

EXHIBIT A

[See attached]

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

2015 MAR 14 AM 8:27

Colony Bank,

MAR 14 2015  
CLERK OF COURT  
JASPER COUNTY SC  
Plaintiff,

v.

WVR II, LLC; Palmetto Industrial Park  
Property Owners' Association, Inc.; First  
Federal Savings and Loan Association of  
Charleston; Thomas Viljac; and Miles  
Loadholt,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) FOR THE 14<sup>TH</sup> JUDICIAL CIRCUIT  
) CIVIL CASE NO.: 2013-CP-27-486

ORDER OF JUDGMENT AND  
FORECLOSURE

RECEIVED

MAY 28 2016

SC Court of Appeals

This matter is before the undersigned pursuant to a Consent Order of Default and Reference, with finality, signed by the Honorable Carmen T. Mullen, Presiding Judge for Jasper County Court of Common Pleas, South Carolina, on March 10, 2014.

The Clerk's file for this case shows:

R. Craig Smith, Registered Agent for WVR II, LLC, was served with the Civil Action Coversheet, Lis Pendens, Certificate of ADR Exemption, Certificate of Exemption, Summons, and Complaint for Foreclosure on December 12, 2013. The Affidavit of Service is of record in this case. Robert M. Deeb, Jr., Registered Agent for Palmetto Industrial Park Property Owners' Association, Inc., was served with the Civil Action Coversheet, Lis Pendens, Certificate of ADR Exemption, Certificate of Exemption, Summons, and Complaint for Foreclosure on November 12, 2013. The Affidavit of Service is of record in this case. Corporation Service Company, Registered Agent for First Federal Savings and Loan Association of Charleston, was served with the Civil Action Coversheet, Lis Pendens, Certificate of ADR Exemption, Certificate of Exemption, Summons, and Complaint for Foreclosure on November 12, 2013. The Affidavit of

Service is of record in this case. Thomas Viljac was served with the Civil Action Coversheet, Lis Pendens, Certificate of ADR Exemption, Certificate of Exemption, Summons, and Complaint for Foreclosure on December 2, 2013. The Affidavit of Service is of record in this case. Miles Loadholt was served with the Civil Action Coversheet, Lis Pendens, Certificate of ADR Exemption, Certificate of Exemption, Summons, and Complaint for Foreclosure on November 25, 2013. The Affidavit of Service is of record in this case.

Miles Loadholt filed an Answer on or about December 17, 2013.

By an Order of the Honorable Carmen T. Mullen, Presiding Judge for Jasper County Court of Common Pleas, South Carolina, on March 10, 2014, the Defendants WVR II, LLC; Palmetto Industrial Park Property Owners' Association, Inc.; First Federal Savings and Loan Association of Charleston; and Thomas Viljac were found to be in default.

Thomas Viljac was subsequently permitted to file an Answer for the reasons stated in the Order Denying Motion for Summary Judgment of the Undersigned dated January 26, 2015.

Pursuant to the Consent Order or Default and Reference, I called a trial of this case at my Office located at 252 Russell Street, Ridgeland, South Carolina 29936, commencing at 10:00, A.M., on April 8, 2014. At the April 8, 2014, trial, a Motion for Summary Judgment was argued. The procedure regarding the disposition of the Motion for Summary Judgment is set out in the January 26, 2015, Order Denying Motion for Summary Judgment. By consent of the Parties, Colony Bank submitted an updated affidavit related to the amounts claimed, and the Defendants submitted affidavits in support of their defense. The Parties also submitted memoranda, and the affidavits, memoranda and evidence submitted at the April 8, 2014, hearing were reviewed in lieu of an additional hearing.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now, having heard and considered the testimony, and having reviewed the pleadings and exhibits, I find and conclude as follows:

1. The Civil Action Coversheet, Lis Pendens, Certificate of ADR Exemption, Certificate of Exemption, Summons, and Complaint for Foreclosure for this case were filed on September 18, 2013.

2. Personal service of Civil Action Coversheet, Lis Pendens, Certificate of ADR Exemption, Certificate of Exemption, Summons, and Complaint for Foreclosure was made on the Defendants as follows:

- (a) On the Defendant WVR II, LLC, on December 12, 2013.
- (b) On the Defendant Palmetto Industrial Park POA, Inc. on November 12, 2013.
- (c) On the Defendant First Federal Savings and Loan Association of Charleston on November 12, 2013.
- (d) On the Defendant Thomas Viljac on December 2, 2013.
- (e) On the Defendant Miles Loadholt on November 18, 2013.

The affidavits of service showing the above are of record herein.

3. The Court of Common Pleas for Jasper County, South Carolina, has jurisdiction over the parties hereto and the subject matter herein.

4. On or about August 12, 2009, WVR II, LLC, executed and delivered its written promissory note to Colony Bank, in the original face amount of One Million Seven Hundred Forty Nine Thousand Fifty Four and 28/100 (\$1,749,054.28) Dollars, with interest thereon at an initial rate of Five (5.000%) per cent, to be adjusted thereafter in accordance with the term of the

August 12, 2009, Promissory Note. A copy of the August 12, 2009, Promissory Note was received into evidence as an exhibit.

5. Contemporaneously with the execution and delivery of the August 12, 2009 Note, and for the purpose of securing payment of the amounts due and owing, WVR II, LLC, made, executed and delivered a written Mortgage of real property to Colony Bank dated August 12, 2009, encumbering the below described property:

All those certain condominium unit(s) situate, lying and being in the Okatie Warehouse, Ridgeland, Jasper County, South Carolina, known and designated as UNIT C-1 and Unit D-1 of the Okatie Warehouses Horizontal Property Regime, and being more particularly shown and described by reference to the Master Deed of WVR, LLC, a South Carolina limited liability company, establishing the Okatie Warehouses Horizontal Property Regime, dated July 10, 2009, and recorded July 28, 2009, in the Office of the Register of Deeds for Jasper County, South Carolina in Record Book 753 at Page 13.

The August 12, 2009, Mortgage is recorded in the Office of The Register of Deeds for Jasper County, South Carolina, in Official Record Book 756 at Page 88. A copy of the August 12, 2009, Mortgage was received into evidence as an exhibit.

6. Colony Bank is the legal holder of the August 12, 2009, Promissory Note and Mortgage.

7. In connection with the August 12, 2009, Mortgage, the Defendant Thomas Viljac executed and delivered his written guaranty of the payment of the amounts due under the August 12, 2009, Promissory Note, and the August 12, 2009, Mortgage. A copy of the August 12, 2009, Guaranty was received into evidence as an exhibit.

8. In connection with the August 12, 2009, Mortgage, the Defendant Miles Loadholt executed and delivered his written guaranty of the payment of the amounts due under the August 12, 2009, Promissory Note, and the August 12, 2009, Mortgage. A copy of the August 12, 2009, Guaranty was received into evidence as an exhibit.

9. On or about January 27, 2010, the Defendant WVR II, LLC, executed and delivered its written promissory note to Colony Bank in the amount of Twenty Five Thousand Two Hundred Eighteen and 00/100 (\$25,218.00) Dollars, with interest thereon at an initial rate of Five (6.000%) per cent, to be adjusted thereafter in accordance with the term of the January 27, 2010, Promissory Note. A copy of the January 27, 2010, Promissory Note was received into evidence as an exhibit.

10. Thomas Viljac executed and delivered his written guaranty of the payment of the amounts due under the January 27, 2010, Promissory Note. A copy of the January 27, 2010, Guaranty was received into evidence as an exhibit.

11. Miles Loadholt executed and delivered his written guaranty of the payment of the amounts due under the January 27, 2010, Promissory Note. A copy of the January 27, 2010, Guaranty was received into evidence as an exhibit.

12. Colony Bank is the legal holder the guarantees executed and delivered by Miles Loadholt and Thomas Viljac.

13. WVR, II, LLC, has not made the payments of principal and interest due under the terms and conditions of the August 12, 2009, Promissory Note and the January 27, 2010 Promissory Note and Mortgage.

14. WVR II, LLC, has received all notices to which it is entitled. On or about August 21, 2013, Colony Bank sent a "Notice of Default and Right to Cure" to WVR II, LLC, with respect to its failure to pay the amounts due and owing under the terms and conditions of the August 12, 2009, Promissory Note and the January 27, 2010 Promissory Note and Mortgage, and WVR II, LLC, failed to respond to the "Notice of Default and Right to Cure" or cure the default. A copy of the "Notice of Default and Right to Cure" was received into evidence as an exhibit.

15. WVR II, LLC, is in default under the terms and conditions of the August 12, 2009, Promissory Note and the January 27, 2010 Promissory Note and Mortgage.

16. As a result of the default, and of the failure of WVR II, LLC, to cure the default after notice, Colony Bank has elected to accelerate the balance due and owing on the Notes, and seeks the foreclosure of its Mortgage.

17. The Defendants Miles Loadholt and Thomas Viljac both asserted the Statute of Limitations as a defense to the claims of Colony Bank against them. Each of them filed Motions for Summary Judgment. Those motions were denied by a written order of the undersigned dated January 26, 2015.

18. The Defendants Miles Loadholt and Thomas Viljac both asserted the Statute of Limitations as a defense to the claims of Colony Bank against them. Each of them filed Motions for Summary Judgment.

19. It is undisputed that the Defendant WVR II, LLC, executed a note and mortgage in favor of Colony Bank, on August 12, 2009, and another on January 27, 2010. The Defendant Miles Loadholt executed a guaranty of the Note on August 12, 2009.<sup>1</sup> The January 27, 2010, note was an additional extension of credit under the original loan and was also secured by the August 12, 2009, mortgage.<sup>2</sup> The Defendant WVR II, LLC, defaulted on the notes on or about April 30, 2010.<sup>3</sup> This action was commenced by Colony Bank on September 18, 2013.

The basis for the defense is that this action was not commenced within three years of the date of the default by WVR II, LLC.

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<sup>1</sup> The execution and delivery of the note, mortgage and guaranty are admitted.

<sup>2</sup> An additional guaranty was executed and delivered with respect to the January 27, 2010, Note, which was admitted.

<sup>3</sup> The default by WVR II, LLC, is admitted.

Colony Bank argues that Miles Loadholt and Thomas Viljac waived their right to assert the defense of the statute of limitations in the written guarantees. Under South Carolina law, a guaranty is a contract subject to the rules of contract interpretation. *In re: Southco, Inc.*, 168 B.R. 95 (Bankr. D.S.C. 1994). Where the language of the contract is language is clear and unambiguous, the language alone determines the contract's force and effect. The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. *McGill v. Moore*, 381 S.C. 179, 672 S.E.2d 571, 574 (S.C. 2009). The court must enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. *Ellis v. Taylor*, 316 S.C. 245, 449 S.E.2d 487 (S.C. 1994).

In South Carolina, a party can waive the right to assert a statute of limitations defense. *McLendon v. S.C. Department of Highways and Public Transportation*, 313 S.C. 525, 443 S.E.2d 539 (S.C. 1994); *Anonymous Taxpayer v. South Carolina Dept. of Revenue*, 377 S.C. 425, 661 S.E.2d 73 (S.C. 2008).<sup>5</sup> A waiver of the statute of limitations may be shown by words or conduct. A waiver may result from express agreement, ... from failure to claim the defense, or by any action or inaction manifestly inconsistent with an intention to insist on the statute. *Mende v. Conway Hosp., Inc.*, 304 S.C. 313, 404 S.E.2d 33 (S.C. 1991).

The guarantees signed by Miles Loadholt and Thomas Viljac include an express agreement to waive the defense of the statute of limitations in the following text:

7. The undersigned waives any and all defenses, claims and discharges of the borrower, or any other obligor pertaining to the 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,

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<sup>5</sup> See also: 54 C.J.S. *Limitation of Actions*, § 55: A statute of limitations defense may be waived by express agreement or by necessary implication.

incapacity, minority, usury, illegality or unenforceability which may be available to the Borrower or any other person liable in respect of any indebtedness, or any setoff available to Borrower against Lender or any 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.

The language of the waiver is clear and unambiguous. In plain language, the language of the guaranty agreements the guarantor waives the defense of the statute of limitations for the guarantor.<sup>6</sup> Because the guaranty is unambiguous, courts in South Carolina will enforce it as written. *McGill v. Moore, supra.*; *Ellis v. Taylor, supra.*<sup>7</sup> Further, South Carolina recognizes that a person can waive his right to assert the statute of limitations as a defense. *McLendon v. S.C. Department of Highways and Public Transportation, supra.*; *Mende v. Conway Hospital, Inc., supra.*; *Anonymous Taxpayer v. South Carolina Dept. of Revenue, supra.*<sup>8</sup>

At the final hearing, Miles Loadholt submitted the affidavits of Frank E. Robinson, III, Esq, and Miles Loadholt in support of his defense related to the statute of limitations. The

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<sup>6</sup> The defendants advanced the argument that the express waiver in the guaranty is "void as against public policy". This argument is not supported by the law in South Carolina, which is clear that a party can waive the statute of limitations. *McLendon v. S.C. Department of Highways and Public Transportation, supra.*; *Mende v. Conway Hospital, Inc., supra.*; *Anonymous Taxpayer v. South Carolina Dept. of Revenue, supra.*

<sup>7</sup> The Defendants cite the case of *Sumter v. Morse*, 2 Hill Eq. 8, 11 S.C.Eq. 87 (1834), for the proposition that an executory contract not to plead the statute of limitations is not binding. The text relied on by the Defendant in that case is *dicta* because in that case the party was held to be bound by his agreement not to plead the statute of limitations. Here, there is an express agreement to waive the statute of limitations that is supported by the consideration of Colony Bank having made the loan to WVR II, LLC. More importantly, *Sumter v. Morse, supra*, stands for the proposition that an agreement not to plead the statute of limitations will be enforced.

<sup>8</sup> A waiver is a voluntary and intentional abandonment or relinquishment of a known right. *Eason v. Eason*, 384 S.C. 473, 682 S.E.2d 804 (S.C. 2009). The language of the waiver in the Guaranty is plain and leaves no question as to what is being waived. Miles Loadholt and Thomas Viljac have not argued otherwise. Further, in the Affidavit of Miles Loadholt, he affirmatively testified that he was aware of the waiver at the time that he signed and delivered the guaranty.

Defendant Thomas Viljac did not submit any evidence and relies on the evidence submitted by Miles Loadholt.

The testimony contained in the affidavit of Frank E. Robinson, III, does not create any issue with respect to the his execution and delivery of the guaranty or the enforceability of the waiver of the statute of limitations defense.

In paragraph 3 of his affidavit, Mr. Robinson's testimony is that he generally declines to offer opinions as to the enforceability of waivers of the statute of limitations defense. It is important to note that Mr. Robinson does not testify that the law in South Carolina is that the waiver is unenforceable, because such testimony would be directly contrary to the law of this state. Rather, Mr. Robinson testifies only that he declines to give opinions on the subject.

In South Carolina, a party can waive the right to assert a statute of limitations defense. *McLendon v. S.C. Department of Highways and Public Transportation*, 313 S.C. 525, 443 S.E.2d 539 (S.C. 1994); *Anonymous Taxpayer v. South Carolina Dept. of Revenue*, 377 S.C. 425, 661 S.E.2d 73 (S.C. 2008).<sup>1</sup> A waiver of the statute of limitations may be shown by words or conduct. A waiver may result from express agreement, ... from failure to claim the defense, or by any action or inaction manifestly inconsistent with an intention to insist on the statute. *Mende v. Conway Hosp., Inc.*, 304 S.C. 313, 404 S.E.2d 33 (S.C. 1991).

Thus, irrespective of whether or not Mr. Robinson will offer an opinion on the enforceability of a waiver of the statute of limitations defense, the law in South Carolina is that the waiver is valid. To the extent that Mr. Robinson's testimony is offered as an expert opinion on the state of the law in South Carolina, the same is inadmissible. See: Rule 702, SCRE;

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<sup>1</sup> See also: 54 C.J.S. *Limitation of Actions*, § 55: A statute of limitations defense may be waived by express agreement or by necessary implication.

*Dawkins v. Fields*, 354 S.C. 58,580 S.E.2d 433 (S.C. 2003); *Vortex Sports and Entertainment v. Ware*, 378 S.C. 197, 662 S.E.2d 444 (SCApp. 2008).

In paragraphs 4 and 5 of his affidavit, Mr. Robinson offers testimony that is based on opinions given by other lawyers that he has reviewed. This is inadmissible hearsay. Rule 802, SCRE. In addition, as with the testimony of Mr. Robinson, whether or not any other lawyer will give an opinion does not change the law in South Carolina.

Mr. Robinson's testimony in paragraph 6 is that the reason that he and other lawyers do not give opinions as to the enforceability with respect to waivers of the statute of limitations is: "the concern that by real estate lawyers that such a provision might be found to be unenforceable as against public policy. . ." This testimony is also inadmissible, and is not relevant, for the following reasons:

(a) Mr. Robinson does not say that the waiver is unenforceable. Rather, he speculates that the waiver might be found to be unenforceable. This is not testimony of facts in Mr. Robinson's personal knowledge, but rather is inadmissible speculation. Rule 602, SCRE; *Bowers v. Bowers*, 349 S.C. 85, 561 S.E.2d 610 (SCApp. 2002). Further, the speculation is contrary to the law of South Carolina. *McLendon v. S.C. Department of Highways and Public Transportation, supra.*; *Anonymous Taxpayer v. South Carolina Dept. of Revenue, supra.* (S.C. 2008).

(b) Mr. Robinson's testimony as to the opinions of other lawyers and the rationale of other lawyers is inadmissible speculation and inadmissible hearsay. Rule 602, SCRE; Rule 802, SCRE.

(c) To the extent that this testimony, whether from Mr. Robinson, or any other lawyer, is intended to be an expert opinion on the state of the law in South Carolina, it is inadmissible. See: Rule 702, SCRE; *Dawkins v. Fields, supra.*; *Vortex Sports and Entertainment v. Ware, supra.*

In paragraph 7 of his affidavit, Mr. Robinson quotes from texts that suggest language for a lawyer to use in preparing opinion letters, if the lawyer wishes to decline to express an opinion on the enforceability of terms in a particular document. This testimony is not relevant to the

issues in this case, as the quoted text is nothing more than suggested language for a person who wishes to decline to give an opinion. To the extent that the text is offered as evidence, or as a foundation for an opinion, as to the state of the law in South Carolina, it is inadmissible. See: Rule 702, SCRE; *Dawkins v. Fields, supra.*; *Vortex Sports and Entertainment v. Ware, supra.* Further, in South Carolina, the law is *McLendon v. S.C. Department of Highways and Public Transportation, supra.*; *Anonymous Taxpayer v. South Carolina Dept. of Revenue, supra.* (S.C. 2008).

To the extent that Mr. Robinson's testimony in paragraph 8 is intended to be an opinion on the law, is it inadmissible. Further, it is contrary to the law of South Carolina, which is that a party can waive the right to assert a statute of limitations defense. *McLendon v. S.C. Department of Highways and Public Transportation, supra.*; *Anonymous Taxpayer v. South Carolina Dept. of Revenue, supra.* (S.C. 2008).

The testimony contained in the affidavit of Miles Loadholt likewise does not create any issue with respect to the his execution and delivery of the guaranty or the enforceability of the waiver of the statute of limitations. Further, the affidavit includes testimony that is inadmissible hearsay, and testimony that is inadmissible as opinion testimony on matters of law.

In paragraph 2 of his affidavit, Mr. Loadholt offers testimony related to "opinions given by lawyers in commercial transactions". This statement is inadmissible hearsay. Rule 602, SCRE. Further, whether or not a lawyer in a commercial lending transaction will or will not give an opinion on the enforceability of any term is not relevant to the question of whether or not the waiver in Mr. Loadholt's guaranty is enforceable. To the extent that the testimony is designed to offer any expert opinion that the waiver is unenforceable, the testimony is inadmissible.

Witnesses cannot offer testimony on points of law. See: Rule 702, SCRE; *Dawkins v. Fields, supra.*; *Vortex Sports and Entertainment v. Ware, supra.*

Finally, the testimony in paragraph 3 of the Loadholt affidavit does nothing more than confirm that Mr. Loadholt was aware of the terms of the guaranty, and that, with such knowledge, he executed and delivered it in connection with the transaction. The guaranty is, unquestionably, his agreement.<sup>2</sup> In the case of a written contract, the signing of which is admitted, the signer is bound by the terms and conditions thereof. *J. B. Bolt Co. v. Britt*, 129 S.C. 226, 123 S.E. 845 (S.C. 1924).

Miles Loadholt argues that the guaranty should be deemed unenforceable as a contract of adhesion. First, this was not plead.<sup>1</sup> Second, there is no evidence in the record to support the argument. The only testimony is that Mr. Loadholt was aware of the terms of the guaranty, and that his experience with other commercial lenders is that the terms of the loan documents are not negotiable. There is no evidence related to this transaction and what negotiation, if any, occurred or was attempted in connection with it, there is no basis for a finding that the guaranty is an adhesion contract. Further, such a finding, in and of itself, would not make the guaranty unenforceable. *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 498 S.E.2d 898 (SCApp. 1998).<sup>2</sup> There is no testimony or any evidence to support any finding that the guaranty in the context of a commercial loan is unconscionable. Absent such evidence, there is no basis for finding that the guaranty is unenforceable.

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<sup>2</sup> The execution and delivery of the guaranty are admitted in the pleadings.

<sup>1</sup> See: April 28, 2014, Answer to Amended Complaint of Miles Loadholt, and April 15, 2014, Answer to Amended Complaint of Thomas Viljac .

<sup>2</sup> No argument regarding whether or not the guaranty is unconscionable has been advanced. The argument is simply that the guaranty is an adhesion contract, and nothing more. The law in South Carolina does not deem adhesion contracts unenforceable, with nothing more appearing. *Lackey v. Green Tree Financial Corp., supra.*

Based on the foregoing, I conclude that the guarantees of Miles Loadholt and Thomas Viljac are enforceable and that Miles Loadholt and Thomas Viljac have waived their right to assert a defense based on the statute of limitations.

20. The amounts due and owing on the obligation of the Notes, together with accumulated interest, accumulated late charges, and other expenses incurred by Colony Bank all of which is secured by the Mortgages, are as follows:

Principal on 08/12/09 note as of February 3, 2015	\$1,749,054.28
Interest on 08/12/09 note as of February 3, 2015	\$ 463,705.65
Principal on 01/27/10 note as of February 3, 2015	\$ 25,218.00
Interest on 01/27/10 note as of February 3, 2015	\$ <u>7,704.09</u>
<b>TOTAL</b>	<b>\$2,245,682.02</b>

The per diem for the August 12, 2009 Promissory Note is Two Hundred Forty Two and 92/100 (\$242.92) Dollars, and the per diem for the January 27, 2010 Promissory Note is Four and 20/100 (\$4.20) Dollars. The per diem accrues from February 4, 2015 through the date of this Order.

21. The attorney for the Plaintiff, Curtis L. Coltrane, submitted affidavits detailing the attorney's fees and expenses incurred by the Plaintiff to date, as well as those anticipated to be incurred by the Plaintiff for work necessary to complete this foreclosure. The Affidavits of Attorney's Fees and Expenses were received into evidence as an exhibit, and the attorney offered himself for cross examination with respect to the attorney's fees and expenses.

22. In addition to the total amount that is due and owing under the terms and conditions of the August 12, 2009, Mortgage as modified, I have considered the six factors set out in *Baron Data Systems v. Loter*, 297 S.C. 382, 377 S.E.2d 296 S. C. 1989), as follows:

- (a) The nature, difficulty and extent of the legal services rendered: This case involved a foreclosure of a mortgage totaling more than One Million

Seven Hundred Thousand and No/100<sup>ths</sup> (\$1,700,000.00) Dollars. Successfully prosecuting a mortgage foreclosure involves the examination of loan documents; examination of the title to real property, preparation of all pleadings necessary to bring the case to trial; appearing at trial and presentation of evidence; preparation of sale notice; attending foreclosure sale and preparation of the Master's Deed and other documents to conclude the matter.

- (b) The time and labor devoted to the case. The affidavit of fees set out in detail the amount of time spent by counsel in prosecuting this case. No evidence was presented to show that the time was not actually spent, or that the amounts of time spent were unreasonable.
- (c) The professional standing of counsel. The Plaintiff's attorney has been a member of the South Carolina Bar for 30 years. He has tried many foreclosure cases as well as other types of cases. He is experienced with real estate and title matters. His professional standing with the bar is good.
- (d) The contingency of compensation. This case was not a contingency fee matter.
- (e) The fee customarily charged in the locality for similar services. The rates charged by the Plaintiff's attorney's law firm are as follows:

(a)	Para-legals	\$	85.00 Per Hour
(b)	Associates	\$	150.00 Per Hour
(c)	Partners	\$	250.00 Per Hour

These rates are in line with those charged by law firms in Beaufort County, South Carolina, for this type of service.

- (f) The beneficial results obtained. The attorney has successfully prosecuted this foreclosure, and has obtained a beneficial result for the Plaintiff.

23. Based on the foregoing, I find that the attorney's fees and expenses in the amount Eight Thousand Nine Hundred Eight and 47/100 (\$8,908.47) Dollars are reasonable for the work performed as of February 3, 2015, and the sum of One Thousand Seven Hundred Fifty and 00/100 (\$1,750.00) Dollars is a reasonable amount to allow for the work necessary to conclude this case.

24. The amounts due and owing under the terms and conditions of the August 12, 2009, Promissory Note and the January 27, 2010 Promissory Note, including interest, accumulated late charges and costs of collection and attorney's fees, are as follows:

Principal on 08/12/09 note as of February 3, 2015	\$1,749,054.28
Interest on 08/12/09 note as of February 3, 2015	\$ 463,705.65
Principal on 01/27/10 note as of February 3, 2015	\$ 25,218.00
Interest on 01/27/10 note as of February 3, 2015	\$ <u>7,704.09</u>
<b>SUBTOTAL</b>	\$2,245,682.02
Costs of Collection and Attorney's Fees	
(a) Through February 3, 2015	\$ 8,908.47
(b) To Completion of Case	\$ <u>1,750.00</u>
<b>TOTAL</b>	\$2,256,340.49

25. The lien of the August 12, 2009, Mortgage is superior to and has priority over all other liens against the title to the real property described in Paragraph 5 above, including any lien claimed by Palmetto Industrial Park Owners Association, Inc. or First Federal Savings and Loan Association of Charleston.

26. This loan is not subject to the requirements of the Home Affordable Modification Program ("HAMP"), and South Carolina Supreme Court Order 2011-05-02-01 has been complied with. Colony Bank set forth in the Pleadings for this case that the Note and Mortgage in this case are not subject to modification, and no counter affidavit was received from any Defendant. The Note and Mortgage are not subject to modification under the HAMP, or subject to South Carolina Supreme Court Order 2011-05-02-01 for the following reasons:

- (a) The Mortgage encumbers commercial property.
- (b) The property encumbered by the Mortgage is not an owner occupied primary residence.

27. Colony Bank has reserved its right to a deficiency judgment against WVR II, LLC, Miles Loadholt and Thomas Viljac.

### CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is Ordered, Adjudged and Decreed:

1. The Plaintiff, Colony Bank, is awarded judgment against the Defendants, WVR II, LLC, Miles Loadholt and Thomas Viljac in the amount of Two Million Two Hundred Fifty Six Thousand Three Hundred Forty and 49/100 (\$2,256,340.49) Dollars.
2. The lien of the August 12, 2009, Mortgage is superior to and has priority over all other liens against the title to the real property described in Paragraph 5 above.
3. The lien of the August 12, 2009, Mortgage upon the above described real property, shall be foreclosed and the Defendants WVR II, LLC, Thomas Viljac, Miles Loadholt, Palmetto Industrial Park Property Owners' Association, Inc. and First Federal Savings and Loan Association of Charleston, or anyone claiming by, through or under the Defendants WVR II, LLC, Thomas Viljac, Miles Loadholt, shall be barred of any right, title, interest in, lien upon or equity of redemption in or to the above described real property.
4. The Defendants WVR II, LLC, Miles Loadholt and Thomas Viljac shall, on or before, the date and time of the sale of the property hereinafter described, shall pay to the Plaintiff the amount of the Plaintiff's debt stated above.
5. On default of the payment at or before the date and time of the sale, the undersigned shall sell the below described property at public auction in Jasper County, South Carolina as set forth below.

6. The below described real property shall be sold by the undersigned, after due advertisement according to law, on the first available sales day after entry of this Order of Judgment and Foreclosure, and should the first available sales day fall on a legal holiday, then the sales day shall be on the Tuesday next following the legal holiday, upon the following terms:

(a) For cash, and the Clerk of Court for Jasper County, South Carolina, shall require a deposit of Five (5%) Per Cent of the bid amount, in certified funds, the same to be applied to the purchase price only upon compliance with the bid, but in the case of non-compliance within Thirty (30) Days from the date of the bid, the same shall be forfeited and applied to the Plaintiff's judgment debt.

(b) If the Plaintiff is the successful bidder at the sale, however, for a sum not exceeding the cost of the sale and the indebtedness of the Defendants WVR II, LLC; Palmetto Industrial Park Property Owners' Association, Inc.; First Federal Savings and Loan Association of Charleston; Thomas Viljac; and Miles Loadholt, to the Plaintiff, then the Plaintiff may pay to the Clerk of Court for Jasper County, South Carolina, on the amount of the costs of the sale, crediting the balance of the bid on the indebtedness adjudged to be owing from the Defendant to the Plaintiff by this Order.

(c) Since the Plaintiff has demanded a deficiency judgment, the bidding shall remain open for a period of Thirty (30) Days.


(d) It is a condition of this sale that the sale shall not occur if the Plaintiff or the Plaintiff's attorney is not present at the sale.

7. The undersigned shall, by due advertisement according to law, give notice of the time and place of the sale and the terms thereof. The undersigned shall, upon compliance with the terms of the successful Purchaser's bid, issue and good and sufficient title to the premises and property sold under this Order of Judgment and Foreclosure. If upon such sale being made, the high bidder shall fail to comply with the terms of the bid within Thirty (30) Days from the date of the bid, the Master In Equity may advertise the premises for sale at a subsequent sales day, at the risk of the former high bidder, and so on from time to time thereafter, until compliance with a bid shall be achieved.

8. The Purchaser at said Sale shall pay any and all recording fees, and any applicable State of South Carolina, Jasper County, or municipal documentary stamp and transfer fee expense.
9. The Sale shall be subject to any real property taxes or special assessments which are due and owing from and after the date of the Sale.
10. The full amount of the Judgment awarded herein shall carry interest at the legal judgment rate until compliance with bid is made.
11. The proceeds from the Sale shall be applied as follows:
  - (a) To the payment of the Costs and Expenses of the Sale;
  - (b) To the payment of the Plaintiff's Judgment awarded herein, or so much thereof as the purchase money will pay;
  - (c) The surplus, if any, will be held and distributed pursuant to a further Order of the undersigned.
12. Upon making a sale of the property as described above, and upon the execution and delivery to the purchaser or purchasers of a deed to the property, the purchaser or purchasers of the property shall be put into possession of the property upon production of the deed. Upon request of the holder of the deed, the Sheriff of Jasper County, South Carolina, shall put the holder of the deed into possession of the property.
13. The guarantees of Miles Loadholt and Thomas Viljac are enforceable and that Miles Loadholt and Thomas Viljac have waived their right to assert a defense based on the statute of limitations.
14. Colony Bank has reserved its right to the entry of a deficiency judgment against the Defendants WVR II, LLC, Miles Loadholt and Thomas Viljac.
15. The real property to be sold pursuant to this Order of Judgment and Foreclosure is described as follows:

All those certain condominium unit(s) situate, lying and being in the Okatie Warehouse, Ridgeland, Jasper County, South Carolina, known and designated as UNIT C-1 and Unit D-1 of the Okatie Warehouses Horizontal Property Regime, and being more particularly shown and described by reference to the Master Deed of WVR, LLC, a South Carolina limited liability company, establishing the Okatie Warehouses Horizontal Property Regime, dated July 10, 2009, and recorded July 28, 2009, in the Office of the Register of Deeds for Jasper County, South Carolina in Record Book 753 at Page 13.

IT IS SO ORDERED



R. Thayer Rivers, Jr., Special Referee  
for Jasper County, South Carolina

Ridgeland, South Carolina

This 6 Day of April, 2015.