKGROUND

By way of history and background of this litigation, the Defendants would point out the following important events and the dates on which they occurred (Reference - Timeline attached as Exhibit 1):

May 24, 2010	Greer State Bank files suit (Exhibit 2)
June 9, 2010	Service affected on McKeown Defendants (Exhibit 3)
August 4, 2010	Defendants file Answer and Counterclaim demanding jury trial (Exhibit 4)
September 1, 2010	Greer State Bank files Motion for Reference (Exhibit 5)
October 4, 2010	Motion for Reference is canceled by the bank (Exhibit 6)
October 5, 2010	Motion for Reference scheduled for hearing (Exhibit 7)

March 23, 2011	Status conference held before Judge Stilwell, no mention is made by the bank of any pending motion that this action be placed on a nonjury calendar. This case, by agreement of the parties, is set for trial for the week of May 31, 2011. (Exhibit 8)
May 16, 2011	At the request of the bank, case is continued beyond the May 31, 2011 term. (Exhibit 9)
May 31, 2011	Case originally set for jury trial during this week.
June 27, 2011	By agreement of the parties, this case is set for jury trial and case is called for trial. (Exhibit 10)
June 27, 2011	The case is continued at the request of the bank and parties agree to a day certain jury trial of this matter for August 29, 2011. (Exhibit 11)
July 5, 2011	Greer State Bank moves for non-jury trial (Exhibit 12)
August 29, 2011	This case is set for day certain jury trial (Exhibit 13)

LEGAL ARGUMENT

The purpose of a jury waiver clause, just like an arbitration clause, is to permit a contracting party, when entering into an agreement, to protect itself from protracted litigation and the accompanying legal costs associated with the process. In that sense, jury waiver and arbitration clauses are shields to protect parties from the uncertainties of jury trials. The purpose of these clauses is not that they be utilized as swords -- to be relied upon and activated at some strategic point in the litigation process for one parties benefit and another parties detriment -- but as shields. In this case, Greer State Bank, early on made a reference motion, which it voluntarily canceled and did not mention this issue ever again, at least until now, five weeks before trial. During the time that this case has been on the jury trial roster, extensive discovery has been taken, depositions conducted, status conferences held, and motions argued before the court.

Now, after a substantially unsuccessful summary judgment effort, the Plaintiff wishes to switch tracks causing even further delays and which will increase the potential damages that the Defendants may be liable for by tens of thousands of dollars. Clearly, Greer State Bank is using the jury waiver clause as a sword in that, at a strategic time in this litigation, it is attempting to utilize this clause to gain an advantage. Such use of this clause, as a sword rather than a shield, is unfair and perverts its purpose in a manner never intended.

The Plaintiff now attempts to assert and argue that the Defendants have no right to a jury trial because of certain language contained in the original promissory notes and guaranty agreements. The language contained in those documents has not changed since the filing of this lawsuit, and the bank cannot now be heard to make a demand for a nonjury trial when it has acted in a manner completely and totally inconsistent with such a position and to the detriment of the Defendants.

No question, under Rule 38 of the SCRPC a party may waive its right to a jury trial by failing to assert such right. Likewise, the same rationale dictates that a party, which might otherwise have an entitlement to a nonjury trial, can waive such right by failing to timely demand such mode of trial.

Here, Plaintiff's unexplainable delay in demanding a non-jury trial has prejudiced the Defendants by extending litigation time, increasing attorney's fees, allowing Plaintiff to claim additional damages and allowing the Plaintiff to "test the waters before taking the swim" on the jury calendar.

In preparation for this case set as a jury trial, the Defendants have incurred thousands of dollars of additional attorney's fees that they would not have otherwise incurred had Plaintiff

timely pursued their non-jury trial mode argument which they now attempt to assert. The Defendants do not object to such cost, recognizing it is part of the process all litigants must go through in order to have a jury trial; however, to be put to the expense of preparing for a jury trial, and then to simply allow the Plaintiff to come in, shortly before trial date and change the mode of trial is unfair. (See Exhibit 14)

If the court, at this late date, allows this case to be tried nonjury it is likely that the case will not be called for trial for at least another two or three months. Keep in mind, there is a time line in finding three days in which a judge could now hear the case. It would likely be in October or November of 2011. Each day that this case is delayed from a trial date increases the potential damages of the Defendants in the amount of \$738.9729 on Note 1 and \$32.7475 on Note 2 per day. So, if this court grants the motion of the bank and the case is delayed another sixty days beyond August 29, 2011, it will mean additional, potential damages of \$46,303.22. This sum, if combined with the \$68,683.10 (May 31-August 28 [89 days]) in additional interest costs incurred since May 31, 2011, when the case could have been tried but was continued at the bank's request, amounts to a total of \$114,986.32. Further, and just as important, it will mean a continued shut down of the Defendant Bruce McKeown's livelihood and ability to develop or sell lots in this subdivision. Mr. McKeown waits anxiously for his day in court as its disposition totally dictates whether he will continue at the Stillwaters Subdivision or seek other employment.

The cases most closely analogous to this factual scenario are cases involving untimely and delayed request for arbitration after a lawsuit has been filed and is on the jury roster. A case on point with this issue is *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 521 S.E.2d 749 (2000). There, two years into the litigation the contractor moved to stay the circuit court action in favor

of arbitration. The circuit court denied such motion and contractor appealed to the South Carolina Court of Appeals. The court held that the right to enforce an arbitration clause may be waived as follows:

It is generally held that the right to enforce an arbitration clause may be waived. *Hyload, Inc. v. Pre-Engineered Prods., Inc.*, 308 S.C. 277, 280, 417 S.E.2d 622, 624 (Ct.App.1992) ("A party may waive the right to arbitrate given by a contract."); *Cencula v. Keller*, 152 Ill.App.3d 754, 105 Ill. Dec. 712, 504 N.E.2d 997, 999 (1987); *Home Gas Corp. of Mass., Inc. v. Walter's of Hadley, Inc.*, 403 Mass. 772, 532 N.E.2d 681, 683 (1989).... "Waiver is the voluntary and intentional relinquishment of a known right," *Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 929 (Ct.App.1994).

In order to establish waiver, a party must show prejudice through an undue burden caused by delay in demanding arbitration. *Sentry Eng'g & Constr., Inc. v. Mariner's Cay Dev. Corp.*, 287 S.C. 346, 351, 338 S.E.2d 631, 634 (1985). "There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case." *Hyload, Inc.*, 308 S.C. at 280, 417 S.E.2d at 624.

This issue of the mode of adjudication presents itself frequently in the area of arbitration clauses. Clearly, the parties can agree to arbitration and be bound by such agreement if they act in a manner consistent with such terms and conditions of the contract. However, it is fatal to a party seeking the arbitration of a controversy when such party fails to act in a timely manner and then on the eve of trial attempts to "switch tracks" and have the matter adjudicated by way of arbitration. This principle is the identical one presented in this case.

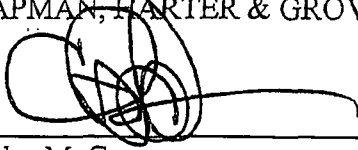
On repeated occasions, the parties over the course of this litigation have sought the assistance of the court, including but not limited to motions to amend, compel, and summary judgment. Further, the Defendants have been put to the time and expense of attending the

opening of court and reviewing the jury panel, preparing for a jury trial, meeting to mark trial exhibits with opposing counsel, preparing demonstrative exhibits, issuing numerous trial subpoenas and paying process server and witness fees, and accomplishing all of those many expensive and laborious tasks antecedent to the trial actually commencing. The delays in resolving these issues and the additional attorneys fees and costs incurred by the Defendants during this lengthy litigation supports the proposition that Greer State Bank's delay in demanding a nonjury trial until the litigation was nearly complete acts to the prejudice of the Defendants. It also allows the bank a strategic advantage, in testing the waters and availing itself of the jury trial process, prior to moving this case to the non-jury calendar.

CONCLUSION

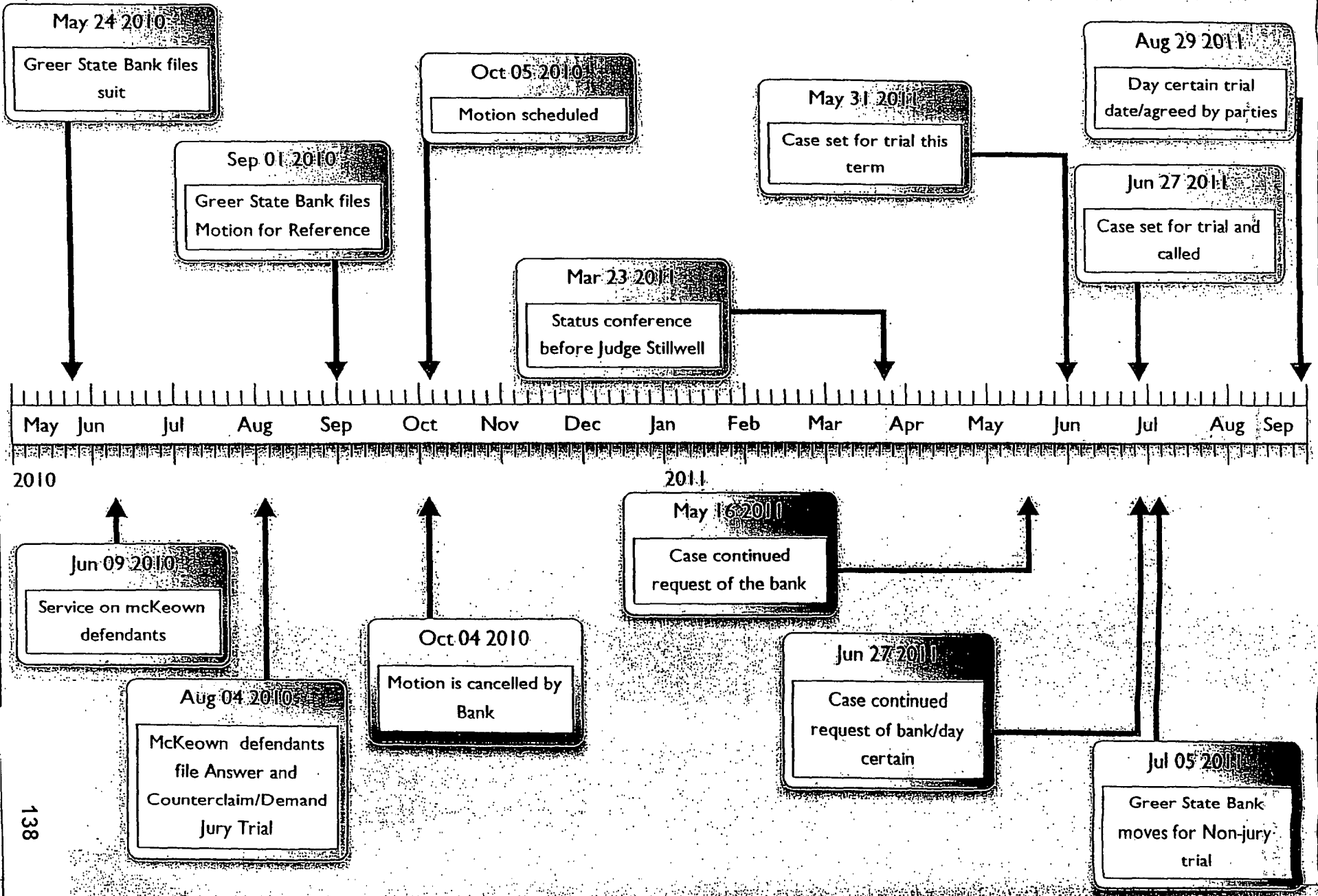
In this case, the bank's prior actions are totally inconsistent with its now pending motion for a non-jury trial; the litigation machinery has been substantially invoked for over a year, and the parties are, after several continuances, within five weeks of a mutually agreed upon, day certain jury trial; however, most importantly, the sudden abrupt change in the trial mode greatly prejudices the Defendants.

Respectfully submitted,
CHAPMAN, HARTER & GROVES, P.A.

BY: 
Charles M. Groves
1012 East Washington Street1)
P.O. Box 10224 (29603)
Greenville, South Carolina
(864) 233-4500 (phone)
(864) 232-1710 (fax)
cmgro@chglawsc.com

Greenville, South Carolina
July 19, 2011

Time line -- Trial of Greer State Bank vs Mckeown



Charles Groves

From: Brook Fowler <Brook.Fowler@carterlawpa.com>
Sent: Monday, October 04, 2010 2:23 PM
To: CharlesGroves
Subject: FW: GSB v. McKeown 2010-4223

The hearing on the Bank's motion for reference has been cancelled. See the email of Steve Lopez below.

S. Brook Fowler
Carter, Smith, Merriam, Rogers & Traxler, PA
P.O. Box 10828
Greenville, SC 29603
Phone: 864.242.3566
Fax: 864.232.1558
Email: brook.fowler@carterlawpa.com

From: Lopez, Stephen [mailto:SLopez@greenvillecounty.org] **On Behalf Of** NJCoord
Sent: Monday, October 04, 2010 2:08 PM
To: Susan Thompson
Subject: RE: GSB v. McKeown 2010-4223

Thank you for your e-mail. I will cancel the hearing tomorrow on this motion, but not mark the motion as withdrawn. Please let everyone involved know not to appear.

Thanks,
Steve

Stephen Lopez
Non-Jury Coordinator

CARTER, SMITH, MERRIAM, ROGERS & TRAXLER, P.A.
ATTORNEYS AT LAW

REX L. CARTER
JEFFREY A. MERRIAM
DAVID M. ROGERS
THOMAS W. TRAXLER
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WEBSITE: www.carterlawpa.com

COUNSEL:
JEFFERSON V. SMITH, JR.

September 17, 2010

VIA FACSIMILE AND U.S. MAIL

Mr. Charles M. Groves
CHAPMAN HARTER & GROVES, P.A.
PO Box 102244, FS
Greenville, South Carolina 29603

RE: *Greer State Bank v. McKeown Property on Lake Robinson, LLC,
Bruce A. McKeown, Robert M. McKeown, Cathy J. Lockhart, Rita
W. McKeown, and Connie S. Santoro f/k/a Connie S. McKeown*
Case Number: 2010-CP-23-4223

Dear Charles:

Enclosed please find a copy of the Hearing Notice in the above referenced matter setting my Motion to Refer to Master for October 5, 2010 at 3:30 PM before Judge Robin B. Stilwell.

Sincerely,

CARTER, SMITH, MERRIAM, ROGERS
& TRAXLER, P.A.



S. Brook Fowler

SBF/smt
Enclosures

Cc: Brad Cantrell (via facsimile – w/o enclosures)

FOR COURT USE ONLY

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2010-CP-23-4223

PRE-TRIAL CONFERENCE FORM

Greer State Bank,

Held: Date and Time Wednesday, March 23, 2011
@ 12:00 pm

Plaintiff(s)

- VS -

McKeown Property On Lake Robinson, LLC, et al

Defendant(s)

Nature of case:

Foreclosure; Wrongful Foreclosure, Breach of Contract, Breach of Implied
Covenant of Good Faith & Fair Dealings, Breach of Fiduciary Duty, Negligence
and Unclean Hands

Date incident occurred (if applicable):

April 2010

Number of Witnesses to be called by: PLAINTIFF: 4-5

DEFENDANT: 5

Estimated length of time for trial: 2 ½ days

Possibility of Settlement: Unknown

Is a PRETRIAL HEARING required: No

Case filing date: 5/24/10

List any pending and/or anticipated motions and their dates of filing below:

None

List each attorney involved in this trial:

Plaintiff: S. BROOK FOWLER

Defendants McKeown Property On
Lake Robinson, LLC, Bruce
McKeown and Rita McKeown:
CHARLES M. GROVES

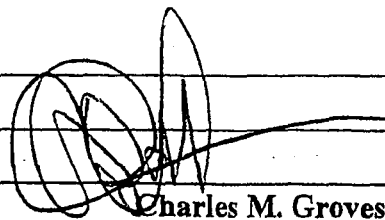
Plaintiff's actual damages (e.g. - medical, lost wages, etc. - not fees, costs, etc.):

\$ Disputed foreclosure
action/lender liability claims

Special Conditions:

Date: March 23, 2011

Attorney for Defendant:


Charles M. Groves

Charles Groves

From: Charles Groves <cmgro@chglawsc.com>
Sent: Monday, May 16, 2011 2:35 PM
To: 'Brook Fowler'
Subject: RE: McKeown Trial Date - Graduation Conflict

Brook,

The June 27th term will be fine.

CHAPMAN, HARTER & GROVES, P.A.

1012 East Washington Street

Greenville SC 29603

Office: 864-233-4500

Fax: 864-672-1537

cmgro@chglawsc.com

NOTE NEW FAX AND EMAIL ADDRESS

From: Brook Fowler [mailto:Brook.Fowler@carterlawpa.com]
Sent: Monday, May 16, 2011 2:06 PM
To: CharlesGroves
Cc: Susan Thompson
Subject: RE: McKeown Trial Date - Graduation Conflict

Lyndal Coker has taken us off of the trial docket for May 31. She wants to know if we want back on for June 20 or 27. Since you were gracious enough not to oppose my needed continuance, I'll let you choose the next date. Let me know and I'll advise Lyndal.

S. Brook Fowler
Carter, Smith, Merriam, Rogers & Traxler, PA
P.O. Box 10828
Greenville, SC 29603
Phone: 864.242.3566
Fax: 864.232.1558
Email: brook.fowler@carterlawpa.com



Greenville County 13th Circuit Court Rosters



[County Home Page](#) [Return To Roster Selection](#)

Court Agency	23002	Judge		Roster Description	June 27, 2011 Judges Stilwell/Hill Roster Meeting Mon. 9:15 a.m.
Roster Type	Jury Trial	Roster Begin Date	06/27/2011	Roster End Date	06/27/2011
Roster Id	147				

Attorney Bar#
(SCB + 5-digit
Bar #)

**Case
Number**

[Refresh Roster Details](#)

Filed From

**Filed
Thru**

Pages [Printer Friendly Display](#)

Priority	Case Number	Case Caption	Plaintiff Attorney	Defendant Attorney	Filed Date	Case Type	Sub Type	Status	Note
1	2010CP2309806	South Carolina State Of vs. Quentin Dale Markham	James G. Bogle Jr. (803) 734-3970 Invrd	Elizabeth P. Wiygul (864) 235-2900	12/01/2010	Common Pleas	Sexual Predator 510	Pending	DAY CERT - SEXL PREL (? lengt
2	2009CP2310698	Colleen Walbridge , plaintiff, et al vs. Mary Kathryn Powell	James Westor Segura (864) 271-2232	Mary Kathryn Powell (864) 908-4841	12/18/2009	Common Pleas	Torts/Other 399	Pending	1 da
3	2010CP2300030	Akzo Nobel Coating Inc vs. Steve Henson , defendant, et al	C. Richard Stewart (864) 235-2019	Norman Douglas Brannon (864) 573-0048	01/05/2010	Common Pleas	Debt Collections 110	Pending	1.5 - days (case conti to Ju 27, 2011 ner
4	2010CP2301937	Olise Sherman , plaintiff, et al vs. Washington Parks Jr , defendant, et al	Rodney F. Pillsbury (864) 241-9828	James P. O'Conne (864) 220-0005	03/09/2010	Common Pleas	Torts/Other 399	Pending	1 - 1 days (Mr. Parks may need prote for

5	<u>2010CP2302195</u>	Albrie Nate Bashaw vs. Greenville City Of , defendant, et al	Thoma M. Creech Jr. (864) 235-4999	N. Heyward Clarkson III (864) 232-4400 Russell	03/17/2010	Common Pleas	Premises Liab 330	Pending	2 - 2 days
6	<u>2010CP2302298</u>	Pop Entertainment Inc vs. Pyong Sim Lee Saulsby	Fredric Scott Pfeiffer (864) 250-9780	Pyong Sim Lee Saulsby (864) 380-5551	03/22/2010	Common Pleas	Real Prop/Other 499	Pending	1 da
7	<u>2010CP2302305</u>	William J Delozier vs. Cliffs Communities Inc , defendant, et al	Joseph Sloan Lyles (864) 232-1676	Marcus K Gore (803) 454-0955 Robert Lawrence Rehnold	03/22/2010	Common Pleas	Premises Liab 330	Pending	2 da (cont to Ju 27 p order of cont.
8	<u>2010CP2303398</u>	Kyle Rogers , plaintiff, et al vs. Luis Fernando Bolivar	Stephe Fulton Shaw (877) 600-7429	Luis Fernando Bolivar	04/27/2010	Common Pleas	Personal Injury 350	Pending	1 da
	<u>2010CP2304228</u>	Bank vs. [REDACTED] Property On Lake Robinson Llc , defendant, et al	Brook Fowler (864) 242-3566	Charles M. Groves (864) 233-4500	05/24/2010	Common Pleas	Foreclosure 420	Pending	2 - 3 days

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Charles Groves

From: Coker, Lyndall <LCoker@greenvillecounty.org>
Sent: Monday, June 27, 2011 12:50 PM
To: Brook Fowler
Cc: Charles Groves; Tom Traxler
Subject: RE: Greer State v. McKeown

All,
I'll move the case to the Aug. 29 term and set it Day Certain with Judge Hill.
I'm glad it worked out for you.
It was good seeing you.

Thanks,
Lyndall

From: Brook Fowler [mailto:Brook.Fowler@carterlawpa.com]
Sent: Monday, June 27, 2011 12:42 PM
To: Coker, Lyndall
Cc: Charles Groves; Tom Traxler
Subject: RE: Greer State v. McKeown

Lyndall,

You are correct. Judge Hill continued the case until the week of August 29, 2011 (he is holding court that week). If available, Judge Hill agreed for the case to be set first that week as a day-certain. Finally, Judge Hill agreed to "keep" the case from this point forward.

Charles, if I've mistated anything, please clarify.

Thanks,
Brook

S. Brook Fowler
Carter, Smith, Merriam, Rogers & Traxler, PA
P.O. Box 10828
Greenville, SC 29603
Phone: 864.242.3566
Fax: 864.232.1558
Email: brook.fowler@carterlawpa.com

From: Coker, Lyndall [mailto:LCoker@greenvillecounty.org]
Sent: Monday, June 27, 2011 11:41 AM
To: Brook Fowler; Heyward Clarkson
Subject: Greer State v. McKeown

Brook and Heyward,
I just got word that Judge Hill continued your case.
Please let me know which term to set it on and I'll move it.
Thanks!
Lyndall

Greenville County 13th Circuit - Roster Details
Aug. 29, 2011 Judges Hill/Verdin Roster Meeting Mon. 9:15 a.m.

Court Agency	Greenville County Common Pleas	Judge		Roster Id	165
Roster Type	Jury Trial	Roster Begin Date	08/29/2011	Roster End Date	08/29/2011

Number of cases = 8

#	Case Number	Case Caption	Plaintiff Attorney	Defendant Attorney	Filed Date	Case Sub Type	Case Status	Notes	Date Certain	Not Before Date
1	2010CP2304223	Greer State Bank vs. Mckeown Property On Lake Robinson Llc , defendant, et al	S Brook Fowler (864) 242-3566	Charles M. Groves (864) 233-4500	05/24/2010	Foreclosure 420	Pending	DAY CERTAIN 2 - 3 days - Judge Hill set the case Day Certain and he will try the case		
2	2010CP2302291	Suzanne J. Engelmarm vs. Ted Smith defendant, et al	David Charles Alford (864) 574-0870	Andrew Todd Darwin (864) 594-5300 Kevin Wayne Reese (864) 770-6126	03/29/2010	Torts/Other 399	Pending	2 days		
3	2010CP2302452	Detroit Pendgraf vs. Seema Dress To Impress , defendant, et al	Stephen R.H. Lewis (864) 242-9000	Geoffrey W Gibbon (864) 239-4000 Samuel Mokeba (803) 799-9091	03/26/2010	Premises Lab 330	Pending	2.5 days		
4	2010CP2302478	Michael Davis vs. Starla Rutan	Samuel Darryl Harris (864) 277-0102	Starla Rutan (864) 422-8969	03/29/2010	Breach of Cont 140	Pending	1 day		
5	2010CP2302537	Albert Hammer vs. Wade Stephens , defendant, et al	James Weston Segura (864) 271-2232	Susan Stephens (813) 810-5200 Wade Stephens (813) 810-5200	03/31/2010	Torts/Other 399	Pending	2 days		
6	2010CP2304051	Corporate Imaging Solutions Inc vs Ben Sak Textile Inc	Adam C Bach (864) 271-9580	John Robert Devlin Jr (864) 242-4050	05/19/2010	Debt Collections 110	Pending	2 days		
7	2010CP2304174	JTM Properties LLC vs. Saffrons Side Walk Cafe LLC , defendant, et al	M Allison Moon (864) 271-1595	Elizabeth McDaniel McMillan (864) 239-4037 Lauren Sharpton Price (864) 451-7038 Lewis W. Tollison (864) 451-7038	05/21/2010	Breach of Cont 140	Pending	2 days		
8	2010CP2309139	Variety Wholesalers Inc vs Tony Chapman defendant, et al	Tynetta G Evans (864) 242-8440	Eric Holcombe Philpot (864) 242-1366	11/05/2010	Debt Collections 110	Pending	7 length Case set per Scheduling Order Judge Stilwell signed 3-18-11		

Greer State Bank
v.
McKeown Property On Lake Robinson, LLC, et al

**SPECIFIC COSTS ASSOCIATED WITH
JURY TRIAL DISPOSITION**

Enlargement of Trial Exhibits:

5/31/11	TPM	\$310.05
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Witness Fees for Trial Subpoenas:

6/17/11	Kenneth M. Harper	\$ 35.00
6/17/11	Paul D. Lister	\$ 35.00
6/17/11	Bruce Owen	\$ 35.00
6/17/11	Tracy Bouye	\$ 35.00

Service of Trial Subpoenas:

6/21/11	Greenville Process Service	\$200.00
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TOTAL COSTS: \$685.05



1003 Laurens Rd
Greenville, SC 29607
Phone: (864)271-4770
Fax: (864)271-0555
Visit our website @ www.tpm.com

Statement

Remit to:
P.O. Box 6705
Greenville, SC 29606

Statement Date: 5/31/2011

Salesperson: House

Customer Number: 0042455

CHAPMAN, HARTER & GROVES, P.A.
PO BOX 10224 F.S.
GREENVILLE, SC 29603

Contact:

Date	Reference	Customer PO #	Charge	Credit	Balance
5/6/2011	0448475-IN	na	310.05		310.05

Total: 310.05

Current	30 Days	60 Days	90 Days	120 Days	Balance Due
310.05	0.00	0.00	0.00	0.00	310.05

G
P S

GREENVILLE PROCESS SERVICE

25 Woods Lake Road, Suite 216, Greenville, SC 29607
(864) 242-0712

INVOICE NO: 63319
INVOICE DATE: 6/21/11

C.A. NO. 2010-CP-23-4223
FILE NO.

SERVICE FOR:

Chapman Harter and Groves
1012 East Washington Street
Greenville, SC 29601

SERVICE ON:

Kenneth M. Harper
Lister, Jeter, & Lloyd CPAs LLC
Appraisal & Consulting Services
Crider & Bouye, LLC

TYPE DOCUMENT:

Trial Subpoena

PLAINTIFF:

Greer State Bank

vs.

SERVICE DATE:

6/21/11

DEFENDANT(S):

McKeown Property on Lake, et al.

SERVICE:	<u>\$200.00</u>
FILING:	<u>\$0.00</u>
EXPEDIATION:	<u>\$0.00</u>
COPIES AND FAXING:	<u>\$0.00</u>
MILEAGE: 0 @ \$.40/ 1	<u>\$0.00</u>
TOTAL:	<u>\$200.00</u>

EXPLANATION:

THANK YOU VERY MUCH!

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

Greer State Bank,
Plaintiff

v.

McKeown Property On Lake
Robinson, LLC, et al
Defendants,

SUBPOENA IN A CIVIL CASE
Case Number: 2010-CP-23-4223

Pending in Greenville County

TO: **KENNETH M. HARPER, 9 HENLEY COURT, GREER, SC 29650**

☒ **YOU ARE COMMANDED** to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: GREENVILLE COUNTY, COURTHOUSE, 305 EAST NORTH ST., GREENVILLE, SC	COURTROOM: TBD
	DATE AND TIME: TERM OF COURT BEGINNING JUNE 27, 2011 @ 10:00 a.m. and continuing until such time as the case is called for trial

☐ **YOU ARE COMMANDED** to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:	DATE AND TIME:
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☐ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects in your possession custody or control at the place, date and time specified below (list documents or objects): **SEE ATTACHED EXHIBIT A FOR DOCUMENTS TO BE PRODUCED**

☐ Any and all documents in your possession relative to your testimony to be given at the trial of the above-referenced matter.

PLACE:	DATE AND TIME:
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☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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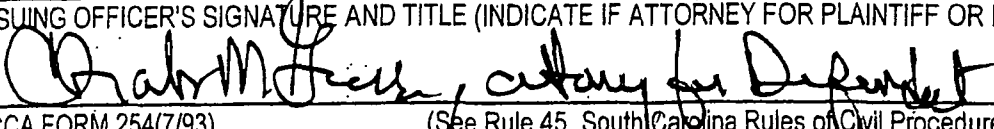
ANY SUBPOENAED ORGANIZATION NOT A PART TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(B)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS, THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER:

Charles M. Groves, Chapman, Harter & Groves, P.A., 1012 East Washington Street, Greenville, SC (864) 233-4500

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1) AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

 DATE June 17, 2011

SCCA FORM 254(7/93)
Reverse)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

Greer State Bank,
Plaintiff

v.

McKeown Property On Lake
Robinson, LLC, et al
Defendants,

SUBPOENA IN A CIVIL CASE
Case Number: 2010-CP-23-4223

Pending in Greenville County

TO: **PAUL D. LISTER**, Lister, Jeter & Lloyd, CPAs, LLC, 405 West Poinsett Street, Greer,
SC 29650

☒ **YOU ARE COMMANDED** to appear in the above named court at the place, date and time specified below to
testify in the above case.

PLACE OF TESTIMONY: GREENVILLE COUNTY, COURTHOUSE, 305 EAST NORTH ST., GREENVILLE, SC	COURTROOM: TBD
	DATE AND TIME: TERM OF COURT BEGINNING JUNE 27, 2011 @ 10:00 a.m. and continuing until such time as the case is called for trial

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deposition in the above case.

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PREMISES	DATE AND TIME
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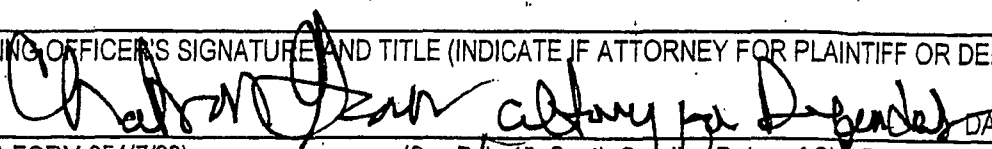
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30(B)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT
SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO
CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE
MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS, THE PERSON SO
DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER:

Charles M. Groves, Chapman, Harter & Groves, P.A., 1012 East Washington Street, Greenville, SC (864) 233-
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ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

 DATE June 17, 2011

SCCA FORM 254(7/93)
Reverse)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

Greer State Bank,
Plaintiff

v.

McKeown Property On Lake
Robinson, LLC, et al
Defendants,

SUBPOENA IN A CIVIL CASE

Case Number: 2010-CP-23-4223

Pending in Greenville County

TO: **R. BRUCE OWEN, APPRAISAL & CONSULTING SERVICES, INC., 10 LAVINIA AVE., GREENVILLE, SC**

☒ **YOU ARE COMMANDED** to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: GREENVILLE COUNTY, COURTHOUSE, 305 EAST NORTH ST., GREENVILLE, SC	COURTROOM: TBD
	DATE AND TIME: TERM OF COURT BEGINNING JUNE 27, 2011 @ 10:00 a.m. and continuing until such time as the case is called for trial

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ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

Charles M. Groves *Attorney for Defendant* DATE June 21, 2011

SCCA FORM 254(7/93)
Reverse)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

Greer State Bank,
Plaintiff

v.

McKeown Property On Lake
Robinson, LLC, et al
Defendants,

SUBPOENA IN A CIVIL CASE

Case Number: 2010-CP-23-4223

Pending in Greenville County

TO: **Tracy J. Bouye, Crider & Bouye, LLC, 2 Ridgeway Avenue, Greenville, SC 29607**
☒ **YOU ARE COMMANDED** to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: GREENVILLE COUNTY, COURTHOUSE, 305 EAST NORTH ST., GREENVILLE, SC	COURTROOM: TBD
	DATE AND TIME: TERM OF COURT BEGINNING JUNE 27, 2011 @ 10:00 a.m. and continuing until such time as the case is called for trial

☐ **YOU ARE COMMANDED** to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

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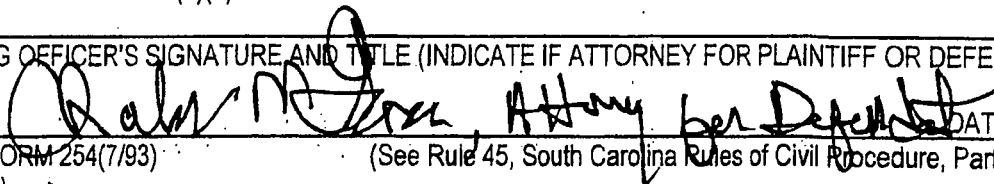
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER:

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ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

 Attorney for Defendant

DATE June 13, 2011

SCCA FORM 254(7/93)
Reverse)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

Greer State Bank,
Plaintiff

v.

McKeown Property On Lake
Robinson, LLC, et al
Defendants,

SUBPOENA IN A CIVIL CASE
Case Number: 2010-CP-23-4223

Pending in Greenville County

TO: **WILLIAM S. HARRILL, JR., GREER STATE BANK, 1111 West Poinsett Street,
Greer, SC 29650**

- ☐ **YOU ARE COMMANDED** to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: GREENVILLE COUNTY, COURTHOUSE, 305 EAST NORTH ST., GREENVILLE, SC	COURTROOM: TBD
DATE AND TIME: TERM OF COURT BEGINNING JUNE 27, 2011 @ 10:00 a.m.	

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ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE June 17, 2011

SCCA FORM 254(7/93)
Reverse)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

Greer State Bank,
Plaintiff

v.

McKeown Property On Lake
Robinson, LLC, et al
Defendants,

SUBPOENA IN A CIVIL CASE
Case Number: 2010-CP-23-4223

Pending in Greenville County

TO: **VICTOR GROUT, GREER STATE BANK, 1111 West Poinsett Street, Greer, SC 29650**

- ☐ **YOU ARE COMMANDED** to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: GREENVILLE COUNTY, COURTHOUSE, 305 EAST NORTH ST., GREENVILLE, SC	COURTROOM: TBD
	DATE AND TIME: TERM OF COURT BEGINNING JUNE 27, 2011 @ 10:00 a.m.

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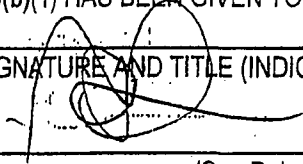
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ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)



DATE June 17, 2011

SCCA FORM 254(7/93)
Reverse)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

Greer State Bank,
Plaintiff

v.

SUBPOENA IN A CIVIL CASE
Case Number: 2010-CP-23-4223

McKeown Property On Lake
Robinson, LLC, et al
Defendants,

Pending in Greenville County

TO: **JOHN RICHARD MEDLOCK, JR., GREER STATE BANK, 1111 West Poinsett Street, Greer, SC 29650**

- ☐ YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: GREENVILLE COUNTY, COURTHOUSE, 305 EAST NORTH ST., GREENVILLE, SC	COURTROOM: TBD
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DATE June 17, 2011

SCCA FORM 254(7/93)
Reverse)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2010-CP-23-4223

Greer State Bank,)

Plaintiff,)

vs.)

AFFIDAVIT OF BRUCE A. MCKEOWN

McKeown Property On Lake)

Robinson, LLC, Bruce A. McKeown,)

Robert M. McKeown, Cathy J.)

Lockhart, Rita W. McKeown and)

Connie S. Santoro f/k/a Connie S.)

McKeown,)

Defendants.)

PERSONALLY APPEARED BEFORE ME, Bruce A. McKeown, who upon being duly sworn states:

1. My name is Bruce McKeown and I am one of the Defendants in the above-captioned law suit.

2. I very much would like for my case to be heard by a jury.

3. This case was originally scheduled for trial on May 31, 2011, and has been continued beyond that date and beyond the next trial date of June 27, 2011.

4. It is my understanding that the case has now been set for a day certain on August 29, 2011.

5. From the pleadings it appears that the bank is claiming interest costs of \$738.9729 on Note 1 and \$32.7475 on Note 2 every day that this matter remains unresolved.

6. I have had to pay significant attorneys fees in having my lawyer prepare this case for a jury trial. Specifically, it cost me several thousands of dollars for him to prepare the entire weekend before the June 27, 2011 trial date. I realize that the June 27, 2011 trial date was not a day certain but nevertheless was "par for the course" as you worked your way up the trial docket for your day in court.

7. Also, I incurred costs for witness fees and subpoena service for my jury trial.

8. I believe that it would be very unfair to me, to McKeown Property on Lake Robinson

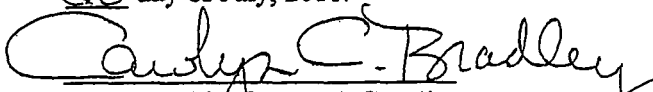
LLC and my wife Rita for this case at the last minute to be taken off the jury calendar.

9. Another consideration is that my life is really being put on hold, while I wait for my day in court. Each day that passes cost me money, in that I am not able to sell lots in the Stillwaters Subdivision, and yet, I don't want to leave and move somewhere else and start another job until I know what is going to happen. I feel that I have been very patient in waiting my turn in line for a jury trial, and I would very much request that the court give consideration to the harm this will cause to me if this case does not go to trial as agreed to by everybody on August 29, 2011.

Further, Affiant saith not.


Bruce A. McKeown

SWORN to before me this the
20 day of July, 2011.


Notary Public for South Carolina

My Commission Expired 7/10/19

CARTER, SMITH, MERRIAM, ROGERS & TRAXLER, P.A.
ATTORNEYS AT LAW

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COUNSEL:
JEFFERSON V. SMITH, JR.
DAVID M. ROGERS
(1955-2010)

July 29, 2011

VIA – HAND DELIVERY

The Honorable D. Garrison Hill
Judge of the 13th Judicial Circuit
Greenville County Courthouse
305 East North Street, Suite 213
Greenville, South Carolina 29601

2011 JUL 29 AM 11:29
FILED-CLERK OF COURT
GREENVILLE CO SC
PAUL B. WIGGS

RE: *Greer State Bank v. McKeown Property on Lake Robinson, LLC, Bruce A. McKeown, Robert M. McKeown, Cathy J. Lockhart, Rita W. McKeown, and Connie S. Santoro f/k/a Connie S. McKeown*
Case Number: 2010-CP-23-4223

Dear Judge Hill:

I have received the fax to you from Charles Groves dated July 28, 2011, submitting to you additional case law on the issue of his Motion to Amend to Add Conversion as a cause of action.

In the vein of submitting to you additional authorities beyond the hearing, I enclose herewith a copy of the following cases that I cited in our Motion to transfer this matter to the non-jury calendar.

- *Gregory Poole v. Union Planters Bank*, 337 S.W.3rd 771, 783 (Tenn.Ct.App. 2010) ("However, it is the opinion of this court that the entry of a scheduling order does not manifest an intent and purpose to waive a jury-waiver provision where, as here, a party may move to strike a jury demand up to the eve of trial.") Confirmed in *Regions Bank v. Lost Cove Cabins*, 2010 WL 4514957 (Tenn.Ct.App. November 2010)
- *Leary v. Stylarama*, 174 Conn. 217, 384 A.2d 377 (1978)
- *Camel Square, L.L.C. v. Rubin Companies, Inc.*, (Unpublished), 2010 WL 2773399 (Ariz.App.Div. 1) (July 13, 2010) ("Here, Camel Square did not file its motion to enforce the jury waiver provision for more than three years after TRC made its demand for a jury trial. Nevertheless, Camel Square did not make its motion on the eve of trial, but more than two months before trial was set to begin.

Honorable D. Garrison Hill
Re: *Greer State Bank v. McKeown*
July 29, 2011
Page 2

We find no error in the trial court's decision to enforce the contractual jury waiver.")

- *Tracinda Corporation v. DaimlerChrysler AG*, 502 F.3d 212, 227 (3rd Cir. 2007) ("Since 'a court has the power to act sua sponte at any time' under Rule 39, 'it follows that a court has the discretion to grant a motion to strike a jury demand at any time, even on the eve of trial.' " ...Because a party may file a motion to strike a jury demand at any time under Rule 39(a), we conclude that DaimlerChrysler did not commit inexcusable delay by filing its motion to strike after the close of discovery. Having reached this conclusion, we need not consider whether DaimlerChrysler's delay caused prejudice to Tracinda.")
- *Mowbray v. Zumot*, 536 F.Supp.2d 617 (Md. DC 2008)
- *Cellport Systems, Inc. v. Peiker Acoustic GMBH & Co.*, 2011 WL 290530 (Colo. DC 2011)
- *JPA, Inc. v. USF Processors Trading Corp., Inc.*, (Unpublished) 2006 WL 740401 (N.D.Tex. 2006)

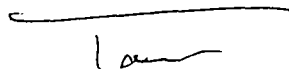
As to the issue of right a jury trial on a permissive counterclaim when the Complaint is an action in equity:

- *Johnson v. South Carolina National Bank*, 292 S.C.51, 55, 354 S.E.2d 895, 897 (1987) ("If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial.")

If you need anything further or need any response from us as to any of the cases cited by Mr. Groves, please let us know.

Sincerely,

CARTER, SMITH, MERRIAM, ROGERS
& TRAXLER, PA.



Thomas W. Traxler

TWT/sb

Enclosures

cc: Charles M. Groves (w/encs.) (via – hand delivery)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2010-CP-23-4223

Greer State Bank,)

Plaintiff,)

v.)

McKeown Property On Lake)

Robinson, LLC, Bruce A. McKeown,)

Robert M. McKeown, Cathy J.)

Lockhart, Rita W. McKeown and)

Connie S. Santoro f/k/a Connie S.)

McKeown,)

Defendants.)

DEFENDANTS' NOTICE OF MOTION
AND MOTION TO AMEND ANSWER
AND COUNTERCLAIM PURSUANT TO
RULE 15 OF THE SCRPC

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendants, will ten (10) days from the date of service of this Motion, or at such time as counsel may be heard, move for an Order allowing Defendants to amend their Answer and Counterclaim pursuant to Rule 15 of the SCRPC. In support of this Motion, Defendants state as follows:

1. That Defendants filed their original Answer and Counterclaim in this case on August 4, 2010 and, subsequently amended same on September 13, 2010.
2. That upon further investigation of the facts of this case and as a result of discovery responses, the Defendants wish to add two additional causes of action to their Counterclaim, one for conversion and a second for breach of contract accompanied by a fraudulent act.
3. That the Plaintiff will not be prejudiced if the Court permits Defendants to amend their Answer and Counterclaim as stated above.

The Motion shall be based on the statutory and case law of the State of South Carolina,

the South Carolina Rules of Civil Procedure, specifically Rule 15 which provides that amendment of pleadings shall be freely given when justice so requires and will not prejudice any other party. A copy of said proposed Amended Answer and Counterclaim is attached hereto and incorporated by reference.

WHEREFORE, Defendants respectfully request the Court to allow them to amend their Answer and Counterclaim to provide additional causes of actions as more fully set forth in the proposed Amended Answer and Counterclaim, a copy of which is attached hereto; and for such other and further Orders as this Court deems just and proper.

CHAPMAN HARTER & GROVES, P.A.

BY 

Charles M. Groves
1012 East Washington Street (29601)
Post Office Box 10224 F.S. (29603)
Greenville, South Carolina
(864) 233-4500
Attorney for Defendants

Greenville, South Carolina
July 1, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C.A. NO.: 2010-CP-23-4223

Greer State Bank,)

Plaintiff,)

vs.)

SECOND AMENDED ANSWER AND
COUNTERCLAIM OF DEFENDANTS

McKeown Property On Lake)

Robinson, LLC, Bruce A. McKeown,)

Robert M. McKeown, Cathy J.)

Lockhart, Rita W. McKeown and)

Connie S. Santoro f/k/a Connie S.)

McKeown,)

Defendants.)

(JURY TRIAL DEMANDED)

The Defendants, McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown, answering the Complaint of the Plaintiff would show this Honorable Court as follows:

FOR A FIRST DEFENSE
(General Denial)

1. That all allegations of this Complaint not hereinafter admitted, modified or explained are denied with strict proof demanded thereof.

2. That the allegations of Paragraphs 1 and 2 are admitted.

3. That so much of Paragraph 3 is admitted as alleges that the Defendant Rita W. McKeown is a citizen and resident of the State of Georgia. That the remaining allegations of Paragraph 3 are denied.

4. That answering the allegations of Paragraph 4 the Defendants, McKeown Property On Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown (hereinafter "McKeown

Defendants”) would admit any matter that are matters of public record. That all remaining allegations are denied.

5. That the allegations of Paragraph 5 and 6 are admitted.

6. That answering Paragraph 7, the McKeown Defendants repeat those responses to all previous paragraphs the same as repeated herein verbatim.

7. That answering the allegations of Paragraph 8, the McKeown Defendants admit the execution of Note 1 by Defendant McKeown Property on Lake Robinson, LLC and described therein, the terms of which speak for themselves.

8. That as to the allegations of Paragraph 9, the McKeown Defendants admit that a copy of Note 1 as described in Paragraph 8 of Plaintiff’s Complaint is attached to said Complaint.

9. That answering the allegations of Paragraph 10, the McKeown Defendants admit the execution of Note 2 by McKeown Property on Lake Robinson, LLC and described therein, the terms of which speak for themselves. Further, the McKeown Defendants admit that an Extension Agreement was executed by the Plaintiff, the terms of which speak for themselves.

10. That as to the allegations of Paragraph 11, the McKeown Defendants admit that a copy of Note 2 and the Extension Agreement as described in Paragraph 10 of Plaintiff’s Complaint are attached to said Complaint.

11. That answering the allegations of Paragraph 12, the McKeown Defendants admit the execution of the mortgage described therein, the terms of which speak for themselves.

12. That as to the allegations of Paragraph 13, the McKeown Defendants admit that a copy of the Mortgage as described in Paragraph 12 of Plaintiff’s Complaint is attached to said Complaint.

13. That answering the allegations of Paragraph 14 the McKeown Defendants would admit only so much of said Paragraph as are matters of public record.

14. That answering the allegations of Paragraphs 15, 16, 17, 18, 19, 20 and 21, the McKeown Defendants crave reference to the Notes and Mortgage for the terms of said instruments. That the remaining allegations of said Paragraphs are denied.

15. That answering Paragraph 22, the McKeown Defendants are not certain if all such required notices have been given and, therefore, same is denied with strict proof demanded thereof.

16. That the allegations of Paragraph 23 are denied; that Defendants McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown allege the Plaintiff failed to properly fund the Notes which the mortgage secures; that the McKeown Defendants deny that Defendants McKeown Property on Lake Robinson, LLC, Bruce A. McKeown and Rita W. McKeown are in default.

17. That the allegations of Paragraph 24 are denied.

18. That answering Paragraph 25, the McKeown Defendants are uncertain if they may avail themselves of any government statute or program, and, therefore, same is denied with strict proof demanded thereof.

19. That answering Paragraph 26, the McKeown Defendants repeat those responses to all previous paragraphs the same as repeated herein verbatim.

20. That answering the allegations of Paragraph 27, the Defendants Bruce A. McKeown and Rita W. McKeown admit the execution of the Personal Guaranties described therein, the terms of which speak for themselves. All other allegations of said Paragraph are denied.

21. That the McKeown Defendants would admit so much of Paragraph 28 as alleges that a copy of the guaranties described in Paragraph of 27 of Plaintiff's Complaint are attached thereto.

22. That the allegations of Paragraph 29 are denied.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM
(Demand For An Accounting)

23. That the allegations of Paragraph 1-21 above, not inconsistent herewith, are realleged as if again fully set forth in their entirety.

24. In further answering the Plaintiff's Complaint and by way of Counterclaim, the Defendants demand an itemized accounting of the debt set forth in the Complaint.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract)

25. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as repeated verbatim.

26. That beginning in late 2004 and throughout 2005 Defendant Bruce McKeown began negotiating with Plaintiff to provide financing for a real estate subdivision to be located in Greenville County, South Carolina, and known as "Stillwaters".

27. That the "Stillwaters" project began taking shape and by the fall of 2005, the Plaintiff made the first of several loans to the McKeown Defendants for the ultimate development of this subdivision.

28. That all parties contemplated at the beginning of the "Stillwaters" project that the Plaintiff would be the sole lender to provide funding of this subdivision.

29. That the McKeown Defendants with each new loan obtained from Plaintiff,

continued to work diligently in not only developing "Stillwaters" but in seeing that the repayment of these loans were timely made.

30. That by the fall of 2008, the subdivision was substantially complete, and the Plaintiff, who had already funded several millions of dollars in loans for the "Stillwaters" project, once again, made the McKeown Defendants an additional loan in the amount of \$4,750,000.00 and \$200,000.00. (Identified as Note 1 and Note 2 in Plaintiff's Complaint, respectively.) These loans were never properly or fully funded by the Plaintiff.

31. That unfortunately and through no fault of the McKeown Defendants, the economy of the United States, and certainly South Carolina, in late 2008 and continuing until the present time began experiencing extreme hardships resulting arguably in the worst economic times since the 1930s and The Great Depression.

32. That the Plaintiff, in part because of the economic uncertainty, required that \$500,000.00 of this Note 1 be set aside and utilized for interest accruing on the Note. The interest set aside in Note 1 of \$500,000.00 would be sufficient to carry this loan well past its maturity date even if none of the "Stillwaters" lots sold during such period of time.

33. That although this loan (Note 1) was extended on October 27, 2009, for six months, all changed in early 2010 relative to the Plaintiff's relationship with the McKeown Defendants.

34. That contrary to the terms of Note 1 and Note 2 and the extension thereof, the Plaintiff failed to properly fund the Notes and perform in accordance with agreement of the parties.

35. That although the bank had at least a two and one-half to three million dollar equity cushion in the "Stillwaters" project, and had given the Defendant Bruce McKeown oral

assurances that it would continue funding this project through the fall of 2010, it abruptly began in the winter of 2009 and spring of 2010, refraining from properly funding the loans in such a way that harmed the McKeown Defendants.

36. That in breach of its contract with the McKeown Defendants it failed to deal with them in good faith and fair dealings while administering the loans, and, in fact for no explainable reason other than wanting this loan to go into default, Plaintiff failed to fund it.

37. That as a result of Plaintiff's breach of contract, the McKeown Defendants have been damaged in an amount to be determined by the trier of fact.

FOR A FOURTH DEFENSE

(Breach of Implied Covenant of Good Faith and Fair Dealing)

38. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

39. That all of the agreements between Plaintiff and the McKeown Defendants, whether oral or written, contained an implied covenant of good faith and fair dealing, which provided that each party would deal fairly with the other, and neither party would do anything to deprive the other party of the agreements.

40. That Plaintiff acting through its officers and agents breached the implied covenant of fair dealings by its conduct, including but not limited to the following:

- [a] deliberately, unjustifiably and unreasonably failing to properly fund the Promissory Notes which are the subject of Plaintiff's foreclosure action;
- [b] deliberately, unjustifiably and unreasonably refusing to inform the McKeown Defendants of potential purchasers of the "Stillwaters" Subdivision;
- [c] deliberately, unjustifiably and unreasonably marketing and selling homes

in the "Stillwaters" Subdivision owned by Plaintiff at a price point Plaintiff absolutely knew would prevent the McKeown Defendants from competing with and realizing sales at a critical time in the life of the subdivision;

- [d] in instituting a foreclosure action on loans that the Plaintiff had not fully funded, thus, stigmatizing "Stillwaters" as a failed development;
- [e] in failing to continue funding this four year old project beyond April 2010, when no loan had ever been in default, the McKeown Defendants had sufficient interest set aside in Note 1 to fund the project beyond said date, and Plaintiff had given the Defendant Bruce McKeown assurance that the Plaintiff would fund the loans beyond April 2010;
- [f] otherwise improperly taking advantage of the McKeown Defendants.

41. That the Defendants specifically plead the affirmative defense of implied covenant of good faith and fair dealings.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Fiduciary Duty)

42 That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

43. That the Plaintiff with each passing year of the "Stillwaters" project began exercising more and more control over same such that by early 2009 Plaintiff for all intents and purposes was exercising excessive, if not exclusive, control over all decisions of the "Stillwaters" project.

44. That by 2009, the Plaintiff was in a joint venture with the McKeown Defendants, in that Plaintiff owned several homes in the subdivision which they exclusively controlled the pricing of which in turn totally dictated whether the McKeown Defendants would be able to sell and develop any lots.

45. That Plaintiff, acting through its agents, breached its fiduciary duty by their conduct, including, but not limited to:

- [a] failing to properly fund the loans it made to the McKeown Defendants;
- [b] failing to market all of the lots of "Stillwaters" in a way and manner that would be advantageous to the McKeown Defendants.
- [c] failing to continue funding the "Stillwaters" project, which it had orally assured the Defendant Bruce McKeown it would do.
- [d] failing to advise the McKeown Defendants of potential purchasers of the "Stillwaters" Subdivision.
- [e] failing to act in the best interest of the McKeown Defendants.
- [f] otherwise improperly obtaining benefits at the expense of the McKeown Defendants and improperly taking advantage of the McKeown's trust in Plaintiff.

46. That as a proximate result of Plaintiff's breach of fiduciary duty, the McKeown Defendants have been damaged, both actual and punitive, in an amount to be determined by the trier of fact.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligence)

47. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

48. That the Plaintiff had a duty to use an appropriate level of skill, prudence and diligence in discharging their duties, including administering disbursements relative to loans made to the McKeown Defendants.

49. That Plaintiff was required to use due care in the marketing of the "Stillwaters" project when its conduct as herein alleged went beyond the scope of mere lender.

50. That Plaintiff failed to exercise such care and as a proximate result thereof Plaintiff's wrongdoing, the McKeown Defendants have been damaged, both actual and punitive, in an amount to be determined by the trier of fact.

FOR AN SEVENTH DEFENSE
(Unclean Hands)

51. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

52. That because of the conduct on the part of the Plaintiff as is set forth hereinabove, the McKeown Defendants allege Plaintiff has unclean hands and, therefore, may not seek any equitable or legal relief from this Court.

53. That the McKeown Defendants specifically plead the affirmative defense of unclean hands.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Conversion)

54. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

55. That during the first quarter of 2010, the Defendant McKeown, LLC made certain payments on its Note 1 with Plaintiff. These payments included a payment made on January 28, 2010, in the amount of \$22,732.88 and a payment made on March 2, 2010, in the amount of \$22,987.97.

56. That the Plaintiff provided the Defendants with receipts by mail evidencing such payments and reflecting that such payments had been credited to the Defendants' account.

57. That under the terms of the promissory note these payment entries were to be deemed correct, accepted by and binding on the parties unless the Plaintiff received a written statement of exception from the borrowers within ten days after such statement was furnished. The Defendants believe the statements were correct and proper and so no exception was ever taken.

58. That at no time before the filing of this lawsuit did the Plaintiff ever inform the Defendants that these payments made by the Defendants were no longer credited to its account.

59. That the Plaintiff surreptitiously, sometime during March or April of 2010, removed the payment credits for the January 2010 and February 2010 payments made by the Defendants.

60. That the payments that were made on January 28, 2010 and March 2, 2010, were with funds which belonged to the Defendants and Plaintiff had no legal right whatsoever to remove or reverse such payments.

61. That such actions taken by the bank make it appear as though this loan was in a delinquent status with the last payment having been made on December 30, 2009.

62. That the acts described herein on the part of the Plaintiff constitute a wrongful and illegal misuse of Defendants' funds and amounted to a misappropriation of the same for the Plaintiff's own use and benefit.

63. That the Plaintiff's conversion of the Defendants' funds was completely without the Defendants' permission or knowledge and was done intentionally, recklessly and with a conscious indifference of the Defendants' rights.

64. That these wrongful actions on the part of the Plaintiff constitute a willful and intentional taking of Defendants' monies and Defendants allege they are entitled to compensatory

damages, both actual and special, as well as punitive damages.

FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract Accompanied by a Fraudulent Act)

65. That the McKeown Defendants incorporate by reference each of the proceeding paragraphs not inconsistent herewith, the same as if fully set forth herein verbatim.

66. As is set forth hereinabove, the Plaintiff and Defendants entered into a loan agreement whereby the Defendant LLC pledged real estate to secure loans made by the Plaintiff to it.

67. Upon information and belief, during the first four months of 2010, the Plaintiff failed to properly fund Note 1, and, thereby breached the said contract and the implied covenant of good faith and fair dealings contained therein.

68. At or near the time of the breach, the Plaintiff engaged in fraudulent conduct toward the Defendant and the breach was committed with fraudulent intent and was accompanied by fraudulent acts in that the bank engineered a default of Note 1 so that it could stop any further funding required under the agreement, in part, by misappropriating over \$40,000 of Defendants' funds which resulted in the loan status going from being current to being delinquent. The Plaintiff failed to ever inform the Defendants of its actions, but, to the contrary, sent the Defendants receipts indicating loan payments were being timely made, that such fraudulent conduct was separate and apart from the breach.

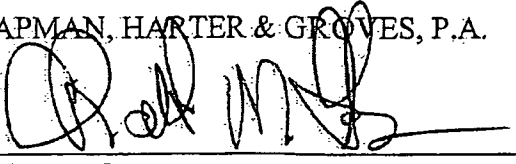
69. The Plaintiff's conduct as described herein accompanied the breach of contract and entitles the Defendants to recover compensatory damages, both actual and special, from the Plaintiff in an amount to be proven at the trial.

70. The Defendants are also entitled to recover punitive damages from the Plaintiff in an amount to be proven at trial based on the Plaintiff's intentional and deceptive conduct.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants pray as follows:

- a. For the dismissal of the Plaintiff's Complaint in its entirety;
- b. For an itemized accounting of the debt set forth in the Plaintiff's Complaint;
- c. For damages, actual, punitive, and special, as made be determined by the trier of fact;
- d. For costs of suit incurred herein;
- e. For such other and further relief as this Court may deem just and proper.

CHAPMAN, HARTER & GROVES, P.A.

BY: 

Charles M. Groves
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Post Office Box 10224 F.S. (29603)
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(864) 233-4500
cmgro@chglawsc.com
Attorney for Defendants McKeown Property
On Lake Robinson, LLC, Bruce A. McKeown
and Rita W. McKeown

Greenville, South Carolina
July 1, 2011

DEMAND FOR JURY TRIAL

Defendants demand a trial by jury of all issues to triable in this action.


CHAPMAN, HARTER & GROVES, P.A.

BY: _____

Charles M. Groves
1012 East Washington Street (29601)
Post Office Box 10224 F.S. (29603)
Greenville, South Carolina
Attorney for Defendants McKeown Property
On Lake Robinson, LLC, Bruce A. McKeown
and Rita W. McKeown

Greenville, South Carolina
July 1, 2011

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2010-CP-23-04223

GREER STATE BANK,
PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

MCKEOWN PROPERTY ON LAKE
ROBINSON, LLC, BRUCE A.
MCKEOWN, ROBERT M. MCKEOWN,
CATHY J. LOCKHART, RITA W.
MCKEOWN, AND CONNIE S.
SANTORO F/K/A CONNIE S.
MCKEOWN,
DEFENDANTS.

ORIGINAL

July 22, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

THOMAS W. TRAXLER, ESQ.
S. BROOK FOWLER, ESQ.
Attorney for the Plaintiff

CHARLES M. GROVES, ESQ.
Attorney for the Defendants

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: This is 2010-CP-23-04223, Greer State Bank v. McKeown Property, et al.

MR. TRAXLER: Yes, sir.

MR. GROVES: Yes, Your Honor.

THE COURT: Motion to amend the answer, is that what we're here for?

MR. GROVES: Your Honor, we've got, I think, three motions. The motion to amend, which I made to amend my answer and counterclaim, they have made a motion to refer this non-jury. And I think a motion to refer it to the Master in Equity.

So I think there's really -- but those two are probably sort of the same.

THE COURT: Okay.

MR. GROVES: So we'll proceed, I guess, on whatever -- theirs is, actually, first on the roster, but mine was filed first. So if you want me to move forward on the motion to amend, I'll be glad to do that.

THE COURT: Yes, sir.

MR. GROVES: Your Honor, we have moved, at this time, to amend the answer and counterclaim that we have filed in this case. And we did that pursuant to Rule 15.

And I think everybody -- it's sort of black letter law and basic law that we all know that amendments are to

1 be freely given by the Court, unless you can show undue
2 delay, or fraud, or trying to gain some advantage. And I
3 would anticipate that opposing counsel might say, well,
4 this is -- we've got a day certain. I hope they say that.
5 We have a day certain for this trial on August the 29th,
6 and here you are moving to amend your answer and
7 counterclaim, and we don't think it's fair. We think this
8 will cause us to have to go out and hire, perhaps, new
9 experts. And we'll have to take additional testimony.
10 All of the usual sort of arguments.

11 We were very careful why we amended and when we
12 amended. This case has been hard fought. We have taken a
13 lot of depositions. There has been a lot of discovery. I
14 think it would be safe to say there's a lot on the line
15 for both parties. The bank -- it's the largest loan that
16 the bank has -- or, at one time, it was the largest loan
17 that they had. And this is absolutely the last train for
18 my client. It's everything to him. So, in that sense,
19 there's a lot at stake in this case.

20 One of the problems that we had, Your Honor, was
21 trying to understand exactly what happened in the first
22 quarter, which is really the focus period here, as far as
23 we're concerned. Other portions of the timeline are
24 important, but especially what happened in 2010 is of
25 grave and great concern to us. There was a -- the answer

1 that was filed in this complaint indicated that the last
2 payment that was made by the Defendant was on December
3 30th of 2009.

4 Now, I would point out that produced in discovery and
5 throughout the first, I guess, 14 months of this case, we
6 all operated on the basis and understanding that this was
7 the payment history card. The reason why -- and I've got
8 copies of this, Your Honor, that I can hand up. The
9 reason why --

10 May it please the Court.

11 The reason why this payment history card is so
12 important is because, under the terms of the promissory
13 note, it provides that payments are to be made and that
14 the payment history is to be shown on a payment history
15 card. That's spelled out right in the language of the
16 mortgage. And it provides, just as I said, that all
17 advances will be charged to a loan account in the
18 borrower's name on lenders books. And the lender shall
19 debit in such account the amount of each advance paid to
20 and credit to such account the amounts of each repayment
21 made by borrower.

22 As I said, up until June 10th of 2007 -- this
23 lawsuit, I think, was filed in May of 2010. For over a
24 year, this is the only thing that Greer State Bank
25 produced to us. And if you look at the bottom of -- and

1 this is bates number 49. You will notice that the last
2 interest payment shown right here is December 30th, 2009,
3 which coincides with what the complaint said. My client
4 came in. And, as we started looking into this case, we
5 started looking at some documents he had, not documents
6 that were produced by the bank. But what he had and
7 brought to me were some payment history cards that -- or,
8 rather, receipts that we've had enlarged.

9 And you can see, for example, here, there's a payment
10 shown on January 28th, 2010, of \$22,732.88. Well, that's
11 not shown. That \$22,732, it's not shown anywhere on the
12 payment history card. And we had a second payment history
13 card -- or rather receipt that my client received in the
14 mail that shows a last payment on 3-2-10 of \$22,987. It's
15 not shown.

16 So we, in the course of discovery, took the
17 deposition of Bill Harrill, senior vice president of Greer
18 State Bank. And Mr. Harrill had a very interesting
19 deposition. And I have his deposition. I'll be glad to
20 share it with the Court, if the Court would like to look
21 into it, if that would assist you. But Mr. Harrill said,
22 Yeah, that's exactly right. He made these payments. And
23 we made the advancements. There was -- what you had here
24 is he had a large \$400,000 -- or interest reserve. And
25 Mr. Harrill says, Yeah, that's right. He did make these

1 payments.

2 I said, Well, I'm confused. Can you show me where
3 they're at?

4 He said, Well -- his words were, We reversed them.

5 Our words are that they misappropriated, at least,
6 \$40,000 of our money. Because it's not shown. And it
7 doesn't indicate that in the complaint, and it doesn't
8 show it here. And, all the sudden, in the course of
9 Mr. Harrill's deposition, he tells us that we just
10 reversed his words. We reversed those sums.

11 And it wasn't until June the 8th that we received --
12 Mr. Harrill said, I'll see if I can get you something that
13 will show what we've done. And it wasn't until June the
14 8th that we really had something that shows what they
15 did -- or we think shows what they did in these -- what
16 they call reversals.

17 So, yes, I am late in making this motion in the sense
18 of a timeline and how long this case has gone on. But,
19 really, June the 8th was the first time we had some proof
20 of exactly what they had done. Although Mr. Harrill, back
21 in his deposition on May 9th, had indicated that that's
22 what they had done. So we think that any argument that
23 somehow this is a dilatory tactic or is a delaying tactic
24 is unfounded.

25 And, also, Your Honor, in fairness, there's not going

1 to be one additional witness called. Either they stole
2 his money, they took his money, they misappropriated his
3 money, or they didn't. And if they didn't, then so be it.
4 That would be for the jury, the finder of fact, to
5 determine.

6 So we filed a complaint -- an amended answer, along
7 with our proposed amended answer and counterclaim, along
8 with our motion. And we left everything exactly as it was
9 before us so that we don't run into this argument of
10 you're going into all new territory, and there's going to
11 be a whole bunch of new witnesses. Because I can
12 appreciate that. This case is cumbersome enough without
13 bringing a whole bunch of new witnesses in.

14 But on our counterclaim for conversion that has been
15 developed in discovery that we did not know about until
16 very recently, did you take his money or not? If we're
17 wrong, then Mr. Harrill's testimony would save the day. I
18 don't know of anybody else they would need.

19 Our second cause of action that -- a new cause of
20 action is breach of contract accompanied by fraudulent
21 act. And we believe that the fraud that was developed in
22 Mr. Harrill's deposition was -- and he testified to such.
23 We never told him what we were doing. Yes, we did take
24 that money. Yes, we did apply it to his account, but we
25 never told him.

1 And part of our theory of the case is that Greer
2 State Bank has engineered a default because they're in
3 need of liquidity and money. And so they would have a
4 motive. You, generally, don't think banks have a motive,
5 which is a little strange about this case. Generally,
6 banks try to work with people on, and on, and on. But, in
7 this instance, we believe the evidence would show that
8 they just threw up their hands. They said, We're tired of
9 working with you, and we're going to reverse these
10 payments back to December the 30th.

11 So that is why we're making this motion at this time.
12 And we think that we're bringing two causes of action
13 and -- you know, breach of contract accompanied by
14 fraudulent act. We've already sued them for breach of
15 contract. No new witnesses. Really, no new evidence to
16 be developed. Did you deceive him? Did you breach the
17 contract? Number one, which is already in the record.
18 And did you deceive him? Did you do something that was of
19 a fraudulent nature. So no new witnesses, no new
20 evidence. I don't know of any new exhibits.

21 And as far as where we're going, Your Honor, we've
22 already sought actual and punitive damages. So there --
23 it's not that we're going into a new arena or a new area.
24 And I think that for these reasons, Your Honor -- and
25 going back to what I started off at the beginning, under

1 Rule 15 of the South Carolina Rules of Civil Procedure, in
2 the interest of justice, amendments to pleadings should be
3 freely allowed. And I think I've, at least, made what, I
4 think, is a credible argument this morning as to the
5 reason why we're doing this.

6 And, also, the fact -- and, lastly, Your Honor, this
7 case was set for trial on June the 27th. It has been
8 delayed for two months. It is unfair that we delay a case
9 for two months so that during that two-month period of
10 time, the bank can go out and -- this was a large part of
11 the delay -- and go in the hedges and highways hoping to
12 find an appraiser that would be of benefit and assist him
13 in the trial of the case in an offensive matter. And
14 that's fine because that's why this case was continued, to
15 a large degree.

16 But it would be grossly unfair to make the other
17 litigant just stand idly by and parade -- and while
18 they're out here billing -- and, hopefully, I'm -- I'm
19 sure they're hoping for an arsenal that they could then
20 use to shoot it at us and to try to deflate the damages.
21 It just would seem in the interest of fairness if they
22 could be on the offense for these two months, which are
23 important months, if we have something that we should be
24 allowed to pursue it also.

25 And, candidly, the reason that I did not make a

1 motion -- I got that on June the 10th. There was no time.
2 The trial was June the 27th. And by the time I make a
3 motion in 10 days, I -- what I anticipated I'd have to do
4 is, perhaps, make a motion during the trial to amend my
5 pleadings to conform with the testimony.

6 So I don't know of any prejudice, other than the
7 obvious that it hurts them and they just assume not have a
8 jury look at this. But I don't know of any prejudice that
9 would come to Greer State Bank in allowing us to amend.
10 And for these reasons, Your Honor, we would ask the Court
11 to allow us to amend these -- our answer and counterclaims
12 to include these two additional counterclaims.

13 Now, I did clean my proposed amended answer and
14 counterclaim up. I deleted the cause of action for
15 wrongful foreclosure, which Judge Miller determined in the
16 motion for -- their motion for summary judgment was not
17 appropriate. And I, also -- he determined it would be an
18 affirmative defense for good faith and fair dealings,
19 which I have done that. But I did not purposely go back
20 and try to change anything to avoid the argument that --
21 you know, that I am trying to expand the war into a whole
22 bunch of stuff that we have never gotten into. Pretty
23 much, everything that I'm saying today has been developed
24 in depositions and discovery.

25 Thank you.

1 THE COURT: Thank you, Mr. Groves.

2 MR. TRAXLER: May it please the Court.

3 THE COURT: Mr. Traxler.

4 MR. TRAXLER: First of all, to clean up the record or
5 clarify the record, it is manifestly unfair and wrong to
6 suggest to the Court that when this came for a trial the
7 other day that we came and we sought the continuance. If
8 the Court will recall, we talked with you in chambers.
9 There was a regulatory appraisal required that had just
10 come in. And it was by the consent of the parties --
11 mutual understanding of the parties that with the other
12 appraisals already in the works that, of course, the case
13 would be continued, not that Greer State Bank came in and
14 said we want it continued.

15 To give you a little bit of background to explain the
16 factual background as to what he is doing, Mr. Groves has
17 done an excellent job of anticipating, but I am not going
18 to argue. He has argued at length on something that I
19 really am not going to dwell on very much at all. I mean,
20 he misses the point.

21 This is a mortgage foreclosure case brought by Greer
22 State Bank against McKeown Properties, the primary debtor,
23 along with guarantors. This is a real estate development
24 project on Lake Robinson that is a project that's,
25 essentially, dead in the water. What Mr. -- the facts

1 behind Mr. Groves attempted amendment is this, the
2 McKeowns had two loans with Greer State Bank, one for
3 \$200,000 and then the big one for \$4.7 million. And it's
4 the big one that I'm going to be talking about.

5 Mr. McKeown had not had any lot sales out there since
6 March of 2008. The problem was Mr. McKeown did not have
7 the ability to make the debt service payments on the
8 mortgage. And I won't go into all the details of the
9 arrangement.

10 But the arrangement with Greer State Bank was that
11 for a while like a credit card company when you don't pay
12 your credit card payment, when a payment was due, the bank
13 would take the interest that was due and add it to the
14 principle. And they simply said, okay, you can't make the
15 payment. We're going to take part of the \$4.7 million
16 that you owe. We're going to take that interest that you
17 owe us and apply it to the principle and increase the
18 principle that way. And, for a couple of years, that is
19 what happened. And you'll hear reference to an interest
20 reserve account and the like. So, basically, he was using
21 the Greer State Bank loan to make his payments is,
22 essentially, what was happening.

23 Now, what Mr. Groves and Mr. McKeown are complaining
24 about is that in the early part of 2010, for the first
25 couple of months, this was done again. And we have got

1 this information in the Court record. The outside
2 auditors of Greer State Bank said, Huh-uh, this loan is
3 not going to be able to be repaid now. We can see that.
4 And if you will move his interest over to principle, that
5 is going to create materially misleading income for the
6 bank resulting in materially misleading financial
7 statements. The outside auditor says, You can't do that
8 any more.

9 And what the record shows is that the outside
10 auditors required Greer State Bank to take the interest
11 that had been added to the principle and move it back to
12 interest. The total sum of what Mr. McKeown owed remains
13 exactly the same before and after the interest reversal.

14 Mr. Groves wants to assert that when Greer State Bank
15 had to reverse the interest entry and put it back in the
16 interest column that that constituted conversion. And
17 then he's, also -- that's, also, the basis for his wanting
18 to say there was a breach of contract accompanied by a
19 fraudulent act. That's all that happened. No money was
20 given to Mr. McKeown or any of the Defendants. No payment
21 was made to them. All that happened was it was moved from
22 the interest column to the principle column. And then
23 when the auditors, basically, put it back to the interest
24 column for accounting purposes, he says we stole the money
25 and we misappropriated the money.

1 Now, I would like to tell you that we are irreparably
2 prejudiced and the like if the amendment goes forward. We
3 have known about this issue for a while. He has known
4 about this issue since March of this year. There will be
5 an additional witness that we will need, if the amendment
6 is made. But I'll be honest with you, the motion and the
7 strength of my argument is the law that courts do not
8 grant motions that are really just an exercise in
9 futility. If you grant the amendments, there's no way he
10 wins on it.

11 Looking at it from that perspective, there is not
12 conversion, unless it is conversion of chattel in this
13 state. If there was a check, an identifiable check, or
14 there was an identifiable pot of money that was taken from
15 him, then there could be an action for conversion of
16 money. Simply reversing an entry is not conversion.

17 And so if you grant the amendment on conversion, then
18 we're right back in on summary judgment or directed
19 verdict and the like. It is an exercise in futility.
20 Because there is no way, under the law in South Carolina,
21 that interest reversal can constitute conversion or
22 depriving somebody of possession of a chattel. It's just
23 contrary to the law.

24 South Carolina has said, Money may be the subject of
25 conversion when it is capable of being identified. And

1 there may be a conversion of indefinite sums, even though
2 specific coins and bills are not identified. However,
3 there can be no conversion when there is a mere obligation
4 to pay a debt. Thus, when there is merely the
5 relationship of debtor and creditor, an action based on
6 conversion of the funds representing the debt is improper.

7 THE COURT: Is that the Owens case?

8 MR. TRAXLER: Yes, Owens v. Andrews Bank & Trust.

9 THE COURT: But isn't he saying that he made a
10 payment?

11 MR. TRAXLER: No, sir.

12 He is trying to say that when -- he is saying that,
13 but he's wrong. Just like he said that I asked for a
14 continuance, he's wrong on that, too. He is saying that
15 when we moved from the interest to principle, that was the
16 payment. It wasn't a nickel out of his pocket. All it
17 did was move it from interest to principle. And it didn't
18 change the balance due at all.

19 THE COURT: So it's undisputed that there wasn't a
20 situation where he came in with money and said --

21 MR. TRAXLER: No.

22 THE COURT: -- instead of going into account A, they
23 put it in account B?

24 MR. TRAXLER: Well, that's the same account. It's
25 just moving from interest to principle, yeah, but that's

1 it. He never gave us a check in any form or fashion. He
2 never brought us any money.

3 As to breach of contract accompanied by fraudulent
4 act --

5 THE COURT: Can I -- I'm sorry to interrupt.

6 MR. TRAXLER: Certainly, certainly.

7 THE COURT: You said conversion of chattel. What if
8 your car that you own was vandalized by someone to the
9 point of being inoperable, but it sat in your driveway the
10 whole time while the vandalism was going on. And then the
11 vandals never drove it off.

12 Would that be conversion?

13 MR. TRAXLER: No, sir.

14 That would be trespass to chattel. It's the tort.
15 But it would not be a -- it would be conversion. That
16 requires depriving somebody of possession.

17 THE COURT: So if -- all right. That's what the
18 Court of Appeals said.

19 MR. TRAXLER: Did they agree with me?

20 THE COURT: They did. But they disagree with me,
21 which is bad for you. I'm just kidding.

22 MR. TRAXLER: That's not fair to give me a trap like
23 that.

24 THE COURT: This is purely hypothetical. My morbid
25 curiosity just got the better of me. But, no, I

1 understand your argument. And I -- that's neither here
2 nor there about this case. I was just curious about the
3 full extent of conversion and juris prudence in this
4 state.

5 All right. So, anyway, you're going with breach of
6 contract accompanied --

7 MR. TRAXLER: If I can make one final point to make
8 sure I'm protected on the record as to the conversion.
9 The payment made by the bank was from the bank to the
10 bank. Again, he didn't have anything.

11 THE COURT: Right.

12 MR. TRAXLER: Okay. As to breach of contract
13 accompanied by fraudulent act. This property -- the notes
14 that are subject to this foreclosure action matured April
15 30th of last year. And upon maturity, when they weren't
16 paid, this foreclosure case resulted. The interest
17 reversals were done well prior to -- or prior to April
18 30th of 2010, prior to the maturity.

19 First of all, there's no evidence of any fraudulent
20 intent whatsoever. But, more importantly, there's no
21 evidence of the breach of contract. He is stating
22 conclusory statements to you in his memorandum to you, and
23 in his argument to you that this interest reversal was
24 somehow used to put him into default. It was not. And
25 there's no evidence in the record whatsoever.

1 Mr. Harrill did not say anything about any fraud or
2 anything like that. The record is replete that this was
3 put into foreclosure because the notes matured on April
4 30th, and he didn't pay them. This interest reversal was
5 before that. There's not a lick of evidence in the record
6 to show that this interest reversal was used in any form
7 or fashion, or had any effect of putting him into default.
8 That, again, is going to be an exercise in futility for
9 him to be able to assert a cause of action, put us through
10 the expense of defending it, and confusing the case when
11 it should be a summary judgment issue. And he's got no
12 evidence to support it.

13 THE COURT: Yes, sir.

14 MR. GROVES: Your Honor, I agree -- I disagree with
15 almost everything that Mr. Traxler has just said.

16 First of all, we had a lengthy hearing on their
17 motion for summary judgment. There were -- the bank
18 handed up three briefs. The first is about 38 pages. The
19 second was about 20 pages. And, yet, a third, I think,
20 was about four or five pages. And it makes you wonder if
21 this is a vanilla foreclosure. I've never seen, I don't
22 think, 50 or 60 pages on a motion for summary judgment.
23 And I'm really not prepared today to argue the merits. I
24 would be glad to and delighted to.

25 But just -- let me just give you a capsule of what

1 happened. This bank charged Mr. McKeown \$1,000. And they
2 put a \$2 million mortgage on his property. They charged
3 him \$1,000 for the final extension. And he had \$432,000
4 in an interest reserve account.

5 So I take issue that it's the bank's money. No, the
6 bank is charging him \$1,000 for that money. And then --
7 just like they've been doing for the entire year of 2009.
8 That was the agreement, that they would debit his account.
9 The same way -- Your Honor, people do this all the time
10 when they have overdraft protection. And we've got a
11 document where they've got this -- it characterizes that
12 sort of protection.

13 And you just can't come in and undue the language of
14 the mortgage -- or, rather, undue the language of the
15 note. You just can't come in 90 days after a payment is
16 made to the tune of \$22,000. What you didn't hear was the
17 lender shall provide the borrower periodic statements of
18 the borrowers loan account, which they did, which shall be
19 deemed to be correct and accepted by combining them on the
20 borrower.

21 So they're sending the borrower these statements
22 showing that, for example, on March 2nd, \$22,987 was paid
23 out of your interest reserve account. It doesn't matter
24 where it came from. I mean, people spend credit money all
25 the time. He had paid them for that. They were

1 charging -- he's paying \$746 a day in interest.

2 So it's a little disingenuous to then come in and
3 say, well, it's our money. Well, it's not your money.
4 Once you make a loan to this man and you're charging
5 interest and an origination fee, it becomes his money, his
6 access to that money.

7 And you can't just come back in in 90 days and --
8 this argument that some out of court -- or an out of the
9 bank auditor told them to do that, that's simply not -- he
10 was not in any privity of anything with an out of court --
11 or an out of bank accounting outfit. And if they're doing
12 that thing, they may well -- whatever they're doing on
13 non-accrual, that's one thing. His loan is not part of
14 this non-accrual equation.

15 They made him a loan. And he made payments. And
16 then they went back after he made those payments, they
17 reversed it and showed -- and the president of the bank --
18 or the then president of the bank, when we took his
19 deposition, he said, Yeah, this thing went into a
20 delinquency mode status on December 31th of 2009.

21 I said, how could it be delinquent since December of
22 2009 when he's making these payments every month?

23 And he said, well, we reversed them.

24 That's not a good answer. You can't sit and tell me
25 that if a bank each month is drafting an account that I

1 have in January, February, March, April that they can go
2 back in April and say, we're going to wipe out all these
3 payments that you've made. We're going to show your loan
4 is in default since December. And we're going to come out
5 and repossess your car.

6 You know, this -- any doubt about what they did was
7 totally, totally resolved in the language of that note
8 when it said that when those payments -- we're going to
9 send you a receipt, which they did. And it says that once
10 you receive those receipts, those amounts are binding upon
11 the borrower and they're binding upon the bank.

12 And this shell game business that, well, we -- you
13 know, we just took the money back and we had to do it,
14 that's not the way it is. He had \$400,000 and something,
15 they had a \$7.5 million appraisal. He owed them
16 \$4,400,000. And I have yet to hear a good explanation
17 from anybody at Greer State Bank as to why they reversed
18 his loan when he was completely current and they had an
19 appraisal for almost \$3 million more than he owed.

20 And just like there's a pancake, there's two sides to
21 every story. Well, we'd be here all day explaining to you
22 why we think based upon a whole bunch of 10K's -- and I
23 know you don't want to get into that. But, Your Honor, it
24 seems to me like what he's saying, if -- you know, if he
25 amends, we really can't show much prejudice. And, you

1 know, if he wants to move for summary judgment or if it's
2 that's open and shut, then so be it. But I do not think
3 it is nearly as open and shut as what they represent to
4 you today.

5 THE COURT: So the breach is the reversal?

6 MR. GROVES: The breach is not funding this loan.
7 They were under an obligation with the customer. In
8 October -- October 27th of 2009, when this loan matured,
9 they brought him in. They said, Pay us \$1,000 and we will
10 agree for the next six months to make your payments each
11 month. You've got \$432,000. The loan is for \$4,750,000.
12 So you've got a cushion of \$432,000. We're charging \$746
13 a day. And we, also, want \$1,000. He pays the \$1,000.

14 So he assumes like had been the relationship with
15 them for some time, the payments are getting made. And
16 why wouldn't he? He's getting receipts in the mail
17 saying, Here is your January 28th payment, you made it to
18 the tune of \$22,700. They never tell him the fraud is
19 they stopped funding his loan. That's bad enough. They
20 reverse all this money.

21 And Mr. Harrill -- and I've got his deposition. I
22 asked him, Did you ever tell your customer what you were
23 doing?

24 No.

25 I said, How is he supposed to know what you're doing?

1 And he could not give me an answer -- not a good
2 answer, a bad answer. We just -- you know, we just
3 decided we were insecure.

4 But I don't believe under current law that what they
5 did amounts to anything other than conversion. It's an
6 identifiable sum. It's \$22,987 here. And on this one
7 over here, it's \$22,732. And I am confident that we can
8 show conversion, that they took something that became his
9 money. And this -- because he put up a mortgage on a
10 piece of land when he put it up was -- the last appraisal
11 was \$7.5 million. So he parted with something of value.

12 So sort of this -- you know, it's our money. It's
13 not exactly what happened. He put up valuable property.
14 And he, in exchange for that, had every right to expect
15 that the bank would keep their end of the bargain. And
16 that is to continue to allow him -- and we've got -- I can
17 produce many, many documents where the bank said, we know
18 that he will not be able to pay. And we know that he's
19 got an interest reserve and it will cover this thing, not
20 only through April of 2010, but for many months
21 thereafter.

22 THE COURT: But isn't it -- I mean, isn't the idea
23 behind the statement that conversion is an appropriate
24 one, but not identifiable funds based on the fact that
25 money is a fungible good? And how can you say it's his

1 money? It's not like --

2 MR. GROVES: Well, Your Honor, he -- it is his money.
3 He parted with a piece of real estate appraised at \$7.5
4 million. They then put an identifiable sum, \$500,000,
5 into an account. And they said, This is your money for
6 purposes of having a loan reserve. He then took money out
7 of that interest reserve account, and each month a payment
8 was made. This is not just -- this had been going on the
9 entire year of 2009.

10 So I can identify with great clarity and certainty
11 exactly how much money -- since June 10th, how much money
12 of his they misappropriated. That was his money. These
13 funds are identifiable. It's not just they took some of
14 his money somewhere. We can tell you to the dollar how
15 much of his money they took and misappropriated. So
16 that's why we think it's conversion.

17 THE COURT: Well, I mean, isn't that like the kid
18 that goes in the bank and says, I want you to show me my
19 money in my account?

20 I mean, there is --

21 MR. GROVES: Well, you know, obviously, the serial
22 numbers -- I'd be silly to stand here and tell you he's
23 got dollars with serial numbers, and dollars are fungible.
24 But, by the same token, it's been my understanding for
25 about 35 years that if you've got money -- if I've got

1 \$100 in my wallet and somebody takes that \$100 and I can
2 identify it, on the civil side, that is conversion. That
3 is taking something that belongs to me. It's -- you're
4 exactly right. I couldn't argue to the contrary. It's,
5 certainly, fungible.

6 But I think what the law is talking about is in terms
7 of can you identify some money, some abstract figure? No.
8 We're telling you to the penny, you know, what has been
9 taken. And if I'm wrong about it, we -- you know, we'll
10 be glad to call it something else. What we're saying --
11 and I guess in layman's terms is they stole his money.
12 And I don't think stealing is a recognized cause of
13 action. They took his money that was his.

14 Now, if we don't call it conversion, we can call it
15 whatever. If the Court believes it's something else, I
16 think it's -- but I think we all know what we're talking
17 about, taking thousands of dollars that belongs to
18 somebody that he can identify and you had no legal right
19 to take it. That's what I'm trying to get at.

20 THE COURT: Well, I understand. And I don't know.
21 I'm trying to determine it myself. Because I think there
22 is some ambiguity in some of these decisions about when
23 and under what circumstances money can be the subject of
24 conversion.

25 And that Owens case is an older case. But this case,

1 Richardson's Restaurant v. National Bank of South
2 Carolina, 304 S.C. 289, it says, There can be no
3 conversion of money unless there's an obligation on a
4 defendant to deliver specific identifiable funds to the
5 Plaintiff.

6 So I don't know if --

7 MR. GROVES: I suppose the specific identifiable
8 funds are the half million dollars that he had in that
9 account. He had a half million dollars in that account.
10 And that's what we're talking about. They took money that
11 belonged to him by way of that account that they had no
12 right to.

13 THE COURT: Right.

14 MR. GROVES: And so that's -- but, again, I learn
15 something new every day in this business.

16 But what we're getting at is -- and to cut to the
17 chase is -- and if it's a more appropriate cause of
18 action, I'll be glad to amend it for that appropriate
19 cause of action. As I say, I think it is conversion
20 because it -- you know, it meets all the elements that I
21 understand conversion -- taking something that is not
22 yours, it belongs to someone else, and misappropriating
23 and taking it for your use, which is what they did.

24 Again, this is a very complex case. And I think,
25 frankly, until you start looking at a lot of -- and we've

1 looked at a lot of these 10-Ks and 8-Ks. And you start
2 realizing, well, on a parallel track of what's going on
3 with him, the bank is on the ropes. The bank is -- the
4 FDIC is ready to close the doors of that bank. They're
5 presently operating under a consent agreement. The
6 president has recently gone. The stock has tanked to the
7 tune of about 90 percent. It's not in good financial
8 condition.

9 So when you start looking at that and then looking at
10 why they did what they did, it makes no sense. It makes
11 no sense why when you've got a \$7.5 million appraisal out
12 there and you take Bill Harrill's deposition and he said,
13 We read the newspaper is why we felt insecure. They had
14 nothing that would indicate they were insecure at the time
15 they did this.

16 THE COURT: All right. I understand your argument.
17 I grant your motion as to the breach of contract
18 accompanied by fraudulent act.

19 I'm going to think about the conversion. And I'll be
20 glad for you to submit any kind of brief or authority you
21 wish to.

22 MR. GROVES: Okay.

23 THE COURT: Either side can submit it. But I don't
24 know how you get around that Owens case.

25 MR. GROVES: I'll be glad to look at it, Your Honor.

1 THE COURT: Well, maybe you can. I don't know.

2 All right. Well, thank you very much.

3 MR. GROVES: I think he's got a motion now.

4 MR. TRAXLER: I've got another motion.

5 THE COURT: Oh, I'm sorry.

6 MR. TRAXLER: This one has got merit.

7 MR. GROVES: We don't need to hear that one.

8 MR. TRAXLER: We have moved to have this case tried
9 non-jury. As I indicated to you, it's a mortgage
10 foreclosure case. The notes that are the subject to this
11 foreclosure, the guarantee signed by Mr. McKeown, all have
12 a clear waiver of jury trial here. And the waiver is
13 broad. And the waiver says, All parties, including the
14 bank, hereby waive -- all parties to this note hereby
15 waive to the fullest extent permitted by law any right to
16 trial by jury with respect to any dispute, whether it
17 contract, tort, or otherwise arising out of or in
18 connection with, related to, or incidental to the
19 relationship established between them and this note, and
20 any other instrument, document, or agreement executed or
21 delivered in connection herewith, or the transaction
22 related hereto.

23 There is in this case by the Defendants and by the
24 bank a clear contractual agreement that this case would be
25 tried non-jury. It is -- the case was, initially, filed

1 as a foreclosure case and a collection on the guarantee.
2 It was a non-jury matter. Mr. Groves filed an answer and
3 counterclaim. And his initial answer and counterclaim
4 simply demanded an accounting, which is, also, an
5 equitable cause of action, even though Mr. Groves demanded
6 a jury trial when his counterclaim was only for an
7 accounting, which is an equitable cause of action under
8 Byrd v. King.

9 The jury trial demand was, essentially, a nullity.
10 He amended his answer and counterclaim in October, I
11 believe it was, of last year. This case is about a year
12 old. And he asserted legal causes of action and demanded
13 a jury trial. We filed our reply where we said that he
14 did not have the right to a jury trial.

15 Now, I will grant you that this case has been on the
16 jury calendar since August of last year. I will grant you
17 that we've had numerous hearings. I will grant you that
18 we were before you and we were getting ready to have a
19 jury trial about a month ago. Happily, the jury was never
20 picked. The jury was never impaneled. And the case was
21 not called.

22 Now, the question is, what is the law on this and
23 what is any prejudice to Mr. McKeown, if prejudice is even
24 a hallmark in this case?

25 First of all, you have just granted Mr. Groves motion

1 to amend, at least, with respect to breach of contract,
2 accompanied by fraudulent act. And, as we all know, under
3 Rule 38(a), anybody has a right to demand a jury trial
4 within 10 days of the last pleading. Theoretically, the
5 mode of trial has opened up again by that rule. But, more
6 importantly, under Rule 39(a), the Court has the right
7 either on a motion of a party or on its own initiative to
8 try a matter non-jury, if the Court believes that the
9 matter is to be tried non-jury.

10 Now, of course, the question -- I'm anticipating
11 Mr. Groves -- I assume he is going to, as he did in his
12 memorandum, assert all sorts of prejudice by this being
13 moved from the jury calendar at this stage to the non-jury
14 calendar.

15 First of all, there's no South Carolina case directly
16 on point as to moving it from the jury to the non-jury
17 calendar in no -- in the time frame. I would point out to
18 you that under Rule 39(a), the Court on its own initiative
19 or on the motion of a party can transfer from the jury to
20 the non-jury calendar that has no time frame. And so the
21 question is, what do you do here when this case is set for
22 trial in a double term the week of August 29th?

23 First of all, in South Carolina, when we have a
24 reverse situation where a party has tried to move it from
25 the non-jury to a jury trial, the South Carolina courts

1 have said that even though it was late that you could do
2 that, even though discovery had been completed and the
3 like. And in terms of looking at the reverse situation,
4 every case around the country -- and I'm getting ready to
5 cite them to you. Every case around the country that we
6 have found dealing with this issue has said even on the
7 eve of trial, the Court can transfer it over. And most of
8 those cases are not looking at the issue of prejudice or
9 not. Because the rule provides it is always subject to
10 being moved.

11 And the Tennessee case of Powell v. Union Planters,
12 337 S.W.3rd 771, last year, there was a motion to strike a
13 jury trial four years after the case had been filed and
14 the jury trial demand. A scheduling order for the jury
15 trial had been entered. And the Court says -- and this is
16 South Carolina law, a jury trial waiver is perfectly
17 enforceable.

18 And the -- Mr. Powell argued that the bank in that
19 particular case by delaying its motion to strike the jury
20 trial demand and entering into a scheduling order setting
21 the trial had waived its right to enforce the parties
22 contract. And that court, and all state courts, and all
23 the federal courts have said the better rule, however,
24 permits a party seeking to strike a jury demand to file a
25 motion up to the eve of trial to enforce the parties

1 contract.

2 That case was confirmed in the November 2010 case in
3 Tennessee of Regions Bank v. Lost Cove Cabins. The cite
4 on that is 2010 Westlaw 451957. The same holding was held
5 in Leary v. Stylarama out of Connecticut in 1978. The
6 cite for that is 384 A.2d. 377. There was the same
7 holding out of Arizona in Camel Square v. The Rubin
8 Companies, 2010 Westlaw 2773399. All of those were up to
9 the eve of trial. In the federal courts in the case of
10 Tracinda v. Daimler Chrysler, 502 F.3d 212, a Third
11 Circuit case from 2007, the motion to strike a jury demand
12 was made three years after the fact.

13 Again, just as I'm sure Mr. McKeown is going to argue
14 all sorts of alleged prejudice and the like, the Court
15 said, A party -- because a party may file a motion to
16 strike a jury demand at any time under Rule 39(a), we
17 conclude that Daimler Chrysler did not commit inexcusable
18 delay by filing this motion to strike after the close of
19 discovery. Having -- and this is important -- having
20 reached this conclusion, we need not consider whether
21 Daimler Chrysler's delay caused prejudice to Tracinda.

22 So the same holding in Mowbray v. Zumot, 536 F. Supp.
23 out of Maryland in 2008. And I'm sorry I don't have the
24 page number. I can get it for you in a minute. The same
25 holding in Cellport Systems, Inc. v. Peiker Acustic, 2011

1 WestLaw 290530 out of Colorado from this year. The same
2 holding in 2006 out of Texas, JPA v. USF Processers, 2006
3 Westlaw 740401.

4 There are some cases out of New York from the 50s
5 that said, no. Those cases have since been changed by New
6 York. The reason New York said, no, you can't do that in
7 the 50s was because when you went from the jury calendar
8 over to non-jury, their system had it where you went to
9 the bottom of the jury trial roster like a newly filed
10 case. That ain't happening here. This is a lateral move
11 over.

12 We are set for a jury trial before you on August
13 29th. We are ready to try this case on August 29th,
14 before you non-jury. It is going to be a four-day
15 trial -- jury trial, two or three days non-jury. There is
16 no prejudice at all to Mr. McKeown. Discovery is
17 discovery, developing facts, developing arguments,
18 developing the law, getting documents and all of that is
19 the same whether it is a jury trial or not.

20 The only difference between a non-jury trial and a
21 jury trial is requests for charge, voir dire, and the
22 style of presentation in the courtroom. Discovery doesn't
23 change.

24 THE COURT: Well, I mean, is change really good? I
25 mean, New York in the 50s, they had the Yankees, the

1 Giants, and the Dodgers.

2 MR. TRAXLER: Everything has gone downhill since.
3 And they all moved to the west coast.

4 But every case around the country dealing with this
5 issue, except for the early New York cases, has said this
6 is a matter all the way up until the eve of trial. They
7 contracted for this to be non-jury. There's no prejudice
8 to them at all. It's not going to result in any delay.
9 The only question is going to be whether we have 12 people
10 sitting in the jury and them deciding the case.

11 And for that reason, we ask that this Court be
12 transferred to the non-jury roster. As part of that
13 motion, we can either try it before you on August 29th --
14 we're ready to go forward -- or refer it to Judge Simmons
15 to the Master in Equity to be tried.

16 THE COURT: So all of these Defendants are still in
17 the case?

18 MR. TRAXLER: The Defendants who have appeared and
19 are participating and not in default are McKeown Property
20 on Lake Robinson, LLC, that's the primary debtor, Bruce
21 McKeown is in as a guarantor, and Rita McKeown is in as a
22 guarantor. The other Defendants have not -- they have a
23 second mortgage. And they're simply named for the second
24 mortgage purposes.

25 THE COURT: They're --

1 MR. TRAXLER: Now -- I'm sorry. Go ahead.

2 THE COURT: I was just going to ask, they're all
3 covered by these -- I mean, your argument is they're bound
4 by some waivers and the guarantee to their right to a jury
5 trial?

6 MR. TRAXLER: We are not seeking any relief against
7 them. If they're second mortgagees, they're joined for
8 the protection of their interest.

9 THE COURT: I'm talking about the LLC and Bruce
10 and -- is it Rita McKeown?

11 MR. TRAXLER: Rita, yes, sir.

12 That's what I need to clarify for you. The LLC
13 signed the notes waiving the jury trial. Bruce McKeown
14 signed a guarantee. And the guarantee, specifically, says
15 he waives a jury trial. And we have causes of action
16 against them for the foreclosure, and deficiency, and
17 collection of guarantee. Rita McKeown has, also, signed a
18 guarantee.

19 Now, I don't know that Mr. Groves is aware of this,
20 but I wanted you to be aware of it. Her guarantee does
21 not contain the jury waiver. And that gives us an issue.
22 We are prepared with authority from our client and commit
23 on the record that if the Court grants the motion to try
24 this matter non-jury, then upon that order becoming final,
25 she will be dismissed with prejudice. We will assert no

1 claims against her.

2 She has a counterclaim against us trying to defeat
3 the guarantee. She is not a member of the LLC. She has
4 no claim, other than trying to defeat the guarantee. We
5 are willing to dismiss, if this case goes non-jury, the
6 action against her with prejudice because of the guarantee
7 or any other reason.

8 So I don't have a jury waiver from her. I don't need
9 her. If this goes non-jury, we'd fix that issue that we
10 will dismiss her with prejudice and -- upon this order
11 becoming final.

12 THE COURT: She might need you, Mr. Traxler.

13 MR. TRAXLER: Might need me for what? She has no
14 claim against us. We've got the guarantee.

15 THE COURT: She doesn't have the -- she's not covered
16 by the breach of contract -- as I understand your
17 argument, the only cause of action that would allow the
18 right to a jury trial is the one I just allowed them to
19 amend; right?

20 MR. TRAXLER: Well, he's got other negligence causes
21 of action --

22 THE COURT: Oh, okay.

23 MR. TRAXLER: -- and things that are in there
24 already.

25 MR. GROVES: Breach of fiduciary duty, which is one

1 of the claims that survived summary judgment.

2 THE COURT: By Rita?

3 MR. GROVES: By all the Defendants, I believe.

4 MR. TRAXLER: Yeah. They're just generically
5 referred to as Defendants.

6 THE COURT: Okay.

7 MR. TRAXLER: Now, let me, also, point out that if I
8 dismiss her -- my claim against her, she is in a
9 permissive counterclaim situation. The law in this state
10 is that if the complaint is equitable in non-jury and the
11 counterclaim is permissive, even though legal in nature,
12 it is a non-jury equitable matter.

13 So when I dismiss her with prejudice, if you grant my
14 motion, her claim ought to go away. If it does not, then
15 it is permissive. And under the case law of this case
16 because the complaint is one for foreclosure and
17 equitable, because it is permissive, it is a non-jury
18 equitable matter to be decided. And I'll be glad to hand
19 up the case and give you the case cite for that.

20 THE COURT: What is that, that Johnson v. South --

21 MR. TRAXLER: I believe that's it.

22 (Pause.)

23 MR. TRAXLER: Yes, sir. It is Johnson v. South
24 Carolina National Bank, 292 S.C. 51, 354 S.E.2d 895, where
25 the Supreme Court in 1987 said, We summarize here the

1 proper analysis for determining the trial of legal and
2 equitable issues in complaints and counterclaims. And
3 they say if the complaint is equitable and the
4 counterclaim is legal and permissive, the Defendant waives
5 his right to a jury trial.

6 So upon the granting of our motion and that order
7 becoming final, we dismiss our claim against her with
8 prejudice.

9 THE COURT: All right. Yes, sir, Mr. Groves.

10 MR. GROVES: May it please the Court, Your Honor.

11 I'd like to put into the record 14 exhibits. And
12 these are tabbed. These are the 14 that are attached to
13 the exhibit that I've attached to my memorandum, although
14 some of them like the complaint I included the entire
15 complaint. But I'd like to offer those 14 exhibits, along
16 with the affidavit of the Defendant, Bruce McKeown, which
17 I've, also, served in this case.

18 MR. TRAXLER: I thought it was already part of the
19 record.

20 MR. GROVES: Well, I just wanted to be certain.

21 Your Honor, I would invite the Court to look on down
22 in Rule 39. Mr. Traxler has pointed out Section A of that
23 rule. But I would ask the Court to look at Section C.
24 And I think that is -- this is at the heart of what we're
25 here on today.

1 Now, all these cases that he cites, I was waiting to
2 hear some from Puerto Rico, but I didn't hear any of
3 those. But they're all over the place. But if you look
4 at 39(c), it says, In all actions -- that would include
5 ours -- not triable of right by a jury.

6 So if you assume and take for granted everything he's
7 just said as being the gospel, and they don't have a
8 right -- any of them have a right to a trial by a jury,
9 and all actions not triable of right by jury, and then if
10 you go down, it says, The Court with the consent of both
11 parties may order a trial by a jury whose verdict has the
12 same effect as if the trial had been a matter of right.

13 Now, in this case, at tab 1, we've got a timeline.
14 And, at every bend in the road, Greer State Bank has
15 consented to a trial by a jury. We had a status
16 conference before Judge Stilwell on May -- on March 23rd,
17 at which time both parties -- both attorneys advised the
18 Court that we were ready for trial. And Judge Stilwell
19 set this case for trial based upon that representation on
20 May 31st [sic]. Prior to that, the case was continued at
21 the request of the bank. And the case was then consented
22 to on the jury trial roster by both parties -- by both
23 attorneys.

24 And if you will look in the tabs that are attached to
25 the memorandum that I have handed up, if you'll look at --

1. number eight is my pre-trial conference form. If you look
2 at number nine, that's where there's an e-mail from me to
3 Mr. Fowler indicating that June 27th would be the term.
4 And we're agreeing. It's not just something coming up,
5 but an affirmative agreement of the parties. And then at
6 tab 10, you will see where this case is set for trial on
7 June 27th.

8 Now, if I understood correctly when we had the status
9 conference, we agreed that we wanted a jury trial. And
10 that was on June 27th with the Court on, yet, another
11 status conference. We agreed that this case would be
12 heard by jury trial on August 29th, 2011. And that was an
13 agreement of the parties. That's three times, at the
14 status conference on June 27th, and now on the August 29th
15 hearing, we have an agreement of the parties saying this
16 case is going to be tried by a jury.

17 If you look again at Rule 39(c), then you've got a
18 situation whether it's triable or not, it's done so by
19 consent of the Court. It's -- I'm sorry. It's done by
20 the consent of both parties. And that's where -- before
21 you even get to this waiver argument, which I've mentioned
22 and talked about a good bit in my brief, you've got a
23 situation where everybody has agreed, not only once, but
24 three different times.

25 There is a case, Your Honor, I'd like to hand up.

1 It's Horn v. Davis Electric. It's not cited in my brief.
2 But it stands for this very proposition where you may not
3 have a right to a jury trial. But if both parties agree
4 to it, then so be it. And in this situation when you've
5 got the case continuing on for such a long period of
6 time -- it's interesting that the motion for summary
7 judgment, which the bank made in this case, was back -- I
8 believe it was heard June 6th before Judge Miller. And it
9 was only after that motion was heard that this case -- we
10 started hearing -- and it was, actually, on July 5th that
11 this motion was first made in modern times for a non-jury
12 trial.

13 It is interesting -- you know, it is -- I think Greer
14 State Bank -- you can always look at things in sort of two
15 different levels. On the one level, well, we have this
16 absolute right by contract. And on the other level, I
17 believe, Your Honor, what happened was that, perhaps, at
18 the summary judgment stage -- because we had two or three
19 motions -- two or three long briefs. They realized for
20 the first time this was not a null [phonetic] foreclosure,
21 but that there was some real issues and some real problems
22 with their position, and, frankly, that this case had the
23 potential to get away from them.

24 And it was at that point in time, Your Honor, that we
25 then start seeing -- at least, after the status conference

1 an effort being made to have this thing taken away from
2 the jury trial calendar. And as I've argued, Your Honor,
3 I believe that those provisions -- the waiver provisions,
4 they're just like arbitration provisions. They're there
5 for a purpose for a shield, to shield people from a
6 protracted lawsuit and all the accompanying legal fees
7 that might go with it. But it is not intended to be a
8 sword, meaning that it's not intended for a party to stay
9 on a track for 15 months, and then realize to make a
10 strategic plan, a battle plan, that this case may not be
11 exactly what we thought it was. Whoa, we don't want to go
12 in front of a jury. And that's using it offensively in a
13 strategic manner as a sword and it's a perversion,
14 certainly, of what the parties contracted and agreed to
15 that, yeah, if you're going to do this, you come in early
16 in the game and you do it. You don't wait until you've
17 tested the waters in -- on the trial calendar and then
18 determine, well, maybe we'd be better off because of
19 these -- the way this case has sort of evolved, we might
20 be better off to have this thing heard by a bench trial.

21 Your Honor, there's significant prejudice to my
22 client at this very late date. And that prejudice is the
23 manner in which you prepare for a jury trial is very
24 different than for a non-jury trial. We have had
25 subpoenas. We've attached those. We -- in conjunction

1 with the 27th hearing, we sent out several subpoenas.
2 There was a cost, the service fees, the witness fees. My
3 client -- we spent the entire weekend as is eluded to in
4 his -- or I did in his affidavit preparing. Those are all
5 costs that he would not have otherwise have had to bear
6 had this case -- had the Plaintiff's asserted this
7 position in a timely fashion.

8 In addition, Your Honor, this case is \$750 and
9 something a day in interest that -- potential interest
10 that my clients may be required to pay if the Plaintiff's
11 prevail on their action. And so every day that this case
12 continues and is not heard costs my client money. He is
13 dead in the water. He is -- he's a little guy. This is
14 his world. This is the home place, grandpa's home place.
15 And so he wants to stay. But -- so he's sort of in no
16 man's land.

17 And so for -- those are, generally, the prejudices
18 that would come to bear to the McKeowns if this case is
19 continued yet another time. If this thing goes to Judge
20 Simmons non-jury, magistrate's court, I would think
21 October or November, another 60 days, as I mentioned in my
22 brief, is another \$30,000 or \$40,000 in interest.

23 But, Your Honor, what I think that you have to look
24 at -- and I believe that the ultimate test here is
25 prejudice. I cited the -- an arbitration case. And there

1 are plenty of those cases where -- and you see them, I'm
2 sure, all the time where people -- there's an arbitration
3 clause, people sit on that clause. They don't do
4 anything. And then down the road sometime, they then
5 decide, well, you know, we really don't want this case,
6 you know, heard by an arbitrator. We want to go -- or we
7 don't want it heard by a jury. We want to go have the
8 case arbitrated. Well, you can't do that if you sit on
9 your rights and it's to the other sides detriment. You
10 can't just come in five weeks before and say, okay, we now
11 make a strategic decision. We want this case heard in a
12 different manner.

13 And it's unfair on another level, Your Honor. They
14 know all about his finances. They've got his financial
15 statements for years, and years, and years. And they,
16 also, realize -- the bank realizes that if they can cause
17 Mr. McKeown to run out of money and he can tire, then they
18 can win this lawsuit without ever shooting a bullet.

19 So this continuing to have the case continued and
20 changing, making strategic decisions right here on the eve
21 of trial is very, very unfair to him. And, Your Honor, I
22 would ask the Court to deny their motion to have this case
23 heard as a non-jury matter. A jury right is a very real
24 right.

25 And, certainly, the issue about Ms. McKeown having

1 never conceded or never agreed to this case and this
2 matter being heard non-jury -- I just do not believe that
3 they could show that their actions in acquiescing and
4 agreeing -- and that's what separates this case from all
5 these other cases. You've got someone agreeing, yes, we
6 will try this case non-jury [sic] three times, and the
7 last was a day certain. And then they take an
8 inconsistent position with that right before trial, it
9 works an incredible hardship on my client. And we would
10 ask that this motion be denied.

11 THE COURT: But isn't there a real difference between
12 the arbitration cases and this case, because, obviously,
13 courts have said that if parties avail themselves of the
14 resources of the justice system and conduct discovery, and
15 lull another party into thinking they're involved in civil
16 litigation and in Common Pleas Court that they can't turn
17 around and then throw out and try to cling to an
18 arbitration clause?

19 But, here, they're not -- the bank is not saying they
20 want another forum. They're just saying they just want a
21 different mode of trial that they believe they're entitled
22 to. And I don't understand --

23 MR. GROVES: Your Honor, there would be a difference
24 between arbitration, yes, it's much more streamlined and
25 it would be less discovery. But in this situation, Your

1 Honor, because of their acquiescence and agreement -- let
2 me just give you an example. The June 27th trial, my
3 client ended up spending thousands of dollars preparing
4 for that trial on Monday that didn't take -- didn't go
5 forward. We understand that's par for the course. When
6 you get in line on a jury calendar, your case may not be
7 reached, and that's what you sign up for. But had they
8 made this motion at an appropriate time and used it as a
9 shield, which is what it was designed for, that's
10 thousands of dollars my client would not have had to spend
11 preparing for a case.

12 In addition, Your Honor, the -- there has been, you
13 know, a lot of time that we have had to devote in our
14 preparation for a jury trial. It's really all -- it's all
15 wasted. Because I think that we all concede you try a
16 case non-jury very different than you try a case jury.

17 So that is why I think Rule 39(c) is applicable.
18 And, I mean, I -- you know, we all know you can find cases
19 that say anything anywhere you go. But, at the end of the
20 day, in a case like this where everybody has consented and
21 both parties have consented time and time again that this
22 case will be tried jury, to then come in -- I think it
23 works an injustice to Mr. McKeown. And we'd ask that it
24 not be granted.

25 THE COURT: Thank you.

1 How is this counterclaim permissive?

2 MR. TRAXLER: If we withdraw our claim against her,
3 dismiss our claim against her with prejudice, she doesn't
4 have to be in this case. She doesn't have to file that
5 claim.

6 THE COURT: Okay. I understand.

7 MR. TRAXLER: That's what makes it permissible. If
8 we pursue --

9 THE COURT: Right now, it's not permissive?

10 MR. TRAXLER: Right now, it's not. I'm hoping in
11 about five minutes it will be.

12 But, I mean, this is something that they agreed to
13 and this is part of the contract. There is no prejudice.
14 As much as he tries to recite it, the continuance he
15 refers to would have happened whether this had been jury
16 or non-jury at the time, because we had these regulatory
17 proposals coming in all of the sudden.

18 The Davis Electric case is one where the parties went
19 ahead and tried the case. And then somebody tried to
20 change or challenge the mode of trial after they had
21 consented to the trial of the case. That's not at all
22 appropriate to what we have.

23 Every single argument that Mr. Groves has made was
24 made in that entire litany of cases I gave to you. And
25 every single court has said even up -- with the eve of

1 trial rule, the Court can move it over. And prejudice is
2 not really a factor. He can't show any real prejudice,
3 even if it were a factor.

4 And he says we have some sort of agreement to try
5 this thing by a jury. That is not the case. And I am
6 intimately familiar with Rule 43(k) because I've been
7 bitten by Rule 43(k). There ain't compliance with 43(k)
8 in this case, I can tell you with regard to a jury trial.
9 But every single argument he has advanced has been soundly
10 and roundly rejected by the litany of cases that I gave
11 you to where jury trials -- where motions to strike the
12 jury trial demand were made three and four years after the
13 demand had been made after discovery had been completed.

14 MR. GROVES: Your Honor, in all fairness, I'm not
15 familiar with any of these cases he's talking. And so
16 I -- you know, I have not had a chance to brief them or
17 look at them. So I don't really know what they say. But
18 I know that -- he and I agree there is no South Carolina
19 case that is squarely on point with the position that
20 they're -- at least, that they're taking.

21 THE COURT: Thank you very much for your arguments.

22 It seems like when we last met this case was going to
23 be mediated again. Has that happened?

24 MR. GROVES: We're waiting for the appraisals.

25 MR. FOWLER: That has not happened, Your Honor. The

1 last appraisal came in this week. And so we've got to
2 produce that to Mr. Groves. Hopefully, we can see if
3 there's some middle ground at that point. And I don't
4 know -- I don't really have too much hope. But we'll,
5 certainly, make that effort.

6 MR. GROVES: Your Honor, that was my understanding.
7 But, again, I think we were just waiting. I have not
8 gotten any of the appraisals. But that was what my
9 understanding was, too.

10 MR. TRAXLER: If there's any thought of continuing
11 the case, then that's -- whatever the decision is, then --
12 we're not asking for any continuance.

13 THE COURT: No. I'm not -- that's not what I'm
14 thinking about.

15 MR. TRAXLER: Yes, sir.

16 THE COURT: Okay. Well, I'm going to have to reflect
17 on this issue some. And if y'all wouldn't mind giving me
18 about a week, I'll try to -- maybe ten days to issue my
19 decision on the request to transfer the case to the
20 non-jury and refer it to Judge Simmons.

21 Thank you very much.

22 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

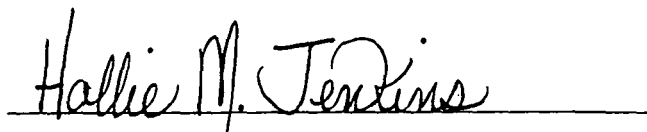
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 22nd day of July, 2011.

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

January 26, 2012



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any parties and not any other material.



Thomas W. Traxler (Bar No. 5624)

S. Brook Fowler (Bar No. 66215)

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Attorneys for Appellant

May 16, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2010-CP-23-04223

Greer State Bank,.....Appellant,

v.

McKeown Property On Lake Robinson, LLC,
Bruce A. McKeown, Robert M. McKeown,
Cathy J. Lockhart, Rita W. McKeown and
Connie S. Santoro f/k/a Connie McKeown,.....Defendants,

OF WHOM McKeown Property on Lake Robinson,
LLC, Bruce A. McKeown and Rita W. McKeown are.....Respondents.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on **McKeown Property On Lake Robinson, LLC, Bruce A. McKeown, and Rita W. McKeown**, by hand-delivering a copy of the same to their attorney of record, **Charles M.**

RECEIVED

MAY 17 2012

SC Court of Appeals

Groves, CHAPMAN, HARTER & GROVES, P.A., at his office at 1012 East
Washington Street, Greenville, South Carolina 29601, on May 16, 2012.

May 16, 2012



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