

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2015-000158

Branch Banking and Trust Company Respondent,

v.

Elie Abikhaled and Ghazi Abikhaled Appellants.

RECORD ON APPEAL

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Attorney for Respondent

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SC Court of Appeals

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property in Richland County, South Carolina (the Mortgage). Plaintiff's foreclosure suit against Borrowers is ongoing in a separate lawsuit currently pending before the Master in Equity, Case Number 2013-CP-40-5115. The present action is separate from the foreclosure action; in the instant case, Plaintiff prays for a personal, deficiency judgment against Borrowers in order to satisfy the loan balance not recovered from the foreclosure and sale of the subject property.

The guaranty agreements executed by Defendants each provide unconditional, joint and several guarantees of all indebtedness of Borrower to Bank whether then existing or thereafter arising (collectively the Guarantees). The Guarantees each contain the following jury trial waiver provision in all capitalized, bold text:

WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OF CLAIMS ARISING OUT OF THIS GUARANTY OR THE BORROWER'S NOTE(S), AND THE RELATED LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND THE BANK OR THE BORROWER AND THE BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO ACCEPT THIS GUARANTY AND TO MAKE THE LOAN(S) TO THE BORROWER. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

In response to Plaintiff's Complaint, Defendants filed an Answer in which they asserted counterclaims for breach of the covenant of good faith and fair dealing, interference with prospective contractual relations, accounting and appraisal, and negligent misrepresentation. The factual basis underlying the counterclaims is Plaintiff's alleged failure to provide additional financing to Borrower to upfit the building that is the subject of the Mortgage.

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II. STANDARD

An action to collect on a guaranty is an action at law. Crafton v. Brown, 346 S.C. 347, 351, 550 S.E.2d 904, 905 (Ct. App. 2001). "A mortgage foreclosure is an action in equity." Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 328, 755 S.E.2d 437, 440-41 (2014), *reh'g denied* (Apr. 2, 2014) (citing Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997)). "However, '[w]hether a party is entitled to a jury trial is a question of law.'" Id. citing (Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010)).

A party may waive the right to a jury trial by contract, but such waiver will be strictly construed as the right to a jury trial is a substantial right. Beach Co. v. Twillman, Ltd., 351 S.C. 56, 63-64, 566 S.E.2d 863, 866 (Ct. App. 2002) (citing N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc., 307 S.C. 533, 535, 416 S.E.2d 637, 638 (1992)). "However, terms in a contract provision must be construed using their plain, ordinary and popular meaning." Id. (citing Fritz-Pontiac-Cadillac-Buick v. Goforth, 312 S.C. 315, 318, 440 S.E.2d 367, 369 (1994)). A jury trial waiver must be made knowingly and voluntarily. See Blackburn, 407 S.C. at 332, 755 S.E.2d at 443; Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437-38 (1995) ("intentional relinquishment of a known right" required for waiver).

III. NATURE OF DEFENDANTS' COUNTERCLAIMS

Plaintiff argues Defendants defaulted under terms of the Guarantees and that because its suit on the Guarantees is not an equitable action, the dispositive issue is not whether Defendants' counterclaims are permissive or compulsory at law as discussed by the Supreme Court in Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 328, 755 S.E.2d 437, 440-41 (2014), *reh'g denied* (Apr. 2, 2014). Rather, Plaintiff argues, the issue is simply whether Defendants contractually waived their rights to a jury trial as to their counterclaims. Additionally, Plaintiff

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argues Defendants' counterclaims are included within the scope of the jury trial waiver in the Guarantees.

Defendants argue that had Plaintiff included the guarantors as defendants in its equitable foreclosure action, Blackburn would be controlling. Additionally, Defendants argue the waiver clause is unconscionable. Both parties contend Blackburn is inapplicable in the present case. The parties arguments regard whether Defendants counterclaims are encompassed within the scope of the waiver and whether the waiver is unconscionable.

The Supreme Court in Blackburn clarified the analytical framework for determining whether borrowers are entitled to a jury trial on their counterclaims. See Blackburn, 407 S.C. at 329-30, 755 S.E.2d at 441-442. Ultimately, however, the court declined to definitively determine whether the borrowers' counterclaims were legal or equitable, compulsory or permissive. See id. at 331-32, 755 S.E.2d at 442-43. The court held that the only way borrowers could obtain a jury trial was if their waivers were not knowingly and voluntarily made and thus invalid and unenforceable. See id. at 332, 755 S.E.2d at 443.

Here, Plaintiff's Complaint is legal, but Defendant's counterclaims are both legal and equitable; therefore, the analytical framework expounded in Blackburn is inapplicable. See id. at 329-30, 755 S.E.2d at 441-442; Rushing v. McKinny, 370 S.C. 280, 289, 633 S.E.2d 917, 922 (Ct. App. 2006) (breach of the covenant of good faith and fair dealing and negligent misrepresentation are legal causes of action); United Ed. Distribs., LLC v. Ed. Testing Serv., 350 S.C. 7, 14, 564 S.E.2d 324, 328 (Ct. App. 2002) (interference with prospective contractual relations is a tort action for damages and an action at law); Historical Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 427, 673 S.E.2d 448, 453 (2009) (an action for an accounting is an action in equity); see also Consignment Sales LLC v. Tucker Oil Co., 391 S.C. 266, 272, 705 S.E.2d 73, 76-77 (Ct. App. 2010); Santoro v. Schulthess, 384 S.C. 250, 259, 681 S.E.2d 897,

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901-902 (Ct. App. 2009) (citing Longshore v. Saber Sec. Servs., Inc., 365 S.C. 554, 560, 619 S.E.2d 5, 9 (Ct. App. 2005)). Consequently, this Court need not determine whether borrowers' counterclaims are permissive or compulsory. Defendants have no right to a trial by jury on their equitable accounting and appraisal counterclaim. See Historical Charleston Holdings, LLC, 381 S.C. at 427, 673 S.E.2d at 453; Blackburn, 407 S.C. at 332, 755 S.E.2d at 443. Similarly, Defendants have no right to a jury trial on their legal counterclaims because such claims are squarely within the scope of the waiver clause. See Blackburn, 407 S.C. at 332, 755 S.E.2d at 443. Consequently, this Court must determine only whether the waivers were executed knowingly and voluntarily. See id.

IV. VALIDITY OF WAIVER

Defendants presented no evidence or argument that Borrowers were unable to freely, voluntarily, intelligently, and knowingly waive their right to a jury trial. Accordingly, this Court finds the waivers are valid and enforceable. Further, the waivers were conspicuous, noticeable, and unambiguous, printed in all capital letters in bold type with a bold heading. See Blackburn, 407 S.C. at 334, n.8, 755 S.E.2d at 433, n.8.

V. SCOPE OF WAIVER AND COUNTERCLAIMS

Defendants argue that the subject of their counterclaims—Plaintiff's failure to extend financing to upfit the subject property—are not related to the existing relationship between the parties and, therefore, their counterclaims are beyond the scope of the jury trial waiver contained in the Guarantees. In contrast, Plaintiff argues Defendants' counterclaims concern matters or claims arising out of either the Guarantees or the Note and the related documents executed in connection with the Guarantees, or claims occurring as a result of the relationship between the Bank and Borrowers. Simply stated, Borrowers executed the subject Guarantees in connection with the Note and Mortgage obtained from Plaintiff. The Guarantees encompass all claims

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regarding the Note, Mortgage, and subject property. Defendants concede that their claims are based on Plaintiff's conduct growing out of Plaintiff and Defendant's fiduciary relationship and, ultimately, from the underlying Note attached to the property. Defendants argue that Plaintiff breached its promise to extend future financing relating to the subject property. The waiver expressly provides: THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OF CLAIMS ARISING OUT OF THIS GUARANTY OR THE BORROWER'S NOTE(S); AND THE RELATED LOAN DOCUMENTS EXECUTED IN CONNECTION HEREWITH OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND THE BANK OR THE BORROWER AND THE BANK. Therefore, the counterclaims asserted by Defendants are within the scope of the jury trial waiver provision contained in each of the Guarantees, in which Defendants contractually waived their right to a jury trial.

VI. UNCONSCIONABILITY OF WAIVER

Defendants argue they could not have contemplated that in signing the Guarantees, they were waiving their right to a jury trial on claims arising from future misrepresentations and misconduct by Plaintiff and, thus, the waiver is unconscionable. Unconscionability is defined "as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004). "If a court as a matter of law finds any clause of a contract to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result." RESTATEMENT OF CONTRACTS (SECOND) § 208 (1981). "Courts should not refuse to enforce a contract on grounds of unconscionability, even when the substance of the terms appear

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grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter's evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract." Gladden v. Boykin, 402 S.C. 140, 145, 739 S.E.2d 882, 884-85 (2013). "[T]he proper test is whether an important clause was particularly inconspicuous, as if the drafter intended to obscure the term." Id.

"Further, South Carolina's 'general principle ... is that it is not the function of the court to rewrite contracts for the parties.'" York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 90, 749 S.E.2d 139, 151 (Ct. App. 2013) (citing Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007)). Thus, the court must determine whether unconscionability is "due to both an absence of meaningful choice and oppressive, one-sided terms." Id. (citing Simpson, 406 S.C. at 25, 644 S.E.2d at 669). "In determining whether a contract was tainted by an absence of meaningful choice, courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause." Id. at 86, 749 S.E.2d at 148-49 (citing Simpson, 406 S.C. at 25, 644 S.E.2d at 669). The loss of the right to a jury trial is relevant to this determination. Id. (citing Simpson, 406 S.C. at 27, 644 S.E.2d at 670). "Terms are oppressive when 'no reasonable person would make them and no fair and honest person would accept them.'" See id. at 87-88, 749 S.E.2d at 149-150 (citing Simpson, 406 S.C. at 25, 644 S.E.2d at 668).

Having found Borrowers' waivers were made knowingly and voluntarily, this Court finds the waiver provision is conscionable and declines to strike the clause from the parties' contract. Defendants failed to present any evidence or argument that the waivers were entered into by

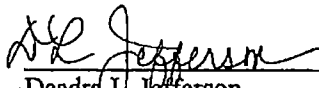
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Borrowers as a result of any procedural unconscionability, or bargaining unfairness, and substantive unfairness. Defendants argue the waivers contained in the Guarantees purport to waive future claims on matters not directly related to the loan that is the subject of the Guarantees, and are thus unconscionable. Defendants also argue they could not have possibly contemplated waving future claims by signing the Guarantees. Defendants presented no evidence or case law supporting their argument. Whereas surprise and hardship caused by the waiver provision is just one factor to be assessed in the court's overall determination of unconscionability, according to the prevailing case law, the scope of the waiver term is not a factor to be considered in this analysis. Ultimately, this Court finds the record does not support a conclusion that Borrowers lacked meaningful choice whether to accept any one-sided terms of the Guarantees, including the waiver provision; accordingly, this Court declines to strike the waiver clause based on unconscionability.

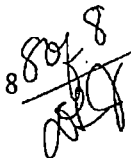
VII. CONCLUSION

Therefore, IT IS HEREBY ORDERED that Plaintiff's Motion to Strike Defendants' Jury Demand is GRANTED.

AND IT IS SO ORDERED.


Deadra L. Jefferson
Presiding Judge

December 16, 2014
Charleston, South Carolina
At Chambers

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Branch Banking and Trust Company,

Plaintiff,

v.

Elie Abikhaled and Ghazi Abikhaled,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2014-CP-00000

COMPLAINT
(Non-Jury)

RICHLAND COUNTY
FILED
2014 MAY -8 PM 2:12
JEANETTE W. MCBRIDE
C.P. & S.S.

The Plaintiff above named, complaining of the Defendants herein, alleges that:

1. Plaintiff Branch Banking and Trust Company (hereinafter "Bank") is a banking institution duly organized and existing under and by virtue of the laws of the United States.
2. Upon information and belief, Defendant Elie Abikhaled is a resident of Richland County, South Carolina.
3. Upon information and belief, Defendant Ghazi Abikhaled is a resident of the State of Florida and has transacted business in the State of South Carolina.
4. On or about June 29, 2011, Cedar Development II, LLC a/k/a Cedar Development 2, LLC ("Borrower") executed a Promissory Note in favor of Bank for Seven Hundred Thirty Thousand Four Hundred Eleven Dollars and 44/100 (\$730,411.44) (the "Note"). A true copy of the Note is made part of this Complaint as Exhibit A.
5. Under terms of the Note, Borrower agreed to repay to Bank the loan amount plus accrued interest at the variable rate of the Bank's Prime Rate plus 2.00% per annum to be adjusted daily as the Bank's Prime Rate changes.

6. In and by the terms of the Note, the failure to pay any installment of either principal or interest or any portion thereof when due shall be a material default of the note, and the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice.

7. For good and valuable consideration, Defendant Elie Abikhaled unconditionally guaranteed all indebtedness of Borrower to Bank, whether then existing or thereafter arising. A true copy of the Guaranty Agreement executed by Elie Abikhaled is made part of this Complaint as **Exhibit B**.

8. For good and valuable consideration, Defendant Ghazi Abikhaled unconditionally guaranteed all indebtedness of Borrower to Bank, whether then existing or thereafter arising. A true copy of the Guaranty Agreement executed by Ghazi Abikhaled is made part of this Complaint as **Exhibit C**.

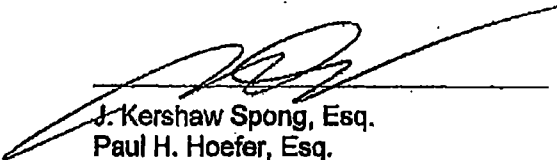
9. In and by the terms of each Guaranty Agreement, the guarantors shall pay all costs and expenses of collection, including reasonable attorneys' fees, in connection with the enforcement of each guaranty.

10. Borrower has failed to make installment payments of principal and interest falling due from and after October 10, 2012 and has defaulted under the terms of the Note.

11. Defendants are each in default on their respective Guaranty Agreements, and Bank has and does hereby elect to declare the entire balance of said principal and interest due and payable at once.

12. As of February 27, 2014, the total amount due and owing under terms of the Note was Seven Hundred Ninety-Seven Thousand One Hundred Sixty-Six Dollars and 98/100 (\$797,166.98), plus interest, costs and fees accruing thereafter.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in the amount of Seven Hundred Ninety-Seven Thousand One Hundred Sixty-Six Dollars and 98/100 (\$797,166.98), plus interest, costs and attorney's fees, all of which continue to accrue, and for such other and further relief as the Court deems just and proper.



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Paul H. Hoefer, Esq.
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8800
Attorneys for the Plaintiff

May 8, 2014

Borrower: CEDAR DEVELOPMENT II LLC

Account Number: 9321508164

Address: 3827 BROAD RIVER RD
COLUMBIA, SC 29210-0514

Note Number: 00004

LEXINGTON, South Carolina
Date: June 29, 2011

BB&T

PROMISSORY NOTE

BORROWER(S) REPRESENTS HERewith THAT THE LOAN EVIDENCED HEREBY IS BEING OBTAINED FOR BUSINESS/COMMERCIAL PURPOSES. For value received, the undersigned, jointly and severally, if more than one, promises to pay to BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation (the "Bank"), or order, at said bank or any of its offices in the above referenced city (or such other place or places that may be hereafter designated by Bank), the sum of

SEVEN HUNDRED THIRTY THOUSAND FOUR HUNDRED ELEVEN DOLLARS & 44/100

Dollars (\$ 738,411.44), in immediately available coin or currency of the United States of America.

☐ Borrower shall pay a prepayment fee set forth in the Prepayment Fee Addendum attached hereto.

Interest shall accrue from the date hereof on the unpaid balance outstanding from time to time at the:

- ☐ Fixed rate of _____ % per annum.
- ☒ Variable rate of the Bank's Prime Rate plus 2.000 % per annum to be adjusted Monthly, on the 1st as the Bank's Prime Rate changes. The interest rate will in no instance exceed the maximum rate permitted by applicable law and if checked here ☒ the interest rate will not decrease below a fixed minimum rate of 3.250 %. If checked here ☐ the interest rate will not exceed ☐ a fixed maximum rate of _____ % or ☐ an average maximum rate of _____ % or ☐ a floating maximum rate of the greater of _____ % or the Bank's Prime Rate. If an average maximum rate is specified, a determination of any required reimbursement of interest by Bank will be made; ☐ when Note is repaid in full by Borrower ☐ annually beginning on _____.
- ☐ Fixed rate of _____ % per annum through _____ which automatically converts on _____ to a variable rate equal to the Bank's Prime Rate plus _____ % per annum which shall be adjusted as such Prime Rate changes.

Principal and interest is payable as follows:

- ☐ Principal (plus any accrued interest not otherwise scheduled herein) is due in full at maturity on _____.
- ☐ Principal plus accrued interest
- ☒ Payable in consecutive Monthly installments of ☐ Principal ☒ Principal and Interest commencing on 06/02/2011

and continuing on the same day of each calendar period thereafter, in 35 equal payments of \$ 4,963.58, with one final payment of all remaining principal and accrued interest due on 06/02/2014.

- ☐ Choice Line Payment Option: 2% of outstanding balance is payable monthly commencing on _____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and accrued interest due on _____.

☐ Accrued interest is payable commencing on _____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining interest due on _____.

☐ Bank reserves the right in its sole discretion to adjust the fixed payment due hereunder on _____ and continuing on the same day of each calendar period thereafter, in order to maintain an amortization period of no more than _____ months from the date of the initial principal payment due hereunder. Borrower understands the payment may increase if interest rates increase.

☐ Prior to an event of default, Borrower may borrow, repay, and reborrow hereunder pursuant to the terms of the Loan Agreement, hereinafter defined.

☐ Borrower hereby authorizes Bank to automatically draft from its demand deposit or savings account(s) with Bank or other bank, any payment(s) due under this Note on the date(s) due. Borrower shall provide appropriate account number(s) for account(s) at Bank or other bank.

The undersigned shall pay to Bank a late fee in the amount of five percent (5%) of any installment past due for fifteen (15) or more days. When any installment payment is past due for fifteen (15) or more days, subsequent payments shall first be applied to the past due balance. In addition, the undersigned shall pay to Bank a returned payment fee if the undersigned or any other obligor hereon makes any payment at any time by check or other instrument, or by any electronic means, which is returned to Bank because of nonpayment due to non-sufficient funds.

All interest shall be computed and charged for the actual number of days elapsed on the basis of a year consisting of three hundred sixty (360) days. In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the Bank's sole discretion). In such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate; provided that unless elected otherwise above, the fixed payment amount shall not be reduced below the original fixed payment amount. However, Bank shall have the right, in its sole discretion, to lower the fixed payment amount below the original payment amount.

This note ("Note") is given by the undersigned in connection with the following agreements (if any) between the undersigned and the Bank:

Mortgage(s) / Deed of Trust(s) granted in favor of Bank as mortgagee / beneficiary:

- ☒ dated 02/21/2008 in the maximum principal amount of \$ 800,000.00
granted by CEDAR DEVELOPMENT II LLC
- ☐ dated _____ in the maximum principal amount of \$ _____
granted by _____

ACCOUNTS / NOTES
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Page 1 of 4

Security Agreement(s) granting a security interest to Bank:

- ☐ dated _____ given by _____
- ☐ dated _____ given by _____
- ☐ Securities Account Pledge and Security Agreement dated _____, executed by _____
- ☐ Control Agreement(s) dated _____, covering ☐ Deposit Account(s) ☐ Investment Property
☐ Letter of Credit Rights ☐ Electronic Capital Paper
- ☐ Assignment of Certificate of Deposit, Security Agreement, and Power of Attorney (for Certificated Certificates of Deposit) dated _____, executed by _____
- ☐ Pledge and Security Agreement for Publicly Traded Certificated Securities dated _____, executed by _____
- ☐ Assignment of Life Insurance Policy as Collateral dated _____, executed by _____
- ☐ Loan Agreement dated _____, executed by Borrower and ☐ Guarantor(s).
- ☐ _____
- ☐ _____
- ☐ _____

All of the terms, conditions and covenants of the above described agreements (the "Agreements") are expressly made a part of this promissory note (the "Note") by reference in the same manner and with the same effect as if set forth herein at length and any holder of this Note is entitled to the benefits of and remedies provided in the Agreements and any other agreements by and between the undersigned and the Bank. In addition to Bank's right of off-set and to any liens and security interests granted to Bank in the Agreements, the undersigned hereby grants to Bank a security interest in all of its depository accounts with and investment property held by Bank, which shall serve as collateral for the indebtedness and obligations evidenced by this Note.

No delay or omission on the part of the holder in exercising any right hereunder shall operate as a waiver of such right or of any other right of such holder, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or of any other right on any future occasion. Every one of the undersigned and every endorser or guarantor of this Note regardless of the time, date or place of signing waives presentment, demand, protest and notices of every kind and assigns to any one or more extensions or postponements of the time of payment or any other indulgence, to any substitutions, exchanges or releases of collateral if at any time there be available to the holder collateral for this Note, and to the additions or releases of any other parties or persons primarily or secondarily liable.

The failure to pay any part of the principal or interest when due on this Note or to fully perform any covenant, obligation or warranty on this or on any other liability to the Bank by any affiliate (as defined in 11 USC Section 101(2)), or by any guarantor or surety of this Note (said affiliate, guarantor, and surety are herein called "Obligor"); or if any financial statement or other representation made to the Bank by any of the undersigned or any Obligor shall be found to be materially incorrect or incomplete; or if any of the undersigned shall fail to furnish information to the Bank sufficient to verify the identity of the undersigned as required under the USA Patriot Act; or in the event of a default pursuant to any of the Agreements or any other obligation of any of the undersigned or any Obligor in favor of the Bank; or in the event the Bank demands that the undersigned secure or provide additional security for its obligations under this Note and security deemed adequate and sufficient by the Bank is not given when demanded; or in the event one or more of the undersigned or any Obligor shall die, terminate its existence, allow the appointment of a receiver for any part of its property, make an assignment for the benefit of creditors, or where a proceeding under bankruptcy or insolvency laws is initiated by or against any of the undersigned or any Obligor; or in the event the Bank should otherwise deem itself, its security interest, or any collateral unsafe or insecure; or should the Bank in good faith believe that the prospect of payment or other performance is impaired; or if there is an attachment, execution, or other judicial seizure of all or any portion of the Borrower's or any Obligor's assets, including an action or proceeding to seize any funds on deposit with the Bank, and such seizure is not discharged within 20 days; or if final judgment for the payment of money shall be rendered against the Borrower or any Obligor which is not covered by insurance or debt cancellation and shall remain undischarged for a period of 30 days unless such judgment or execution lien is effectively stayed; or the termination of any guaranty agreement given in connection with this Note, then any one of the same shall be a material default hereunder and this Note and other debts due the Bank by any one or more of undersigned shall immediately become due and payable without notice, at the option of the Bank. From and after any event of default hereunder, interest shall accrue on the sum of the principal balance and accrued interest then outstanding at the variable rate equal to the Bank's Prime Rate plus 5% per annum ("Default Rate"), provided that such rate shall not exceed at any time the highest rate of interest permitted by the laws of the State of South Carolina; and further provided that such rate shall apply after judgement. In the event of any default, the then remaining unpaid principal amount and accrued but unpaid interest then outstanding shall bear interest at the Default Rate called for hereunder until such principal and interest have been paid in full. In addition, upon default, the Bank may pursue its full legal remedies at law or equity, and the balance due hereunder may be charged against any payment instrument marked "payment in full" on any disputed amount due hereunder, and Bank expressly reserves the right to reject all such payment instruments. Borrower agrees that tender of its check or other payment instrument so marked will not satisfy or discharge its obligation under this Note, disputed or otherwise, even if such check or payment instrument is inadvertently processed by Bank unless in fact such payment is in fact sufficient to pay the amount due hereunder.

WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS NOTE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO MAKE THE LOAN EVIDENCED BY THIS NOTE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Unless otherwise required under a Loan Agreement, if applicable, and as long as any indebtedness evidenced by this Note remains outstanding or as long as Bank remains obligated to make advances, the undersigned shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when delivered shall be the property of the Bank.

The term "Prime Rate," if used herein, means the rate of interest per annum announced by the Bank from time to time and adopted as its Prime Rate. The Prime Rate is one of several rate indexes employed by the Bank when extending credit. Any change in the interest rate resulting from a change in the Bank's Prime Rate shall become effective as of the opening of business on the effective date of the change. If this Note is placed with an attorney for collection, the undersigned agrees to pay, in addition to principal and interest, all costs of collection, including reasonable attorneys' fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of acceleration or other action by Lender to collect the sums due hereunder, unless the actual attorneys' fees incurred, based upon Bank's counsel's normal hourly fees chargeable to Bank, shall be greater than 15% of principal and interest, in which case such billed amount based on such hourly rate shall be the attorneys' fee payable hereunder. All obligations of the undersigned and of any Obligor shall bind his heirs, executors, administrators, successors, and/or assigns. Use of the masculine pronoun herein shall include the feminine and the neuter, and also the plural. If more than one party shall execute this Note, the term "undersigned" as used herein shall mean all the parties signing this Note and each of them, and all such parties shall be jointly and severally obligated hereunder. Whenever possible, each provision of this Note shall be interpreted in such a manner to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under such law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note. All of the undersigned hereby waive all exemptions and homestead laws. The proceeds of the loan evidenced by this Note may be paid to any one or more of the undersigned. No waivers and modifications shall be valid unless in writing and signed by the Bank. In case of conflict between the terms of this Note and the Loan Agreement or Commitment Letter issued in connection herewith, the priority of controlling terms shall be first this Note, then the Loan Agreement, and then the Commitment Letter. This Note shall be governed by and construed in accordance with the laws of South Carolina.

(SIGNATURES ON FOLLOWING PAGE)

BB&T

PROMISSORY NOTE SIGNATURE PAGE

Borrower: CEDAR DEVELOPMENT II LLC

Account Number: 9521508164

Note Number: 00004

Note Amount: \$ 730,411.44

Date: 06/25/2011

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. TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR 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.

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

If Borrower is a Corporation:

WITNESS:

NAME OF CORPORATION

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

If Borrower is a Partnership, Limited Liability Company, or Limited Liability Partnership:

WITNESS:

CEDAR DEVELOPMENT II LLC

NAME OF PARTNERSHIP, LLC, OR LLP

By: 99 _____ (SEAL)

DATE / APPROVED

Title: Member & Manager

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

If Borrower is an individual:

WITNESS:

(SEAL)

Additional Co-makers:

WITNESS:

(SEAL)

(SEAL)

(SEAL)

(SEAL)



GUARANTY AGREEMENT

BRANCH BANKING AND TRUST COMPANY

LEXINGTON, SC

Dear Sirs:

10/09/2007

As an inducement to Branch Banking and Trust Company ("Bank") to extend credit to and to otherwise deal with

CEDAR DEVELOPMENT II LLC

("Borrower").

and in consideration thereof, the undersigned (and each of the undersigned jointly and severally if more than one) hereby absolutely and unconditionally guarantees to Bank and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower, at any time, now or hereafter, incurred with or held by Bank, together with interest, as and when the same become due and payable, whether by acceleration or otherwise, in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof. The obligation of the undersigned is a guarantee of payment and not of collection.

The undersigned is Bank's debtor for all indebtedness, obligations and liabilities for which this Guaranty is made, and Bank shall also at all times have a lien on and security interest in all stocks, bonds and other securities of the undersigned at any time in Bank's possession and the same shall at Bank's option be held, administered and disposed of as collateral to any such indebtedness, obligation or liability of the Borrower, and Bank shall also at all times have the right of set-off against any deposit account of the undersigned with Bank in the same manner and to the same extent that the right of set-off may exist against the Borrower.

It is understood that any such notes, drafts, debts, obligations and liabilities may be accepted or created by or with Bank at any time and from time to time without notice to the undersigned, and the undersigned hereby expressly waives presentment, demand, protest, and notice of dishonor of any such notes, drafts, debts, obligations and liabilities or other evidences of any such indebtedness, obligation or liability.

Bank may receive and accept from time to time any securities or other property as a collateral to any such notes, drafts, debts, obligations and liabilities, and may surrender, compromise, exchange and release absolutely the same or any part thereof at any time without notice to the undersigned and without in any manner affecting the obligation and liability of the undersigned hereby created. The undersigned agrees that Bank shall have no obligation to protect, perfect, secure or insure any security interests, liens or encumbrances now or hereafter held for the indebtedness, obligations and liabilities for which this Guaranty is made.

This obligation and liability on the part of the undersigned shall be a primary, and not a secondary, obligation and liability, payable immediately upon demand without recourse first having been had by Bank against the Borrower or any other guarantor, person, firm or corporation, and without first resorting to any property held by Bank as collateral security; and the undersigned hereby waives the benefits of all provisions of law, for stay or delay of execution or sale of property or other satisfaction of judgment against the undersigned on account of obligation and liability hereunder until judgment be obtained therefor against the Borrower and execution thereon returned unsatisfied, or until it is shown that the Borrower has no property available for the satisfaction of the indebtedness, obligation or liability guaranteed hereby, or until any other proceedings can be had; and the undersigned further agrees that the undersigned is responsible for any obligation or debt, or portion thereof, of the Borrower to the Bank which has been paid by the Borrower to the Bank and which the Bank is subsequently required to return to the Borrower or a trustee for the Borrower in any bankruptcy or insolvency proceeding; and the undersigned further agrees that none of the undersigned shall have any right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of the Borrower to Bank unless and until all of the debts and obligations of the Borrower to Bank have been paid in full. The undersigned hereby waives any claim or right to be a creditor of the Borrower's bankruptcy estate which may arise upon payment by the undersigned of any obligation under this Guaranty.

Check applicable box:

- ☒ This Guaranty is unlimited and applies to all indebtedness of Borrower, whether now existing or hereafter arising.
- ☐ This Guaranty applies to all indebtedness of Borrower evidenced by its promissory note/line number _____ dated _____ (including all extensions, renewals, and modifications thereof) in the principal amount of \$ _____.
- ☐ This Guaranty is limited to an amount of \$ _____ plus accrued interest, late fees, costs of collection (including attorneys' fees) and all other obligations and indebtedness which may accrue or be incurred with respect to the Borrower's indebtedness and obligations to Bank.

To secure the payment of all obligations of the undersigned hereunder, the undersigned hereby grants a security interest and lien in the following goods and property owned by the undersigned:

("Collateral").

The undersigned hereby agrees to execute and deliver to Bank any security agreement, deed of trust, mortgage, UCC financing statement, or other document required by the Bank in order to protect its security interest or lien in the Collateral. This document shall constitute a security agreement under the Uniform Commercial Code of South Carolina ("Code"), and in addition to having all other legal rights and remedies, the Bank shall have all rights and remedies of a secured party under the Code.

ACCOUNTS / NOTES

9521508164 00001

14578C (0704)



Initials: CR

Page 1 of 4

This agreement shall inure to the benefit of Bank, its successors and assigns, and the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, and shall remain in force until a written notice revoking it has been received by Bank; but such revocation shall not release the undersigned from liability to Bank, its successors and assigns, or the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, for any indebtedness, obligation or liability of the Borrower which is hereby guaranteed and then in existence or from any renewals, extensions or modifications thereof in whole or in part, whether such renewals, extensions or modifications are made before or after such revocation, with or without notice to the undersigned. The undersigned waives presentment, demand, protest and notices of every kind and assents to any one or more extensions, modifications, renewals or postponements of the time or amount of payment or any other indulgences given to Borrower. The undersigned shall be responsible for and shall reimburse the Bank for all costs and expenses incurred by the Bank in connection with the enforcement of this Guaranty or the protection or preservation of any right or claim of the Bank in connection herewith, including without limitation costs and expenses incurred by the Bank in connection with its attempts to collect the indebtedness, obligations, and liabilities guaranteed hereby. Cost and expenses shall include reasonable attorneys' fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of action by Lender described above, unless the actual attorney fees incurred, based upon Bank's counsel's normal hourly fees chargeable to Bank, shall be greater than 15% of principal and interest in which case such billed amount based on such hourly rate shall be the attorneys' fee payable hereunder."

If the Borrower is a corporation, this instrument covers all indebtedness, obligations and liabilities to Bank purporting to be made or undertaken on behalf of such corporation by any such officer or agent of said corporation without regard to the actual authority of such officer or agent. The term "corporation" shall include associations of all kinds and all purported corporations, whether correctly and legally chartered and organized.

The undersigned warrants, and represents to the Bank that: (i) this Guaranty is its legally binding obligation, enforceable against the undersigned in accordance with its terms; (ii) the execution and delivery of this Guaranty does not violate or constitute a breach of any agreement to which the undersigned is a party; (iii) that there is no litigation, claim, action or proceeding pending or, to the best knowledge of the undersigned, threatened against the undersigned which would materially adversely affect the financial condition of the undersigned or his/her ability to fulfill his/her obligations hereunder; (iv) that the undersigned has knowledge of the Borrower's financial condition and affairs; and (v) unless otherwise required in a Loan Agreement, if applicable, as long as any Obligations remain outstanding or as long as Bank remains obligated to make advances, the undersigned shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when delivered shall be the property of Bank.

This Guaranty is made in and shall be construed in accordance with the laws and judicial decisions of the State of South Carolina. The undersigned agrees that any dispute arising out of this Guaranty shall be adjudicated in either the state or federal courts of South Carolina and in no other forum. For that purpose, the undersigned hereby submits to the jurisdiction of the state and/or federal courts of South Carolina. The undersigned waives any defense that venue is not proper for any action brought in any federal or state court in the State of South Carolina.

WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS GUARANTY OR THE BORROWER'S NOTE(S), AND THE RELATED LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND THE BANK OR THE BORROWER AND THE BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO ACCEPT THIS GUARANTY AND TO MAKE THE LOAN(S) TO THE BORROWER. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

SIGNATURES ON FOLLOWING PAGE

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgement 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. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, GUARANTOR 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.**

Witness the signature and seal of each of the undersigned.

If Guarantor is a Corporation:

WITNESS:

NAME OF CORPORATION

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

If Guarantor is a Partnership, Limited Liability Company, or Limited Liability Partnership :

WITNESS:

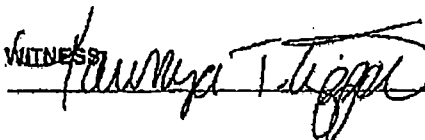
NAME OF PARTNERSHIP, LLC OR LLP

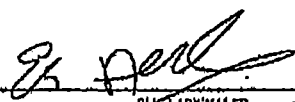
By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

If Guarantor is an Individual

WITNESS:  _____

 _____
SIGNED AND INITIALED

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina corporation, by _____, its _____, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness that witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____.

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina general partnership, by _____, its general partner, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____.

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw _____, a South Carolina limited liability company / limited partnership that by _____, its member or manager / general partner, sign, seal and as its act and deed, and deliver the foregoing within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____.

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF Richland

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named Elie J. Abikhaled, sign, seal and as his/her act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this 9 day of Oct, 2007

Anthony T. Lopez
Witness

(SEAL)

Notary Public for South Carolina

My commission expires: 1/29/11

BB&T

10/09/2007

Dear Sirs:

(Bartolucci)

CEDAR DEVELOPMENT LIMITED

and in consideration thereof, the undersigned (and each of the undersigned jointly and severally) more than one) hereby absolutely and unconditionally guarantee to Bank and its successors and assigns the due and punctual payment of any and all notes, drafts, debits, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower, in any cash, now or hereafter, obtained with or held by Bank together with interest thereon, as and when the same become due and payable, whether by accumulation or otherwise, in accordance with the terms of any such note or draft, debit, obligation or liability, and shall remain liable for the full amount of any such notes, drafts, debits, obligations or liabilities until they are fully paid, notwithstanding any assignment or novation of any such notes, drafts, debits, obligations or liabilities.

Moreover, the obligation of the undersigned is a guarantee of payment and not of collection.

The undersigned is Bank's director or individual, corporate or fiduciary for which this Guaranty is made, and Bank shall also at all times have a lien to the extent of all monies, bonds and other securities of the undersigned at any time in Bank's possession and the same shall in Bank's option be held, administered and disposed of as collateral to any such indebtedness, obligation or liability of the undersigned, and Bank shall also at all times have the right of set-off against any deposit account of the undersigned with Bank in the same manner and to the same extent that the right of set-off may exist against the Depositor.

It is understood that any such notes, drafts, debts, obligations and liabilities may be accepted or created by or with Bank at any time and from time to time without notice to the undersigned, and the undersigned hereby expressly waives presentment, demand, protest, and notice of dishonor of any such notes, drafts, debts, obligations and liabilities or other evidences of any such presentments, negotiation or selling.

Bank may require and accept from time to time any securities of other property as collateral to any such notes, drafts, debts, obligations and discounts and may surrender, compromise, exchange and release absolutely the same or any part thereof as first said without notice to the undersigned and without in any manner affecting the obligation and liability of the undersigned hereby created herein. But said bank have no right or obligation to protect, perfect, secure or insure any security interests, liens or documentations now or hereafter held for the indebtedness obligations and liabilities for which this Guaranty is made,

[illegible]

☐ This Guaranty is unlimited and applies to all indebtedness of Bondwater, whether now existing or hereafter arising.

- ☒ This Guaranty is unlimited and applies to all indebtedness of borrower, whether now existing or hereinafter incurred.
- ☒ This Guaranty applies to all indebtedness of Borrower evidenced by its promissory note(s) number _____ dated _____ (including all extensions, renewals, and modifications thereof) in the principal amount of \$ _____.
- ☒ This Guaranty is limited to an amount of \$ _____ plus accrued interest, (so fees, costs of collection (including attorney's fees) and all other charges and indebtedness which may accrue or be incurred with respect to the Borrower's indebtedness and obligations to Bank.

To secure the payment of all obligations of the undersigned hereinunder, this undersigned hereby grants a security interest and lien in the following goods and property owned by the undersigned:

The undersigned hereby agrees to execute and deliver to Bank any security agreement, deed of trust, mortgage, UCC financing statement, or other documents required by the Bank in order to protect its security interest or lien in the Collateral. The documents shall constitute a security placement under the Uniform Commercial Code of Spain (Codigo "Codigo"), and in addition to having all other legal rights and remedies, the Bank shall have all rights and remedies of a secured party under the Code.

100-443887-100

Page 1 of 4

EXHIBIT

C

The Agreement shall have the benefit of Bank, its successors and assigns, and the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, and shall remain in force until a written notice revoking it has been received by Bank; but such revocation shall not release the undersigned from liability to Bank, its successors and assigns, or the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, for any indebtedness, obligation or liability of the Borrower which is hereby guaranteed and upon its satisfaction or from any personal, corporate or modifications thereof in whole or in part, whether such revocations, extensions or modifications are made before or after such revocation, with or without notice to the undersigned. The undersigned hereby irrevocably, exclusively, power and support of every kind and assigns to any one or more persons, modifications, renewals or continuations of the time or amount of payment for any other (sundry) given to Borrower. The undersigned shall be responsible for and shall reimburse the Bank for all costs and expenses incurred by the Bank in connection with the enforcement of this Guaranty or the protection or preservation of any right or claim of the Bank in connection herewith, including without limitation costs and expenses incurred by the Bank in connection with its efforts to collect the indebtedness, obligations, and liabilities guaranteed hereby. Cost and expenses shall include reasonable attorney's fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of action by lender described above, plus the actual attorney's fees incurred, based upon Bank's counsel's normal hourly fee chargeable to Bank, shall be greater than 15% of principal and interest in which case such (total amount) based on such hourly rate shall be the attorney's fee payable hereunder.

If the Borrower is a corporation, this instrument covers all indebtedness, obligations and liabilities to Bank purporting to be made or undertaken on behalf of such corporation by any such officer or agent of said corporation without regard to the actual capacity of such officer or agent. The term "corporation" shall include associations of all kinds and all purposes corporations, whether corporate and legally chartered and organized.

The undersigned warrants, and represents to the Bank that (i) the Guaranty is its legally binding obligation, enforceable against the undersigned in accordance with its terms; (ii) the execution and delivery of this Guaranty does not violate or constitute a breach of any agreement to which the undersigned is a party; (iii) the Guaranty does not create any claim, action or proceeding pending or, to the best knowledge of the undersigned, threatened against the undersigned which would materially adversely affect the financial position of the undersigned or its ability to fulfill its obligations hereunder; (iv) the undersigned has no knowledge of the Borrower's financial condition and affairs, and (v) unless otherwise required in a Loan Agreement, if applicable, as long as any obligations remain outstanding or as long as Bank remains obligated to make advances, the undersigned shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when received shall be the property of Bank.

This Guaranty is made in and shall be governed in accordance with the laws and judicial decisions of the State of South Carolina. The undersigned agrees that any dispute arising out of this Guaranty shall be adjudicated in either the state or federal courts of South Carolina and in no other forum. For that purpose, the undersigned hereby submits to the jurisdiction of the state and federal courts of South Carolina. The undersigned waives any defense that venue is not proper for any action brought in any federal or state court in the State of South Carolina.

WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTER OR CLAIM ARISING OUT OF THIS GUARANTY OR THE BORROWER'S NOTES, AND THE RELATED LOAN AGREEMENT AND DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND THE BANK OR THE BORROWER AND THE BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO ACCEPT THE GUARANTY AND TO MAKE THE LOAN(S) TO THE BORROWER. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO TRIAL BY JURY. PROVISION IN THE EVENT OF LITIGATION, NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

SIGNATURES ON FOLLOWING PAGE

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 bid bid and may decrease the amount of any deficiency owed in connection with the transaction. TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, GUARANTOR 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.

Witness the signature and seal of each of the undersigned.

If Guarantor is a Corporation:

WITNESS:

NAME OF CORPORATION

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

If Guarantor is a Partnership, Limited Liability Company, or Limited Liability Partnership:

WITNESS:

NAME OF PARTNERSHIP, LLC OR LLP

By: _____ (SEAL)

GENERAL PARTNER OR MANAGER

By: _____ (SEAL)

GENERAL PARTNER OR MANAGER

By: _____ (SEAL)

GENERAL PARTNER OR MANAGER

If Guarantor is an Individual

WITNESS:

Linda Messerly

[Signature]
CLERK

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that she saw the within-written instrument, a South Carolina corporation, by _____, sign, seal and as his act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that she together with the other witness that witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____ Witness

Notary Public for South Carolina
My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that she saw the within-written instrument, a South Carolina general partnership, by _____, as general partner, sign, seal and as his act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that she together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____ Witness

Notary Public for South Carolina
My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that she saw _____, a South Carolina limited liability company / limited partnership that by _____, its member or manager / general partner, sign, seal and as his act and deed, deliver the foregoing within-written instrument for the uses and purposes therein mentioned and that she together with the other witness witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____ Witness

Notary Public for South Carolina
My commission expires: _____

STATE OF SOUTH CAROLINA Florida
COUNTY OF St. Johns

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that she saw the within-written instrument, a South Carolina limited liability company / limited partnership that by _____, its member or manager / general partner, sign, seal and as his act and deed, deliver the foregoing within-written instrument for the uses and purposes therein mentioned and that she together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this 10 day of October, 2007 _____ Witness

Notary Public for South Carolina
My commission expires: 06/12/2011

CAROLE SIMMONS
Notary Public, State of Florida
My Comm. Expires June 14, 2011
Comm. No. 00 685588

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Branch Banking & Trust,

Plaintiff,

v.

Elie Abikhaled and Ghazi Abikhaled,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-40-02968

ANSWER

Jury Trial Demanded

2014 JUL 28 AM 10:22
CLERK OF COURT
SOUTH CAROLINA

Defendants Elie Abikhaled and Ghazi Abikhaled ("Abikhaleds"), answering the Complaint of Plaintiff Branch Banking & Trust ("BB&T") alleges as follows:

1. Each and every allegation not hereinafter specifically admitted, explained, or qualified is denied.
2. Abikhaleds admit the allegations of Paragraph 1, upon information and belief.
3. Abikhaleds deny the allegations of Paragraph 2.
4. Abikhaleds admits so much of the allegations of Paragraph 3 as to allege that Ghazi Abikhaled is resident of the State of Florida.
5. Abikhaleds admit so much of the allegations of Paragraphs 4, 5 & 6 as to allege that Cedar Development II ("CDII") entered into a Promissory Note with BB&T. Further responding to the allegations of Paragraphs 4, 5, & 6, Abikhaleds crave reference to the Note for a complete recitation of its terms and conditions, and deny any allegation inconsistent therewith.
6. Abikhaleds deny the allegations of Paragraphs 7, 8, 9, 10, 11 & 12.
7. Abikhaleds deny all relief sought in Plaintiff's Prayer for Relief.

FOR A SECOND DEFENSE

8. Abikhaleds reassert and re-allege Paragraphs 1 through 7 above.

9. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted. As such, Plaintiff's Complaint should properly be dismissed, with prejudice.

FOR A THIRD DEFENSE

10. Abikhaleds reassert and reallege Paragraphs 1 through 9 above.

11. Jurisdiction and Venue are inappropriate in Richland County. As such, Plaintiff's Complaint should properly be dismissed, with prejudice.

FOR A FOURTH DEFENSE

12. Abikhaleds reassert and re-allege Paragraphs 1 through 11 above.

13. Plaintiff has failed to properly serve the Abikhaleds with process. As such, the Court lacks jurisdiction over the Abikhaleds in this matter.

FOR A FIFTH DEFENSE

14. Abikhaleds reassert and re-allege Paragraphs 1 through 13 above.

15. Plaintiff has failed to exercise reasonable care and due diligence to mitigate its damages and has taken steps which may exacerbate its damages, thereby precluding Plaintiff from recovering those damages which the Plaintiff caused or failed to mitigate.

FOR A SIXTH DEFENSE

16. Abikhaleds reassert and re-allege Paragraphs 1 through 15 above.

17. Plaintiff's claim are barred by the doctrine of unclean hands. As such, Plaintiff's Complaint should properly be dismissed, with prejudice.

FOR A SEVENTH DEFENSE

18. Abikhaleds reassert and re-allege Paragraphs 1 through 17 above.

19. Plaintiff's Complaint is barred by the doctrine of waiver. As such, Plaintiff's

Complaint should properly be dismissed, with prejudice.

FOR AN EIGHTH DEFENSE

20. Abikhaleds reassert and re-allege Paragraphs 1 through 19 above.

21. Plaintiff is estopped from claiming against Abikhaleds. As such, Plaintiff's

Complaint should properly be dismissed, with prejudice.

FOR A NINTH DEFENSE

22. Abikhaleds reassert and re-allege Paragraphs 1 through 21 above.

23. Plaintiff's claims are barred by Accord and Satisfaction. As such, Plaintiff's

Complaint should properly be dismissed, with prejudice.

FOR AN TENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of the Covenant of Good Faith and Fair Dealing)

24. The allegations of Paragraphs 1 through 23 are incorporated herein by reference.

25. March 21, 2008, CDII and BB&T entered a Mortgage agreement securing repayment of a loan made by BB&T to CDII for the construction of a commercial building located at 3715 Broad River Road, property owned outright by CDII. CDII likewise entered a Promissory Note, further securing the loan. The Abikhaleds are principals of CDII.

26. CDII built 3715 Broad River Road for the purpose of renting office and retail space to tenants. BB&T was and aware of CDII's purposes for purchasing the property, and agreed to assist CDII in developing the property to meet the needs of proposed tenants.

27. As is customary in the commercial leasing business, prospective tenants often require an upfit allowance or upfit work from the landlord before agreeing to lease commercial space. During the loan negotiations between CDII, the Abikhaleds, and BB&T, Plaintiff agreed to provide CDII with money for upfitting space to meet tenant needs, as well as other services and amenities designed to assist CDII in renting the 3175 Broad River Road space.

28. As prospective tenants became interested in the 3715 Broad River Road property, upfit discussions became very routine. Despite promising CDII and the Abikhaleds that upfit money and assistance would be provided, BB&T refused to provide money or any additional assistance.

29. Because of the refusal by BB&T to finance or otherwise assist CDII in upfitting the Broad River Road space, the 3715 Broad River Road property became very difficult to lease. Potential tenants who were ready, willing and able to sign lease agreements and move into the space refused, due to the inability to obtain upfits for the rental space.

30. In every contract entered into in South Carolina, there exists an implied covenant of good faith and fair dealing between the parties to the contract. The implied covenant of good faith and fair dealing exists between CDII and BB&T, relative to the Notes and Mortgages by and between CDII and BB&T, and any personal guaranties by and between BB&T and the Abikhaleds.

31. BB&T breached the covenants of good faith and fair dealing, in that BB&T promised the Abikhaleds that BB&T would assist CDII in filling the Broad River Road property with tenants by providing upfit money, and then refusing to provide the upfit money when requested by the prospective tenants.

32. BB&T's breaches of the covenants of good faith and fair dealing caused damage to CDII and the Abikhaleds, as BB&T's breaches undermined CDII's efforts to, and ultimately prevented CDII from filling the office space with tenants. BB&T's breaches further inhibited CDII's and the Abikhaleds' cash flows, and ultimately led to this foreclosure action.

33. CDII and the Abikhaleds have been damaged in that CDII and the Abikhaleds have been deprived of a profitable investment, have suffered both reputational damage in the community at large and creditworthiness damage stemming from the foreclosure. Further, BB&T has filed this foreclosure action to take back the property at Broad River Road, an asset to CDII and the Abikhaleds.

FOR AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Interference with Prospective Contractual Relations)

34. The allegations of Paragraphs 1 through 31 are incorporated herein by reference.

35. From the time of construction until the present, CDII diligently and purposefully solicited potential tenants for the 3715 Broad River Road property. CDII had several tenants ready, willing, and able to enter lease agreements with CDII for office space in the 3715 Broad River Road building.

36. BB&T improperly failed and refused to extend financing for upfits or otherwise assist the potential tenants, therein "killing the deal" and causing the potential tenants to look elsewhere for commercial office space.

37. CDII and the Abikhaleds have been injured in that CDII has been deprived of cash flow generating tenant leases, a profitable investment, damage to CDII's and the Abikhaleds' creditworthiness, and reputation. Further, BB&T has filed this foreclosure action to take back the property located at 3715 Broad River Road, an asset to CDII and the Abikhaleds.

FOR AN TWELTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Accounting and Appraisal)

38. The allegations of Paragraphs 1 through 37 are incorporated herein by reference.

39. BB&T has requested and obtained various real estate appraisals prior to and throughout the life of the loans to CDII. The Abikhaleds believe that the value of the 3715 Broad River Road property is equal to or greater than what is owed on the loans by and between CDII and BB&T.

40. The Abikhaleds believe that they entitled to an accounting of the amounts alleged to be owed by CDII to BB&T, and a currently valued appraisal of the property at 3715 Broad River Road.

FOR AN THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligent Misrepresentation)

41. The allegations of Paragraphs 1 through 38 are incorporated herein by reference.

42. CDII, the Abikhaleds, and BB&T entered into an agreement, wherein BB&T represented to the Abikhaleds and CDII that BB&T would assist in developing the Broad River Road property by providing upfit money to customize and otherwise make the 3715 Broad River Road commercial space attractive as rental space to prospective tenants.

43. BB&T's representation was false, in that BB&T has failed and refused, and continues to fail and refuse, to provide any upfit allowance, loan, or assistance to CDII.

44. BB&T had a pecuniary interest in making the statement, as BB&T stands to profit more from foreclosing on the property than by assisting CDII and the Abikhaleds in populating the 3715 Broad River Road property with tenants.

45. As the Abikhaleds and CDII were both long time customers of BB&T, to which the Abikhaleds and CDII looked to BB&T for experience and advice, BB&T owed the Abikhaleds and CDII a duty of care to see that truthful information was communicated.

46. BB&T breached its duty of care to the Abikhaleds and CDII in that BB&T failed to exercise due care in making the representation.

47. The Abikhaleds and CDII justifiably relied on BB&T's representation in that CDII and the Abikhaleds borrowed the construction money from BB&T and attempted, and continue to attempt, to populate the building with tenants.

48. As a direct and proximate result of the Abikhaleds and CDII's reliance on BB&T's misrepresentations, and BB&T's failure to provide any upfit allowance, loan, or other assistance, CDII has been unable to fill the 3715 Broad River Road property with tenants. Tenants have specifically refused to move into the space due to CDII's inability to upfit the potential rental space.

49. As such, the Abikhaleds' and CDII's cash flows for 3715 Broad River Road have

suffered and dwindled such that CDII is unable to sustain itself. CDII and the Abikhaleds have been deprived of a profitable investment. Further, CDII and the Abikhaleds have suffered damage to their creditworthiness, and the 3715 Broad River Road property is currently being foreclosed on in this action.

FOR A FOURTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligent Misrepresentation)

50. The allegations of Paragraphs 1 through 49 are incorporated herein by reference.

51. During 2013, CDII and the Abikhaleds made arrangements with Security Federal and other private money sources to refinance the loan secured by 3715 Broad River Road on terms more favorable to CDII and the Abikhaleds than those offered by BB&T, and in the process paying off BB&T's loan to CDII as to the 3715 Broad River Property.

52. However, BB&T represented to the Abikhaleds and CDII that BB&T would take a deed in lieu of foreclosure from the Abikhaleds and CDII, and forego seeking any deficiency from CDII or the Abikhaleds. BB&T's representations to CDII and the Abikhaleds were false, in that BB&T has failed, and continues to fail, to honor the proposed transaction.

53. BB&T had and has a pecuniary interest in making the statement, as BB&T stands to gain more from a foreclosure action than if the loan was paid off and moved to another lender.

54. As a long term customer of BB&T, BB&T owed CDII and the Abikhaleds a duty of care to see that BB&T communicated truthful information to the Abikhaleds and CDII.

55. BB&T breached its duty to the Abikhaleds and CDII, in that BB&T failed to exercise due care in communicating the agreement to the Abikhaleds and CDII, as BB&T has failed to take the deed in lieu of foreclosure as to 3715 Broad River Road, and waive any deficiency.

56. The Abikhaleds and CDII justifiably relied on the representation, as the Abikhaleds and CDII did not refinance the 3715 Broad River Road loan with Security Federal or any other lender.

waiting instead on BB&T to honor its agreement.

57. By relying on the representations of BB&T and foregoing refinance of the BB&T loan, CDII and the Abikhaleds have suffered financial, creditworthiness, and reputational damage. Further, CDII and the Abikhaleds have suffered significant tax consequences of which BB&T was made aware prior to the end of 2013.

WHEREFORE, the Abikhaleds pray for the following relief:

Judgment in favor of the Abikhaleds and against BB&T;

A) For Actual Damages;

B) Consequential Damages;

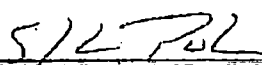
C) Incidental Damages;

D) Punitive Damages;

E) For Dismissal with prejudice of Plaintiff's foreclosure action and all related claims and causes of action;

F) For Costs;

G) For any further relief this Court deems just and proper.


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Columbia, South Carolina
July 25, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Branch Banking and Trust Company,

Plaintiff,

v.

Elie Abikhaled and Ghazi Abikhaled,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2014-CP-40-2968

**BRANCH BANKING AND TRUST
COMPANY'S REPLY TO
DEFENDANTS' COUNTERCLAIMS**

The Plaintiff, Branch Banking and Trust Company ("BB&T"), replies to the Answer and Counterclaims of Defendants Elie Abikhaled and Ghazi Abikhaled (collectively the "Defendants") as follows:

1. The allegations of BB&T's Complaint are reiterated here.
2. That each and every allegation contained in the Answer which is not specifically admitted or otherwise qualified is denied.

FOR A FIRST DEFENSE

3. Paragraphs 1 through 23 do not require a response. To the extent that responses are deemed required, they are denied.

4. No response to paragraph 24 is necessary, but to the extent a response is deemed required, it is denied.

5. Answering the allegations of paragraph 25, BB&T refers to the subject promissory note, note modifications, mortgage, guaranty agreements, and related loan documents and denies factual allegations inconsistent with those documents. BB&T admits entering into a mortgage agreement and promissory note with Cedar Development II, LLC. BB&T denies any remaining allegations of paragraph 25.

6. BB&T denies the allegations of paragraphs 26, 27, 28, and 29.
7. Answer the allegations of paragraph 30, BB&T admits there is an implied covenant of good faith and fair dealing arising out of contracts in South Carolina and states further that BB&T at all times has acted in good faith and with fair dealing. The remaining allegations of paragraph 30 are denied.
8. BB&T denies the allegations of paragraphs 31, 32, and 33.
9. No response to paragraph 34 is necessary, but to the extent a response is deemed required, it is denied.
10. BB&T is without sufficient information to admit or deny paragraph 35, therefore it is denied and strict proof is demanded.
11. BB&T denies paragraphs 36 and 37.
12. No response to paragraph 38 is required, but to the extent a response is deemed required, it is denied.
13. Answering the allegations of paragraph 39, BB&T admits obtaining real estate appraisals of the 3715 Broad River Road property but denies the remaining allegations of paragraph 39.
14. As to the allegations of paragraph 40, BB&T will provide the requested accounting, but BB&T denies all remaining allegations of paragraph 40.
15. No response to paragraph 41 is required, but to the extent a response is deemed required, it is denied.
16. BB&T denies the allegations of paragraphs 42, 43, 44, 45, 46, 47, 48, and 49.
17. No response to paragraph 50 is required, but to the extent one is deemed required, it is denied.

18. BB&T is without sufficient information to admit or deny paragraph 51, therefore it is denied and strict proof is demanded

19. BB&T denies the allegations of paragraphs 52, 53, 54, 55, 56, and 57.

FOR A SECOND DEFENSE

20. Some or all of Defendants' counterclaims fail to state causes of action upon which relief may be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

21. Some or all of Defendants' counterclaims are or may be barred by failure to mitigate damages.

FOR A FOURTH DEFENSE

22. If in fact BB&T was negligent, which is expressly denied, and if such negligence resulted in damages to the Defendants, the Defendants were negligent to a degree exceeding that of BB&T and are therefore barred from recovery by the doctrine of comparative negligence, or in the alternative, any recovery by the Defendants shall be reduced by the Defendants' own negligence if such negligence is found to be less than equal to BB&T's negligence, which is expressly denied.

FOR A FIFTH DEFENSE

23. Defendants' claims are or may be barred by the doctrine of laches and/or the applicable statutes of limitations.

FOR A SIXTH DEFENSE

24. Any award of punitive damages for Defendants would violate constitutional safeguards provided to BB&T by the United States and South Carolina Constitutions.

FOR A SEVENTH DEFENSE

25. Defendants' claims premised on alleged oral agreements and/or representations are barred by the statute of frauds and/or the parol evidence rule.

FOR AN EIGHTH DEFENSE

26. Some or all of Defendants' claims are barred by the assumption of risk.

FOR A NINTH DEFENSE

27. The implied duty of good faith and fair dealing does not impose any duties that are contrary to the express written terms of a contract.

28. At all times, BB&T acted in accordance with the express written terms of the contracts between the parties.

FOR A TENTH DEFENSE

29. Some or all of Defendants' claims are barred by waiver and/or estoppel.

FOR AN ELEVENTH DEFENSE

30. Some or all of Defendants' counterclaims are barred by lack of consideration.

FOR A TWELFTH DEFENSE

31. Some or all of Defendants' counterclaims are barred by S.C. Code Ann. § 37-10-107.

FOR A THIRTEENTH DEFENSE

32. Some or all of the claims asserted by Defendants relate to a legal entity known as Cedar Development II, LLC and therefore, Defendants lack standing to assert any claims of Cedar Development II, LLC in this action and those counterclaims should be dismissed.

FOR A FOURTEENTH DEFENSE

33. The Defendants cannot avail themselves of equitable claims for relief because each has acted with unclean hands

FOR A FIFTEENTH DEFENSE

34. The Guarantees contain an express waiver of the right to trial by jury.

35. BB&T hereby asserts its rights under the Guarantees and will move to strike the jury demand asserted by the Defendants.

FOR A SIXTEENTH DEFENSE

36. BB&T incorporates all other defenses and affirmative defenses raised by or available to any other party and reserves any additional and/or affirmative defenses that may become available during this case

WHEREFORE, having fully responded to Defendants' counterclaims, BB&T prays for an order of this Court dismissing the same, with costs and fees awarded to it, the relief prayed for in the Complaint granted, and any other relief the Court deems just and proper.



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August 13, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Branch Banking and Trust Company,

Plaintiff,

v.

Elie Abikhaled and Ghazi Abikhaled,

Defendants.

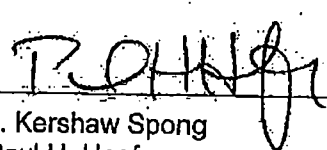
)
) IN THE COURT OF COMMON PLEAS
)

) Case No.: 2014-CP-40-2968
)

)
)
)
) **MOTION TO STRIKE DEFENDANTS'**
) **JURY DEMAND**
)
)

Branch Banking and Trust Company ("BB&T") moves to strike the jury demand contained in the Answer and Counterclaims of Defendants Elie Abikhaled and Ghazi Abikhaled. This motion is based on the grounds that each Defendant contractually waived his right to a jury trial as to any claims arising from the subject BB&T loan and corresponding guaranty agreements. This Waiver is conspicuously present in each of the Guaranty Agreements that the defendants signed, copies of which are attached as exhibits to Plaintiff's Complaint and to Plaintiff's supporting Affidavit.

This Motion is supported by the pleadings and exhibits attached thereto, the applicable law, any supporting affidavits or memorandum of law, and any oral arguments made before this Court.



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Attorneys for the Plaintiff

August 22, 2014

1 THE COURT: Branch Banking and Trust Company versus
2 Elie Abikhaled and Ghazi Abikhaled, Motion to Strike
3 Defendant's Jury Demand, 2014-CP-40-2968.

4 Mr. Hoefer, you're here for the plaintiff?

5 MR. HOEFER: Yes, your Honor.

6 MR. LYDON: Tommy Lydon for the defendants.

7 THE COURT: I didn't think you were Mr. Porter.

8 MR. LYDON: I've recently been retained to represent
9 the defendants. Mr. Porter is being substituted out.

10 THE COURT: Have y'all done an Order substituting.

11 MR. LYDON: I've got a Consent Order right here.

12 THE COURT: Okay. You may proceed with your motion.
13 It's the plaintiff's Motion to Strike or defendant's
14 motion?

15 MR. HOEFER: It's plaintiff's motion.

16 THE COURT: Plaintiff's motion. Okay. You may
17 proceed.

18 MR. HOEFER: I'm Paul Hoefer; I represent the
19 plaintiff BB&T. This is our Motion to Strike the
20 Defendant's Jury Demand. Your Honor, this is a simple
21 debt collection action on two personal Guaranty
22 Agreements. Both of those Guaranties contain enforceable
23 jury trial waiver provisions which is the sole basis of
24 our motion today.

25 Your Honor, as a brief background of this loan

1 relationship, there was an original commercial made from
2 BB&T to Seer Development, LLC, for over \$700,000. The
3 purpose of this loan was for the construction of a strip
4 center building on Broad River Road here in Columbia.
5 The bank took the mortgage on that property. The loan
6 was also secured by the personal Guaranty of the two
7 principals of the company which are the party defendants,
8 Elie and Ghazi. Your Honor, the defendants answered and
9 counterclaimed, and they requested a jury trial.

10 Your Honor, at the end of the day our motion is
11 based on the jury waiver provisions in the Guaranty. And
12 South Carolina law specifically upholds the validity of
13 jury trial waiver provisions.

14 Your Honor, if I may approach, I'd like to hand up a
15 copy of the Guaranty Agreement that has the provision
16 highlighted we will discuss today as well as the two
17 cases that are on point.

18 **(WHEREUPON, MR. HOEFER HANDS DOCUMENT TO THE**
19 **COURT AND MR. LYDON.)**

20 MR. HOEFER: Your Honor, the two cases that I have
21 handed up is the 2002 Court of Appeals case Beach Company
22 versus Twillman as well as the 2014 supreme court
23 decision of Wachovia versus Blackburn. Both cases hold
24 that a party may contractually waive the right to a jury
25 trial.

1 Your Honor, based on Mr. Lydon's memoranda and
2 opposition to the motion, I believe the central issue
3 today is whether or not their counterclaims fall within
4 the scope of that provision or not.

5 Your Honor, the provision at issue is promptly
6 placed in the middle of page 2 of that Guaranty. The
7 relevant language, I've highlighted for both you and Mr.
8 Lydon. It states, "Waiver of Trial by Jury: The
9 undersigned," which are the guarantors, "hereby waive the
10 right to trial by jury of any matters or claims arising
11 out of this Guaranty, the borrower's notes and the
12 related loan documents or out of conduct of the
13 relationship between the undersigned guarantors or the
14 borrower," which is Seer Development. Your Honor, the
15 bank's claim is the defendant's counterclaims all fit
16 squarely within this provision.

17 Your Honor, just to give you a brief overview, the
18 counterclaims are each based on this same theory which is
19 this: Seer claims that as a part of the underlying loan
20 relationship and agreement that BB&T promised that they
21 would provide additional loan funds to improve this Broad
22 River Road property for potential tenants to come in and
23 lease the building. Seer Development claims that BB&T
24 broke its promise and did not provide the additional
25 money for the tenants, and therefore they defaulted on

1 the loan.

2 So, your Honor, these allegations all fall directly
3 within the scope of that provision. I think it's
4 important to recognize that these counterclaims are not
5 these defendants suing BB&T for harassment or personal
6 injury like they fell outside a bank building. We're
7 talking about their suing the bank for claims directly
8 related to this same underlying loan relationship.
9 Whether BB&T would provide additional funding to Seer
10 Development is directly related to the Guaranties. The
11 Guaranties apply to all debt forward whether it's
12 existing, hereafter rising, so any new money would have
13 been assumed by these Guaranties. Any new money that was
14 given would have been directly related to the mortgage
15 because the property Seer sought to improve is under BB&T
16 mortgage. And certainly, your Honor, any new funding to
17 Seer would certainly be related to the relationship
18 between these parties. The request for new funds are
19 directly tied to this current relationship. Again, they
20 would have been personally responsible under this
21 Guaranty for any new money given.

22 So, your Honor, in this case, we have the same
23 borrower with the same guarantors, the same bank and the
24 same property, which is what they wanted money for. I
25 don't think we need to look much further than the

1 specific language of their counterclaims which
2 specifically references the original loan relationship.

3 Your Honor, the two cases I handed up, the Wachovia
4 case is -- It's very instructive. It's different because
5 it's a foreclosure case and it focuses first on the
6 equitable action, but in this case, your Honor, the
7 Guaranty Agreement had almost an identical jury waiver
8 provision and the Court upheld the jury waiver provision
9 in the face of counterclaims, the exact scenario we have
10 here. The Beach Company case is very straight forward.
11 It says the plain meaning of the jury trial provision
12 must be given effect.

13 So, your Honor, in summary, all these claims in the
14 Complaint and Counterclaim, all that falls within that
15 jury waiver provision, we'd ask the Court to strike the
16 jury demand and move this case to the non-jury docket.

17 THE COURT: Mr. Lydon.

18 MR. LYDON: Thank you, your Honor. Interestingly,
19 I'm also going to be relying on the Wachovia versus
20 Blackburn case in support of my position that we are
21 entitled to a jury trial.

22 Your Honor, I think there's one other piece of
23 background the Court needs, and that is that there is a
24 mortgage foreclosure action pending that is related to a
25 Promissory Note that's the subject of this action. That

1 action was filed in 2013 and is presently pending before
2 the Richland County Master-in-Equity.

3 This action on the Guaranties was filed in May of
4 2014, and it's to collect the same debt. In response, my
5 clients filed an Answer in which they served
6 Counterclaims and demanded a jury trial. As Mr. Hoefer
7 acknowledged, the Counterclaims alleged that BB&T
8 promised to provide certain funding in the future but
9 failed to fulfill that promise and counterclaimed for
10 breach of covenant of good faith and fair dealing,
11 interference with constructive contractual relations, and
12 negligent misrepresentation have been filed in response
13 to the Complaint.

14 As a preliminary matter, an action to collect on a
15 Guaranty is an action of law on which parties are
16 entitled to a jury trial unless there's a waiver. And I
17 only bring that out because it's very significant when
18 you're analyzing the supreme court's recent decision in
19 the Wachovia Bank versus Blackburn case, that that was a
20 foreclosure action in equity, and this is an action to
21 collect on a Guaranty which is an action of law.

22 THE COURT: Does it really make a difference in the
23 analysis?

24 MR. LYDON: It does. It makes a big difference in
25 the analysis because in the original Blackburn decision

1 from the court of appeals -- And I've got a copy of it.

2 THE COURT: I'm well familiar with it. I've had a
3 lot of these.

4 MR. LYDON: Okay. In the original Blackburn
5 decision, the lower court said that the scope of the jury
6 trial waiver was broad enough to cover the Counterclaims
7 and denied the right to a jury trial and referred the
8 case to the master-in-equity. The court of appeals
9 reversed and said that -- And I will comment that as Mr.
10 Hoefer said, the jury trial waiver language in Blackburn
11 is very broad and very similar to the jury trial waiver
12 we're talking about here.

13 The court of appeals in Blackburn said that the jury
14 trial waiver is a substantial right and it's to be
15 strictly construed, and they went on to hold that the
16 guarantors could not have contemplated that by signing
17 the Guaranty with a jury trial waiver, they were waiving
18 their right to a jury trial on future tortuous conduct by
19 the bank. And that's what the Counterclaims in our case
20 involve is tortuous conduct by the bank that occurred
21 after the loan was made.

22 So in Blackburn, they reversed the lower court and
23 said that the guarantors were entitled to a jury trial on
24 their Counterclaims in which they alleged tortuous
25 conduct by the bank. The supreme court then reversed the

1 court of appeals and said they were not entitled to a
2 jury trial, but it was not because of the jury trial
3 waiver. They found that they were not entitled to a jury
4 trial on Counterclaims because they were permissive
5 Counterclaims, and under our existing long line of cases,
6 an equitable action in which the defendant files a
7 permissive Counterclaim, they are deemed as a matter of
8 law to waive the right to a jury trial regardless of
9 whether there's any jury trial language or not. So in
10 the supreme court's decision, they opined that the jury
11 trials -- they are not entitled to jury trials on the
12 Counterclaims because it was an equitable action. In
13 this case, your Honor, we've got an equitable action
14 that's pending before Judge Strickland. BB&T chose not
15 to include the guarantors in that action.

16 THE COURT: I'm curious as to why not because
17 normally you would.

18 MR. HOEFER: That's correct, your Honor. I think
19 originally when the foreclosure action was filed, that
20 there was some hope that that case could be resolved and
21 that the property would satisfy the debt in full and that
22 there would be no deficiency and no reason to pursue the
23 guarantor.

24 THE COURT: Why not just amend the pleadings in the
25 master's court?

1 MR. HOEFER: Your Honor, because of the timing.
2 We've sort of hit a dead-end in the foreclosure in trying
3 to get it resolved and worked out, so we -- I think under
4 the case law, that you're allowed to pursue them
5 separately.

6 THE COURT: You are, but in terms of judicial
7 economy, does it make sense?

8 MR. HOEFER: Yes, your Honor. I can't argue that.

9 THE COURT: We normally do it all at one time.

10 MR. HOEFER: Yes, your Honor. I think that that is
11 -- Again, Mr. Lydon just got the case. I think that's
12 something that we can certainly discuss and consider.

13 If I could speak a little bit to the Wachovia case?
14 I don't want to step on Mr. Lydon's toes, but I think
15 that the Wachovia case helps our position. And the
16 underlying court of appeals case, which is sort of no
17 longer the law on this issue, I think the supreme court's
18 opinion has sort of taken that over, but the underlying
19 facts of that case help us because in that case, the
20 facts were that you had some property owners trying to
21 sell some marsh front lots in Georgetown, and Wachovia
22 was out there, I guess, under a tent pushing their
23 financing for this property. And the claims of some
24 people that ended up purchasing some property, they came
25 back and said, well, the sellers and the bank were all in

1 this scheme to inflate property values, so all of this
2 related to this outside sales transaction.

3 Again, in this case, your Honor, we're not talking
4 about anything outside the scope of the original loan
5 documents, the loan agreement; we're talking about new
6 funding. So I think from the facts and standpoint of
7 that case, it helps us. I also think the supreme court's
8 ruling, his interpretation and mine are a little
9 different. I think the case basically says that if the
10 Counterclaims are permissive in a foreclosure action,
11 then they have to be struck. It has to be a bench trial.

12 However, the Court held while these Counterclaims
13 are compulsory, that means they are all out of the same
14 transaction occurrence, meaning that, of course, they
15 fall within the scope of this provision. So that case is
16 instructive, but it's different because this is not a
17 foreclosure action in this case.

18 I think that the bottom line here is -- And I
19 understand your Honor, your point about whether these
20 cases should be consolidated, but for purposes of this
21 hearing today on a Guaranty Agreement, the jury trial
22 waiver provision is very clear that all of these claims
23 in the Complaint and the Counterclaim fall within it.

24 MR. LYDON: And I will conclude my -- And I
25 understand why you asked the question. I had the same

1 question myself. As Mr. Hoefer noted, I'm new to this
2 case. Had they included the guarantor in the foreclosure
3 action, then Wachovia versus Blackburn is directly on
4 point because we're dealing with an equitable action and
5 permissive Counterclaims.

6 For whatever reason, they chose to bring two
7 separate actions, an equitable action, this action, a
8 legal action, and as such, I believe that the reasoning
9 of the court of appeals, which I agree that the Blackburn
10 case was reversed by the supreme court, but it didn't
11 reject the reasoning, which is it was not foreseeable for
12 the guarantors to think that future tortuous conduct ---

13 THE COURT: How is this future tortuous conduct is
14 my question? If everything that's alleged arises out of
15 that relationship, out of the loan agreement, that's
16 contemplated by the loan agreement because what your
17 clients are saying is not future behavior. They are
18 saying the behavior that occurred happened within the
19 parameters of this loan agreement. And if I follow your
20 reasoning, then every time there's a waiver and a
21 personal Guaranty, it would be nullified. There would be
22 no purpose of having it. And basically people could
23 contract to things, and then just say, I don't want to
24 adhere to it now because it's inconvenient.

25 MR. LYDON: I think that's a good question, your

1 Honor, and our position would be that BB&T absolutely 100
2 percent ---

3 THE COURT: I don't know that it makes a difference
4 whether they filed it both at the same time. I was just
5 curious because it's almost no good deed goes unpunished
6 because if they had done that, we wouldn't be here right
7 now.

8 MR. LYDON: We wouldn't be here right now. And my
9 client wouldn't be defending two different lawsuits. But
10 in any event ---

11 THE COURT: Y'all probably need to agree to
12 consolidate them frankly. I don't know that the outcome
13 is going to be much different.

14 MR. LYDON: To answer your question, your Honor: We
15 don't dispute that BB&T complied with its obligation
16 under this Promissory Note to make a loan in the amount
17 of \$730,000. The tortuous conduct is, they also promised
18 to make an additional loan for additional money, and
19 there are emails where we ---

20 THE COURT: It all arises out of the same
21 transaction. You can't say that it's separate
22 transactions because it's not. If it were, they'd have
23 separate contracts.

24 MR. LYDON: Well, they didn't give us the next
25 contract. The agreement was, we're going to make you

1 another loan to upfit this property so that you can rent
2 it out to tenants which will generate rent which will
3 bring in money, you can pay the bank. But it didn't make
4 that subsequent loan, so we're okay -- We'll fulfill
5 their obligation with respect to these Promissory Notes
6 and the Guaranties. It's the subsequent loan that they
7 agreed to make that they didn't make that we relied on
8 which we contend is a negligent representation and also a
9 breach of obligation of good faith and fair dealing.
10 It's not that different from the Blackburn case. The
11 Blackburn case, everything was related to the loans made
12 by Wachovia Bank. It all involved the same real estate
13 transactions, and again, the court of appeals held that
14 it's not reasonable for a guarantor to understand that
15 they are waiving their jury trial as to anything the bank
16 may do in the future. Along those lines, your Honor ---

17 THE COURT: You are saying that they agreed to make
18 loans at a later date and that they didn't do.

19 MR. LYDON: That's correct.

20 THE COURT: How's that enforceable under the statute
21 when you're dealing with money that's supposed to be
22 loaned at some future date that's connected to some
23 property? I'm just a little -- And the supreme court
24 language does not negate a contract, people being bound
25 in a contract.

1 MR. LYDON: I agree. The jury trial waivers are
2 valid, enforceable under the proper circumstances, but I
3 would suggest that the circumstances of our case that are
4 before the court today are what was analyzed in the court
5 of appeals decision where they held ---

6 THE COURT: That's no longer valid and was reversed.
7 I can't rely on that as binding precedent.

8 MR. LYDON: Your Honor, I'm just saying that the
9 reasoning in that case is correct. I understand that
10 it's not precedent because it has been reversed, but the
11 supreme court used an entirely different analysis. They
12 went back to the old permissive compulsory Counterclaim
13 analysis that applied in equitable actions which does not
14 apply to this action, so ---

15 THE COURT: Well, all the relief you're seeking is
16 equitable, especially the accounting and the appraisal.

17 MR. LYDON: The accounting and the appraisal is
18 equitable, and the other three are actions at law. I'm
19 new to the case, your Honor, so I'm figuring out what we
20 previously counterclaimed for, but I understand that they
21 are now my counterclaim, and I'm responsible for proving
22 them and pursuing them.

23 THE COURT: How much money are we talking about? I
24 read it in the Summons and Complaint, but I can't
25 remember.

1 MR. LYDON: It's over \$700,000.

2 MR. HOEFER: Your Honor, I think the actual pay-off
3 of the loan is over \$800,000.

4 THE COURT: What's the value of this property?

5 MR. HOEFER: Well, that's a good question. We've
6 got many appraisals that show different things, but
7 somewhere between 5 and 700,000. Excuse me. The most
8 recent appraisal is \$520,000.

9 THE COURT: Is the bank really interested in
10 pursuing this personal Guaranty or do they just want to
11 sell this property and satisfy this loan?

12 MR. HOEFER: Well, your Honor, we'd love to sell the
13 property and satisfy the debt, but that's not going to be
14 the case. The value of the property is much less than
15 the amount owed, so we have a deficiency unfortunately.
16 That's why we've now brought this case.

17 THE COURT: But the pay-off deals with what----
18 interest?

19 MR. HOEFER: I'm sorry. The total amount owed on
20 the loan is over \$800,000. The value of the property is
21 approximately \$500,000, so we're looking at a \$300,000
22 deficiency.

23 THE COURT: You said 500 to 700.

24 MR. HOEFER: I'm sorry if I misspoke, but the most
25 recent appraisal that the bank has is approximately

1 \$520,000 as the value of the property.

2 THE COURT: This is commercial property, correct?

3 MR. HOEFER: That's correct, your Honor. It's a
4 building on Broad River Road.

5 THE COURT: And what is your client's contention,
6 Mr. Lydon, as to what the property is worth?

7 MR. LYDON: Well, there's a separate foreclosure
8 action going on, your Honor, and it's my understanding
9 that there was a hearing -- I may be wrong, so I'll defer
10 to Mr. Hoefer -- there was a hearing last week in front
11 of Judge Strickland on my client's Motion to Compel
12 production of these appraisals that the bank has gotten
13 because they are trying to ascertain what it's worth too,
14 and the bank has not been willing to give us copies of
15 the appraisals so far and that's before Judge Strickland
16 right now on Motion to Compel.

17 THE COURT: Have y'all made any attempts to resolve
18 this?

19 MR. HOEFER: Your Honor, we've made numerous
20 attempts to resolve this.

21 THE COURT: Was Mr. Lydon involved in those efforts?

22 MR. HOEFER: No, ma'am. And I'm looking forward to
23 speaking with him afterwards and hoping that he's the
24 right guy to hopefully get this thing resolved.

25 MR. LYDON: That's ultimately what I've been

1 retained to do, your Honor, but this is standing ---

2 THE COURT: I would imagine your client's main
3 concern is getting this property sold to satisfy this
4 debt without them being in personal jeopardy.

5 MR. LYDON: One hundred (100) percent correct, your
6 Honor.

7 THE COURT: Where is it at on Broad River Road?
8 Give me a point of reference? Where's it located?

9 MR. HOEFER: It's at 3715.

10 THE COURT: What's that near? I need a landmark,
11 Target, Hamricks.

12 MR. HOEFER: Sorry. I wish I could be more helpful.

13 MR. LYDON: That's Bush River Road.

14 MR. HOEFER: It's Broad River.

15 THE COURT: Where Lizard's Thicket is?

16 MR. HOEFER: Yes. It's a newer brick commercial
17 building. I think this was built in 2008. That's the
18 purpose of the loan proceeds.

19 THE COURT: That's a busy area. Have there been any
20 attempts to sell it, put it on the market?

21 MR. HOEFER: It's been on the market; it hasn't
22 sold.

23 THE COURT: How long?

24 MR. HOEFER: For several years I believe.

25 MR. LYDON: I'm new to the case, your Honor. I knew

1 that the ultimate goal was exactly as you've described,
2 which is to sell the property and satisfaction of the
3 debt, so we were all on the same page. Unfortunately I
4 have not been involved long enough to really help.

5 THE COURT: You said it's been on the market for
6 several years?

7 MR. HOEFER: Well, your Honor, I don't know if it's
8 been on it consistently for several years, but I know in
9 the last several years that NAI Avant has had the
10 property listed whether it's currently listed or -- I
11 don't know the answer to that.

12 THE COURT: Because they entered into the loan in
13 2011; didn't they?

14 MR. HOEFER: That's correct, your Honor.

15 THE COURT: So if it's been on the market for
16 several years, they're going to put it up for sale as
17 soon ---

18 MR. HOEFER: The original loan was May of 2008, and
19 then there was sort of a modification.

20 THE COURT: Okay.

21 MR. HOEFER: It was rolled into this 2011, so it's
22 all been going back since 2008.

23 THE COURT: Okay.

24 MR. HOEFER: And, your Honor, I think it's
25 interesting; we talked about whether this part of the

1 case was in front of Judge Strickland. If all of this
2 was in front of Judge Strickland, the Wachovia case is
3 directly on point and supports our position that the jury
4 trial demand will be struck because neither of their
5 counterclaims -- Say, we're in that court. Those
6 counterclaims would either be permissive and have no
7 right to jury trial or just as the supreme court ordered
8 Wachovia, they'd be compulsory and all under the same
9 transaction occurrence and would fall within that jury
10 waiver provision. So if we're in foreclosure and the
11 master-in-equity supports these counterclaims, the
12 Wachovia case is directly on point supporting our
13 position.

14 MR. LYDON: And I would agree with that. But for
15 whatever reason, the bank has made a decision to bring an
16 equitable action against the main borrower and a legal
17 action against the guarantor.

18 MR. HOEFER: But that doesn't hurt us here today.
19 At the end of the day, the claims still fall under this
20 waiver provision. Whether these claims are permissive or
21 compulsory in this court today makes no difference. This
22 is an action at law. The counterclaims are an action at
23 law. We're dealing with a jury waiver provision that all
24 of them fall within.

25 THE COURT: I'm going to take the matter under

1 advisement. Provide me with proposed Orders within ten
2 days in Word format to djeffersonsc@sccourts.org. Please
3 have your secretaries or paralegals send it to that
4 address and provide each other copies of course.

5 (WHEREUPON, THE HEARING WAS ADJOURNED.)

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COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No.: 2014-CP-40-2968

Plaintiff,

 V_{r}

AFFIDAVIT OF STEVE BLEVINS

Elie Abikhaled and Ghazi Abikhaled,

Defendants:

PERSONALLY appeared before me the undersigned, who being duly sworn,
deposes and says:

1. I am Steve Blevins, Vice-President, Asset Resolution Group, with the Plaintiff Branch Banking and Trust Company ("BB&T"). As such, I am authorized to make this affidavit on BB&T's behalf. This affidavit is based on my personal knowledge of the subject loan and supporting loan documents forming the basis of this action.

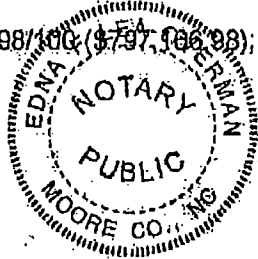
2. On or about June 29, 2011, Cedar Development II, LLC a/k/a Cedar Development 2, LLC ("Borrower") executed a Promissory Note in favor of BB&T for Seven Hundred Thirty Thousand Four Hundred Eleven Dollars, and 44/100 (\$730,411.44) (the "Note"). A true copy of the Note is made part of the Complaint and attached hereto as **Exhibit A**.

3. In connection with the Note, Defendant Elle Abikhaled unconditionally guaranteed all indebtedness of Borrower to BB&T, whether then existing or thereafter arising. A true copy of the Guaranty Agreement executed by Elle Abikhaled is made part of the Complaint and attached hereto as **Exhibit B**.

4. In connection with the Note, Defendant Ghazi Abikhaled unconditionally guaranteed all indebtedness of Borrower to Bank, whether then existing or thereafter arising. A true copy of the Guaranty Agreement executed by Ghazi Abikhaled is made part of the Complaint and attached hereto as Exhibit C.

5. Borrower and Defendants have failed to make payments required under terms of the respective Note and Guaranty Agreements.

6. As of February 27, 2014, the total amount due and owing under terms of the Note was Seven Hundred Ninety-Seven Thousand One Hundred Sixty-Six Dollars and 98/100 (\$797,966.98); plus interest, costs and fees accruing thereafter.



Branch, Banking and Trust Company

By: [Signature]

Its: Vice-President

SWORN to and subscribed before me
this 21 day of August, 2014.

Edna I. La-Ormon

Notary Public for Moore County, NC
My Commission Expires: 11-10-15

Borrower: CEDAR DEVELOPMENT II LLC

Account Number: 9321508164

Note Number: 00004

Address: 3821 BROAD RIVER RD
COLUMBIA, SC 29210-0314

BB&T

LEXINGTON, South Carolina
Date: June 29, 2011

PROMISSORY NOTE

BORROWER(S) REPRESENTS HERewith THAT THE LOAN EVIDENCED HEREBY IS BEING OBTAINED FOR BUSINESS/COMMERCIAL PURPOSES. For value received, the undersigned, jointly and severally, if more than one, promises to pay to BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation (the "Bank"), or order, or said bank at any of its offices in the above referenced city (or such other place or places that may be hereafter designated by Bank), the sum of

SEVEN HUNDRED THIRTY THOUSAND FOUR HUNDRED ELEVEN DOLLARS & 44/100

Dollars (\$ 730,411.44), in immediately available coin or currency of the United States of America.

☐ Borrower shall pay a prepayment fee as set forth in the Prepayment Fee Addendum attached hereto.

Interest shall accrue from the date hereof on the unpaid balance outstanding from time to time at the:

☐ Fixed rate of _____ % per annum.
☒ Variable rate of the Bank's Prime Rate plus 2.000 % per annum to be adjusted Monthly, on the 1st of the Bank's Prime Rate changes. The interest rate will in no instance exceed the maximum rate permitted by applicable law and if checked here ☒ the interest rate will not decrease below a fixed minimum rate of 5.250 %. If checked here ☐ the interest rate will not exceed a fixed maximum rate of _____ %, or ☐ an average maximum rate of _____ %, or ☐ a floating maximum rate of the greater of _____ % or the Bank's Prime Rate. If an average maximum rate is specified, a determination of any required reimbursement of interest by Bank will be made: ☐ when Note is repaid in full by Borrower ☐ annually beginning on _____.

☐ Fixed rate of _____ % per annum through _____ which automatically converts on _____ to a variable rate equal to the Bank's Prime Rate plus _____ % per annum which shall be adjusted as such Prime Rate changes.

Principal and interest is payable as follows

☐ Principal (plus any accrued interest not otherwise scheduled herein)

☐ Principal plus accrued interest

☒ Payable in consecutive _____ Monthly _____ installments of ☐ Principal ☒ Principal and interest } commencing on 09/10/2011

and continuing on the same day of each calendar period thereafter, in 35 equal payments of \$ 4,983.38, with one final payment of all remaining principal and accrued interest due on 08/10/2014

☐ Check/Late Payment Option: 2% of outstanding balance is payable monthly commencing on _____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and accrued interest due on _____

☐ Accrued interest is payable _____ commencing on _____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining interest due on _____

☐ Bank reserves the right in its sole discretion to adjust the fixed payment due hereunder _____ on _____ and continuing on the same day of each calendar period thereafter, in order to maintain an amortization period of no more than _____ months from the date of the initial principal payment due hereunder. Borrower understands the payment may increase if interest rates increase.

☐ Prior to an event of default, Borrower may borrow, repay, and reborrow hereunder pursuant to the terms of the Loan Agreement, hereinafter defined.

☐ Borrower hereby authorizes Bank to automatically draft from its demand deposit or savings account(s) with Bank or other bank, any payment(s) due under this Note on the date(s) due. Borrower shall provide appropriate account number(s) for account(s) of Bank or other bank.

The undersigned shall pay to Bank a late fee in the amount of five percent (5%) of any installment past due for fifteen (15) or more days. When any installment payment is past due for fifteen (15) or more days, subsequent payments shall first be applied to the past due balance. In addition, the undersigned shall pay to Bank a returned payment fee if the undersigned or any other obligor hereon makes any payment at any time by check or other instrument, or by any electronic means, which is returned to Bank because of nonpayment due to non-sufficient funds.

All interest shall be computed and charged for the actual number of days elapsed on the basis of a year consisting of three hundred sixty (360) days. In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the Bank's sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for as long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate; provided that unless elected otherwise above, the fixed payment amount shall not be reduced below the original fixed payment amount. However, Bank shall have the right, in its sole discretion, to lower the fixed payment amount below the original payment amount.

This note ("Note") is given by the undersigned in connection with the following agreements (if any) between the undersigned and the Bank:

Mortgage(s) / Deed of Trust(s) granted in favor of Bank as mortgagee / beneficiary:

☒ dated 03/21/2008 in the maximum principal amount of \$ 800,000.00

granted by CEDAR DEVELOPMENT II LLC

☐ dated _____ in the maximum principal amount of \$ _____

granted by _____

ACCOUNT# / NOTE#

9321508164 00004

147280 (1101)



Page 1 of 4

Security Agreement(s) granting a security interest to Bank:

- ☐ dated _____ given by _____
- ☐ dated _____ given by _____
- ☐ Securities Account Pledge and Security Agreement dated _____, executed by _____
- ☐ Control Agreement(s) dated _____, covering ☐ Deposit Account(s) ☐ Investment Property
☐ Letter of Credit Rights ☐ Electronic Chattel Paper
- ☐ Assignment of Certificate of Deposit, Security Agreement, and Power of Attorney (for Certificated Certificates of Deposit dated _____, executed by _____
- ☐ Pledge and Security Agreement for Publicly Traded Certificated Securities dated _____, executed by _____
- ☐ Assignment of Life Insurance Policy as Collateral dated _____, executed by _____
- ☐ Loan Agreement dated _____, executed by Borrower and ☐ Guarantor(s).
- ☐ _____
- ☐ _____
- ☐ _____

All of the terms, conditions and covenants of the above described agreements (the "Agreements") are expressly made a part of this promissory note (the "Note") by reference in the same manner and with the same effect as if set forth herein at length and any holder of this Note is entitled to the benefits of and remedies provided in the Agreements and any other agreements by and between the undersigned and the Bank. In addition to Bank's right of offset and to any liens and security interests granted to Bank in the Agreements, the undersigned hereby grants to Bank a security interest in all of its depository accounts with and investment property held by Bank, which shall serve as collateral for the indebtedness and obligations evidenced by this Note.

No delay or omission on the part of the holder in exercising any right hereunder shall operate as a waiver of such right or of any other right of such holder, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or of any other right on any future occasion. Every one of the undersigned and every endorser or guarantor of this Note regardless of the time, order or place of signing waives presentment, demand, protest and notices of every kind and assents to any one or more extensions or postponements of the time of payment or any other indulgences, to any substitutions, exchanges or releases of collateral if at any time there be available to the holder collateral for this Note, and to the addition or release of any other parties or persons primarily or secondarily liable.

The failure to pay any part of the principal or interest when due on this Note or to fully perform any covenant, obligation or warranty on this or on any other liability to the Bank by any affiliate (as defined in 11 USC Section 101(2)), or by any guarantor or surety of this Note (said affiliate, guarantor, and surety are hereby called "Obligor"); or if any financial statement or other representation made to the Bank by any of the undersigned or any Obligor shall be found to be materially incorrect or incomplete; or if any of the undersigned shall fail to furnish information to the Bank sufficient to verify the identity of the undersigned as required under the USA Patriot Act; or in the event of a default pursuant to any of the Agreements or any other obligation of any of the undersigned or any Obligor in favor of the Bank; or in the event the Bank demands that the undersigned secure or provide additional security for its obligations under this Note and security deemed adequate and sufficient by the Bank is not given when demanded; or in the event one or more of the undersigned or any Obligor shall die, terminate its existence, allow the appointment of a receiver for any part of its property, make an assignment for the benefit of creditors, or where a proceeding under bankruptcy or insolvency laws is initiated by or against any of the undersigned or any Obligor; or in the event the Bank should otherwise deem itself, its security interest, or any collateral unsafe or insecure; or should the Bank in good faith believe that the prospect of payment or other performance is impaired; or if there is an attachment, execution, or other judicial seizure of all or any portion of the Borrower's or any Obligor's assets, including an action or proceeding to seize any funds on deposit with the Bank, and such seizure is not discharged within 20 days; or if final judgment for the payment of money shall be rendered against the Borrower or any Obligor which is not covered by insurance or debt cancellation and shall remain undischarged for a period of 30 days unless such judgment or execution thereon is effectively stayed; or the termination of any guaranty agreement given in connection with this Note, then any one of the same shall be a material default hereunder and this Note and other debts due the Bank by any one or more of undersigned shall immediately become due and payable without notice, at the option of the Bank. From and after any event of default hereunder, interest shall accrue on the sum of the principal balance and accrued interest then outstanding at the variable rate equal to the Bank's Prime Rate plus 5% per annum ("Default Rate"), provided that such rate shall not exceed at any time the highest rate of interest permitted by the laws of the State of South Carolina; and further provided that such rate shall apply after judgment. In the event of any default, the then remaining unpaid principal amount and accrued but unpaid interest then outstanding shall bear interest at the Default Rate called for hereunder until such principal and interest have been paid in full. In addition, upon default, the Bank may pursue its full legal remedies at law or equity, and the balance due hereunder may be charged against any obligation of the Bank to any party, including any Obligor. Bank shall not be obligated to accept any check, money order, or other payment instrument marked "payment in full" on any disputed amount due hereunder, and Bank expressly reserves the right to reject all such payment instruments. Borrower agrees that tender of its check or other payment instrument so marked will not satisfy or discharge its obligation under this Note, disputed or otherwise, even if such check or payment instrument is inadvertently processed by Bank unless in fact such payment is in fact sufficient to pay the amount due hereunder.

WAIVER OF TRIAL BY JURY, UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS NOTE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO MAKE THE LOAN EVIDENCED BY THIS NOTE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Unless otherwise required under a Loan Agreement, if applicable, and as long as any indebtedness evidenced by this Note remains outstanding or as long as Bank remains obligated to make advances, the undersigned shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when delivered shall be the property of the Bank.

The term "Prime Rate," if used herein, means the rate of interest per annum announced by the Bank from time to time and adopted as its Prime Rate. The Prime Rate is one of several rate indexes employed by the Bank when extending credit. Any change in the interest rate resulting from a change in the Bank's Prime Rate shall become effective as of the opening of business on the effective date of the change. If this Note is placed with an attorney for collection, the undersigned agrees to pay, in addition to principal and interest, all costs of collection, including reasonable attorneys' fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of acceleration or other action by Lender to collect the sums due hereunder, unless the actual attorneys' fees incurred, based upon Bank's counsel's normal hourly fees chargeable to Bank, shall be greater than 15% of principal and interest, in which case such billed amount based on such hourly rate shall be the attorneys' fee payable hereunder. All obligations of the undersigned and of any Obligor shall bind his heirs, executors, administrators, successors, and/or assigns. Use of the masculine pronoun herein shall include the feminine and the neuter, and also the plural. If more than one party shall execute this Note, the term "undersigned" as used herein shall mean all the parties signing this Note and each of them, and all such parties shall be jointly and severally obligated hereunder. Whenever possible, each provision of this Note shall be interpreted in such a manner to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under such law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note. All of the undersigned hereby waives all exemptions and homestead laws. The proceeds of the loan evidenced by this Note may be paid to any one or more of the undersigned. No waivers and modifications shall be valid unless in writing and signed by the Bank. In case of conflict between the terms of this Note and the Loan Agreement or Commitment Letter issued in connection herewith, the priority of controlling terms shall be first this Note, then the Loan Agreement, and then the Commitment Letter. This Note shall be governed by and construed in accordance with the laws of South Carolina.

(SIGNATURES ON FOLLOWING PAGE)

BB&T

PROMISSORY NOTE SIGNATURE PAGE

Borrower: CEDAR DEVELOPMENT II LLC

Account Number: 9521503164

Note Amount: \$ 730,411.44

Note Number: 00004

Date: 06/29/2011

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. TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR 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.

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

If Borrower is a Corporation:

WITNESS:

NAME OF CORPORATION

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

If Borrower is a Partnership, Limited Liability Company, or Limited Liability Partnership:

WITNESS:

CEDAR DEVELOPMENT II LLC

NAME OF PARTNERSHIP, LLC, OR LLP

By: 99.00% (SEAL)

ELITE APPROVAL

Member & Manager

Title: _____

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

If Borrower is an Individual:

WITNESS:

(SEAL)

Additional Co-makers:

WITNESS:

(SEAL)

(SEAL)

(SEAL)

(SEAL)

BB&T

GUARANTY AGREEMENT

BRANCH BANKING AND TRUST COMPANY

LEXINGTON, SC

Dear Sirs:

As an inducement to Branch Banking and Trust Company ("Bank") to extend credit to and to otherwise deal with

CEDAR DEVELOPMENT II LLC

("Borrower").

and in consideration thereof, the undersigned (and each of the undersigned jointly and severally if more than one) hereby absolutely and unconditionally guarantees to Bank and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower, at any time, now or hereafter, incurred with or held by Bank, together with interest, as and when the same become due and payable, whether by acceleration or otherwise, in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof. The obligation of the undersigned is a guarantee of payment and not of collection.

The undersigned is Bank's debtor for all indebtedness, obligations and liabilities for which this Guaranty is made, and Bank shall also at all times have a lien on and security interest in all stocks, bonds and other securities of the undersigned at any time in Bank's possession and the same shall at Bank's option be held, administered and disposed of as collateral to any such indebtedness, obligation or liability of the Borrower, and Bank shall also at all times have the right of set-off against any deposit account of the undersigned with Bank in the same manner and to the same extent that the right of set-off may exist against the Borrower.

It is understood that any such notes, drafts, debts, obligations and liabilities may be accepted or created by or with Bank at any time and from time to time without notice to the undersigned, and the undersigned hereby expressly waives presentment, demand, protest, and notice of dishonor of any such notes, drafts, debts, obligations and liabilities or other evidences of any such indebtedness, obligation or liability.

Bank may receive and accept from time to time any securities or other property as a collateral to any such notes, drafts, debts, obligations and liabilities, and may surrender, compromise, exchange and release absolutely the same or any part thereof at any time without notice to the undersigned and without in any manner affecting the obligation and liability of the undersigned hereby created. The undersigned agrees that Bank shall have no obligation to protect, perfect, secure or insure any security interests, liens or encumbrances now or hereafter held for the indebtedness, obligations and liabilities for which this Guaranty is made.

This obligation and liability on the part of the undersigned shall be a primary, and not a secondary, obligation and liability, payable immediately upon demand without recourse first having been had by Bank against the Borrower or any other guarantor, person, firm or corporation, and without first resorting to any property held by Bank as collateral security; and the undersigned hereby waives the benefits of all provisions of law, for stay or delay of execution or sale of property or other satisfaction of judgment against the undersigned on account of obligation and liability hereunder until judgment be obtained therefor against the Borrower and execution thereon returned unsatisfied, or until it is shown that the Borrower has no property available for the satisfaction of the indebtedness, obligation or liability guaranteed hereby, or until any other proceedings can be had; and the undersigned further agrees that the undersigned is responsible for any obligation or debt, or portion thereof, of the Borrower to the Bank which has been paid by the Borrower to the Bank and which the Bank is subsequently required to return to the Borrower or a trustee for the Borrower in any bankruptcy or insolvency proceeding; and the undersigned further agrees that none of the undersigned shall have any right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of the Borrower to Bank unless and until all of the debts and obligations of the Borrower to Bank have been paid in full. The undersigned hereby waives any claim or right to be a creditor of the Borrower's bankruptcy estate which may arise upon payment by the undersigned of any obligation under this Guaranty.

Check applicable box:

- ☒ This Guaranty is unlimited and applies to all indebtedness of Borrower, whether now existing or hereafter arising.
- ☐ This Guaranty applies to all indebtedness of Borrower evidenced by its promissory note/file number _____ dated _____ (including all extensions, renewals, and modifications thereof) in the principal amount of \$ _____.
- ☐ This Guaranty is limited to an amount of \$ _____ plus accrued interest, late fees, costs of collection (including attorneys' fees) and all other obligations and indebtedness which may accrue or be incurred with respect to the Borrower's indebtedness and obligations to Bank.

To secure the payment of all obligations of the undersigned hereunder, the undersigned hereby grants a security interest and lien in the following goods and property owned by the undersigned:

("Collateral").

The undersigned hereby agrees to execute and deliver to Bank any security agreement, deed of trust, mortgage, UCC financing statement, or other document required by the Bank in order to protect its security interest or lien in the Collateral. This document shall constitute a security agreement under the Uniform Commercial Code of South Carolina ("Code"), and in addition to having all other legal rights and remedies, the Bank shall have all rights and remedies of a secured party under the Code.

ACCOUNT# / NOTE#

9521508164 00001

14578C (0704)



Initials: CA

Page 1 of 4

This agreement shall inure to the benefit of Bank, its successors and assigns, and the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, and shall remain in force until a written notice revoking it has been received by Bank; but such revocation shall not release the undersigned from liability to Bank, its successors and assigns, or the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, for any indebtedness, obligation or liability of the Borrower which is hereby guaranteed and then in existence or from any renewals, extensions or modifications thereof in whole or in part, whether such renewals, extensions or modifications are made before or after such revocation, with or without notice to the undersigned. The undersigned waives presentment, demand, protest and notices of every kind and assents to any one or more extensions, modifications, renewals or postponements of the time or amount of payment or any other indulgences given to Borrower. The undersigned shall be responsible for and shall reimburse the Bank for all costs and expenses incurred by the Bank in connection with the enforcement of this Guaranty or the protection or preservation of any right or claim of the Bank in connection herewith, including without limitation costs and expenses incurred by the Bank in connection with its attempts to collect the indebtedness, obligations, and liabilities guaranteed hereby. Cost and expenses shall include reasonable attorneys' fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of action by Lender described above, unless the actual attorney fees incurred, based upon Bank's counsel's normal hourly fees chargeable to Bank, shall be greater than 15% of principal and interest in which case such billed amount based on such hourly rate shall be the attorneys' fee payable hereunder."

If the Borrower is a corporation, this instrument covers all indebtedness, obligations and liabilities to Bank purporting to be made or undertaken on behalf of such corporation by any such officer or agent of said corporation without regard to the actual authority of such officer or agent. The term "corporation" shall include associations of all kinds and all purported corporations, whether correctly and legally chartered and organized.

The undersigned warrants, and represents to the Bank that: (i) this Guaranty is its legally binding obligation, enforceable against the undersigned in accordance with its terms; (ii) the execution and delivery of this Guaranty does not violate or constitute a breach of any agreement to which the undersigned is a party; (iii) that there is no litigation, claim, action or proceeding pending or, to the best knowledge of the undersigned, threatened against the undersigned which would materially adversely affect the financial condition of the undersigned or his/her ability to fulfill his/her obligations hereunder; (iv) that the undersigned has knowledge of the Borrower's financial condition and affairs; and (v) unless otherwise required in a Loan Agreement, if applicable, as long as any Obligations remain outstanding or as long as Bank remains obligated to make advances, the undersigned shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when delivered shall be the property of Bank.

This Guaranty is made in and shall be construed in accordance with the laws and judicial decisions of the State of South Carolina. The undersigned agrees that any dispute arising out of this Guaranty shall be adjudicated in either the state or federal courts of South Carolina and in no other forum. For that purpose, the undersigned hereby submits to the jurisdiction of the state and/or federal courts of South Carolina. The undersigned waives any defense that venue is not proper for any action brought in any federal or state court in the State of South Carolina.

WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS GUARANTY OR THE BORROWER'S NOTE(S) AND THE RELATED LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND THE BANK OR THE BORROWER AND THE BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO ACCEPT THIS GUARANTY AND TO MAKE THE LOAN(S) TO THE BORROWER. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

SIGNATURES ON FOLLOWING PAGE

Witness the signature and seal of each of the undersigned.

WITNESS:

NAME OF CORPORATION

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

WITNESS:

NAME OF PARTNERSHIP, LLC OR LLP

By: _____ (SEAL)

GENERAL PARTNER OR MANAGER

By: _____ (SEAL)

GENERAL PARTNER OR MANAGER

By: _____ (SEAL)

GENERAL PARTNER OR MANAGER

WITNESS

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina corporation, by _____, its _____, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness that witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina general partnership, by _____, its general partner, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw _____, a South Carolina limited liability company / limited partnership that by _____, its member or manager / general partner, sign, seal and as its act and deed, and deliver the foregoing within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF Richland

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named Eric J. Abikhaled, sign, seal and as his/her act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this 9 day of Oct, 2007

(SEAL)

Notary Public for South Carolina

My commission expires: 11/29/11

Oct-08-2007 12:17

From: BB&T LEXINGTON SC

601-958-0103

T-010 P.001/004 F-107

IMAGE OF POOR QUALITY
DUE TO CONDITION OF
ORIGINAL DOCUMENT

BB&T

GUARANTY AGREEMENT

BRANCH BANKING AND TRUST COMPANY

LEXINGTON, SC

10/09/2007

Dear Sirs:

As an Indemnitor to Branch Banking and Trust Company ("Bank") to extend credit to and to otherwise deal with

("Borrower"),

CEDAR DEVELOPMENT, LLC

and in consideration thereof, the undersigned (and each of the undersigned jointly and severally if more than one) hereby absolutely and unconditionally guarantees to Bank and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower, at any time, now or hereafter, incurred with or held by Bank together with interest, as and when the same become due and payable, whether by acceleration or otherwise, in accordance with the terms of any such note, draft, debt, obligation or liability or agreement evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof. The obligation of the undersigned is a guarantee of payment and not of collection.

The undersigned is Bank's debtor for all indebtedness, obligations and liabilities for which this Guaranty is made, and Bank shall also at all times have a lien on and security interest in all assets, goods and other moneys of the undersigned at any time in Bank's possession and the same shall at Bank's option be held, administered and disposed of as collateral in any such indebtedness, obligation or liability of the Borrower, and Bank shall also at all times have the right of set-off against any deposit account of the undersigned with Bank in the same manner and to the same extent that the right of set-off may exist against the Borrower.

It is understood that any such notes, drafts, debts, obligations and liabilities may be accepted or created by or with Bank at any time and from time to time without notice to the undersigned, and the undersigned hereby expressly waives presentment, demand, protest, and notice of dishonor of any such notes, drafts, debts, obligations and liabilities or other evidences of any such indebtedness, obligation or liability.

Bank may receive and accept from time to time any securities or other property as a collateral to any such notes, drafts, debts, obligations and liabilities, and may surrender, compromise, exchange and release absolutely the same or any part thereof at any time without notice to the undersigned and without in any manner affecting the obligation and liability of the undersigned hereby created. The undersigned agrees that Bank shall have no obligation to protect, perfect, secure or have any security interests, liens or encumbrances now or hereafter held for the indebtedness, obligations and liabilities for which this Guaranty is made.

This obligation and liability on the part of the undersigned shall be a primary, and not a secondary, obligation and liability, payable immediately upon demand without recourse first having been paid by Bank against the Borrower or any other guarantor, person, firm or corporation and without first resorting to any property held by Bank as collateral security; and the undersigned hereby waives the benefits of all provisions of law, for stay of duty of execution or sale of property or other satisfaction of judgment against the undersigned on account of obligation and liability hereunder and judgment be obtained or satisfaction of the indebtedness, obligation or liability guaranteed hereby, or until it is shown that the Borrower has no property available for the satisfaction of the indebtedness, obligation or liability guaranteed hereby, or until any other proceedings can be had; and the undersigned further agrees that the undersigned is responsible for any obligation or debt, or portion thereof, of the Borrower to the Bank which has been paid by the Borrower to the Bank and which the Bank is subsequently required to return to the Borrower or a trustee for the Borrower in any bankruptcy or insolvency proceeding; and the undersigned further agrees that none of the undersigned shall have any right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of the Borrower to Bank unless and until all of the debts and obligations of the Borrower to Bank have been paid in full. This undersigned hereby waives any claim or right to be a creditor of the Borrower's bankruptcy estate which may arise upon payment by the undersigned of any obligation under this Guaranty.

Check applicable box

☒ This Guaranty is unlimited and applies to all indebtedness of Borrower, whether now existing or hereafter arising.

☐ This Guaranty applies to all indebtedness of Borrower evidenced by its promissory note/line number _____ dated _____.

(Including all extensions, renewals, and modifications thereof) in the principal amount of \$ _____

☐ This Guaranty is limited to an amount of \$ _____ plus accrued interest, late fees, costs of collection (including attorney's fees) and all other obligations and indebtedness which may accrue or be incurred with respect to the Borrower's indebtedness and obligations to Bank.

To secure the payment of all obligations of the undersigned hereunder, the undersigned hereby grants a security interest and lien in the following goods and property owned by the undersigned:

("Collateral").

The undersigned hereby agrees to execute and deliver to Bank any security agreement, deed of trust, mortgage, UCC financing statement, or other document required by the Bank in order to perfect its security interest and lien in the Collateral. The undersigned shall continue to secure its obligation under the Uniform Commercial Code of South Carolina ("Code"), and in addition to having all other legal rights and remedies, the Bank shall have all rights and remedies of a secured party under the Code.

ACCOUNTS / NOTES

9531308104 00001

145730 (000)



Page 1 of 4



This agreement shall have the benefit of Bank, its successors and assigns, and the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, and shall remain in force until it is withdrawn or revoked by Bank. Bank's withdrawal or revocation shall not release the undersigned from liability to Bank, its successors and assigns, or its owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, for any and all indebtedness, obligations or liabilities of the Borrower which is hereby guaranteed and which is outstanding or from any renewal, extension or modification thereof in whole or in part, whether such renewal, extension or modification is made before or after such withdrawal, revocation or modification of the undersigned. The undersigned, without protest, demand, notice or notice of any kind and assents to any and all of the conditions, modifications, renewals or extensions of the debt or amount of payment or any other indebtedness given to Borrower. The undersigned shall be responsible for and shall reimburse the Bank for all costs and expenses incurred by the Bank in connection with the enforcement of this Guaranty or the protection or preservation of any right or claim of the Bank in connection herewith, including without limitation costs and expenses incurred by the Bank in connection with its attempt to collect the indebtedness, obligations, and liabilities guaranteed hereby. Cost and expenses shall include reasonable attorney's fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of action by lender described above, unless the actual attorney fees incurred, based upon Bank's counsel's normal hourly fee charged to Bank, shall be greater than 15% of principal and interest in which case such actual amount based on such hourly rate shall be the attorney's fee payable hereunder.

If the Borrower is a corporation, this instrument covers all indebtedness, obligations and liabilities to Bank purporting to be made or undertaken on behalf of such corporation by any such officer or agent of said corporation without regard to the actual authority of such officer or agent. The term "corporation" shall include associations of all kinds and all purported corporations, whether formally and legally chartered and organized.

The undersigned warrants, and represents to the Bank that (1) this Guaranty is its legally binding obligation, enforceable against the undersigned in accordance with its terms; (2) the execution and delivery of this Guaranty does not violate or constitute a breach of any agreement to which the undersigned is a party; (3) that there is no litigation, claim, action or proceeding pending or, to the best knowledge of the undersigned, threatened against the undersigned which would materially adversely affect the financial condition and rating; and (4) unless otherwise required in a Loan Agreement, if applicable, that the undersigned has knowledge of the Borrower's financial condition and rating and (5) unless otherwise required in a Loan Agreement, if applicable, as long as any obligations remain outstanding or as long as Bank remains obligated to make advances, the undersigned shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when delivered shall be the property of Bank.

This Guaranty is made in and shall be construed in accordance with the laws and judicial decisions of the State of South Carolina. The undersigned agrees that any dispute arising out of this Guaranty shall be adjudicated in either the state or federal courts of South Carolina and in no other forum. For that purpose, the undersigned hereby submits to the jurisdiction of the state and federal courts of South Carolina. The undersigned waives any defense that venue is not proper for any action brought in any federal or state court in the State of South Carolina.

WAVE OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THIS UNDERSIGNED HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS GUARANTY OR THE BORROWER'S NOTES, AND THE RELATED LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND THE BANK OR THE BORROWER AND THE BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO ACCEPT THIS GUARANTY AND TO MAKE THE LOAN(S) TO THE BORROWER. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE, AGENT OR COUNSEL OF BANK NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL. PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

SIGNATURES ON FOLLOWING PAGE

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 entered 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 owed in connection with the transaction. TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THIS LOAN, GUARANTOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH WOULD BE THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

Witness the signature and seal of each of the undersigned.

If Guarantor is a Corporation:

WITNESS:

NAME OF CORPORATION

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

If Guarantor is a Partnership, Limited Liability Company, or Limited Liability Partnership:

WITNESS:

NAME OF PARTNERSHIP, LLC OR LLP

By: _____ (SEAL)

By: _____ (SEAL)

By: _____ (SEAL)

If Guarantor is an Individual

WITNESS:

Linda Massery

[Signature]
CLARENCE WILSON

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that she saw the within-named _____, a South Carolina corporation, by _____, its _____, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that she together with the other witness that witnessed the execution thereof,

SWORN TO and subscribed before me this _____ day of _____, _____ Witness

Notary Public for South Carolina (SEAL)

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that she saw the within-named _____, a South Carolina general partnership, by _____, its general partner, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that she together with the other witness whose signature appears above, witnessed the execution thereof,

SWORN TO and subscribed before me this _____ day of _____, _____ Witness

Notary Public for South Carolina (SEAL)

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that she saw _____, a South Carolina limited liability company / limited partnership that by _____, its member or manager / general partner, sign, seal and as its act and deed, deliver the foregoing within-written instrument for the uses and purposes therein mentioned and that she together with the other witness witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____ Witness

Notary Public for South Carolina (SEAL)

My commission expires: _____

STATE OF SOUTH CAROLINA Florida
COUNTY OF St. Johns

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that she saw the within-named CHAS. L. ROSSKOPF, sign, seal and as his act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that she together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this 10th day of October, 2007 Linda Messervy Witness

Notary Public for South Carolina (SEAL)

My commission expires: 6/2011

CAROLE SIMMONS
Notary Public, State of Florida
My Comm. Expires June 14, 2011
Comm. No. DD 885588

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

Branch Banking and Trust Company,

Plaintiff,

v.

Elie Abikhaled and Ghazi Abikhaled,

Defendants.

Case No.: 2014-CP-40-2968

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO STRIKE
JURY DEMAND

This is a suit for collection on guarantees of payment executed by Defendants Elie Abikhaled and Ghazi Abikhaled in favor of Branch Banking and Trust Company ("Bank"). The subject guarantees each contain enforceable waiver of jury trial provisions. Therefore, based on these waivers, Bank respectfully requests this Court strike the Defendants' jury demand.

Bank alleges one cause of action to enforce the guarantees. Bank did not seek a jury trial. In their Answer and Counterclaims, Defendants answered and requested a jury trial.

Facts

Defendants each executed a Guaranty Agreement in favor of Bank whereby each unconditionally, jointly and severally, guaranteed all indebtedness of Cedar Development II, LLC a/k/a Cedar Development 2, LLC ("Cedar Development") to Bank whether then existing or thereafter arising (collectively the "Guarantees"). See *Affidavit of Steve Blevins*. Cedar Development executed a Promissory Note dated June 29, 2011 in favor of Bank for Seven Hundred Thirty Thousand Four Hundred Eleven Dollars

and 44/100 (\$730,411.44) (the "Note"). *Id.* Cedar Development defaulted under terms of the Note, and Defendants defaulted under terms of the Guarantees. *Id.*

The Guarantees each contain the following jury waiver provision located at the bottom of Page 2 in all capitalized, bold text:

WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OF CLAIMS ARISING OUT OF THIS GUARANTY OR THE BORROWER'S NOTE(S), AND THE RELATED LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND THE BANK OR THE BORROWER AND THE BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO ACCEPT THIS GUARANTY AND TO MAKE THE LOAN(S) TO THE BORROWER. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS TO AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Argument

A jury waiver clause in a contract is enforceable. See *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63-64, 566 S.E.2d 863, 866 (Ct. App. 2002). The waiver will be strictly construed because a right to a jury trial is a substantial right. *N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 535, 416 S.E.2d 637, 638 (1992). However, terms in a contract provision must be construed using their plain, ordinary and popular meaning. *Fritz-Pontiac-Cadillac-Buick v. Goforth*, 312 S.C. 315, 318, 440 S.E.2d 367, 369 (1994).

The waiver provision in each Guaranty Agreement plainly provides that the guarantor waives the rights to trial by jury of any matters or claims arising out of the Guarantees, Note, the related loan documents, or out of the conduct of the relationship between Defendants and Bank. Bank's claim and the Defendants' counterclaims all arise directly out of the loan documents and/or the relationship between Defendants and Bank.

Defendants cannot now repudiate jury waiver provisions which are clear, unambiguous, prominently placed in documents, and which the Bank relied on when making the loan. As the contracts are clear and no adequate basis exists to challenge enforcement of the jury waiver provisions therein, the plain meaning of these agreements must be given effect and the Defendants' request for a jury trial should be stricken.



Paul H. Hoefer [SC Bar #77506]
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
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(803) 779-8900
Attorneys for the Plaintiff

October 8, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Branch Banking and Trust Company,)
Plaintiff,)

vs.)

Elie Abikhaled and Ghazi Abikhaled,)
Defendants.)

Civil Action No. 2014-CP-40-2968

**DEFENDANTS' MEMORANDUM
IN OPPOSITION TO MOTION
TO STRIKE JURY DEMAND**

2014 OCT 16 AM 9:11
JANETTE V. MOORE
C.C.P. & G.S.

This Memorandum is submitted in opposition to Plaintiff's Motion to Strike Jury Demand in connection with the referenced matter.

Plaintiff filed this action to collect on guaranties purportedly given by Defendants in connection with a promissory note from Cedar Development II, LLC. Plaintiff is presently foreclosing on the promissory note and mortgage from Cedar Development II, LLC in a separate lawsuit (Civil Action No. 2013-CP-40-5115). In response to Plaintiff's Complaint, Defendants filed an Answer in which they asserted counterclaims for breach of covenant of good faith and fair dealing, interference with prospective contractual relations, accounting and appraisal, and negligent misrepresentation. The factual basis underlying the counterclaims is Plaintiff's failure to provide financing that it promised for upfitting the building that is the subject of the foreclosure action.

An action to collect on a guaranty is any action at law. *Crafton v. Brown*, 346 S.C. 347, 550 S.E.2d 904 (Ct. App. 2001). As such, either party is entitled to a jury trial. However, the form guaranty which serves as the basis for Plaintiff's lawsuit contains a provision that attempts

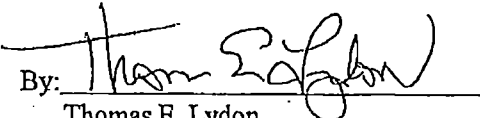
to waive the guarantor's right to a jury trial. The waiver states that it extends to "any matters or claims arising out of this guaranty or the borrower's note(s), and the related loan documents executed in connection herewith or out of the conduct of the relationship between the undersigned and the bank or the borrower and the bank." Although a party may waive the right to a jury trial by contract, such a waiver must be strictly construed, as the right to trial by jury is a substantial right. *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 566 S.E.2d 863 (Ct. App. 2002).

The actions of Plaintiff in failing to provide promised financing are not related to the existing lending relationship between the parties. Therefore, the counterclaims asserted by Defendants are not subject to the jury trial waiver. Defendants could not have contemplated that in signing the guaranty, they were waiving their right to a jury trial on claims arising from future misrepresentations and misconduct by Plaintiff.

To the extent that the jury trial waiver attempts to waive Defendants' right to a jury trial on matters not directly related to the loan that is the subject of the guaranty, the waiver is unconscionable. In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Carolina Care Plan, Inc. v. United HealthCare Services, Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004). If a court as a matter of law finds any clause of a contract to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663 (2007). To extend the scope of the waiver to Plaintiff's actions in future dealings with Defendants would be unconscionable.

Based on the foregoing, with respect to the counterclaims asserted by Defendants,
Plaintiff's Motion to Strike Jury Demand should be denied.

McANGUS, GOUDELOCK & COURIE, LLC

By: 

Thomas E. Lydon
1320 Main Street, 10th Floor
Post Office Box 12519
Columbia, South Carolina 29211
803-779-2300
Attorneys for Defendants

October 10, 2014

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) Case No. 2013-CP-40-5115

Branch Banking and Trust Company,)
Plaintiff,) MASTER'S ORDER AND JUDGMENT
v.) OF FORECLOSURE AND SALE
Cedar Development II, LLC a/k/a) (Deficiency Judgment Demanded)
Cedar Development 2, LLC,)
Defendants.)

FILED
2013 MAY 13 PM 4:10
CLERK OF COURT
C.C.P. & G.S.

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, and upon the stipulation and agreement of all parties hereto, not in default, the above-entitled matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said Order of Reference a hearing was held, attended by the attorneys of record, J. Kershaw Spong for the Plaintiff Branch Banking and Trust Company and Stephen D. Porter for the Defendant Cedar Development II, LLC.

The attorneys announced a settlement of all issues in this case and put on the record and filed herewith a Settlement Agreement pursuant to South Carolina Rules of Civil Procedure 41. A copy of the Settlement Agreement is attached hereto and made a part of this Order as Exhibit B.

Testimony was taken, which is herewith reported, and from the testimony and evidence, I find, conclude and order as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on August 28, 2013.

2. The Summons and Complaint were filed on **August 28, 2013**.
3. Service was made upon the Defendants named in this Order as is shown by the proofs of service previously filed with the court. The Defendant filed an answer and asserted various counterclaims.
4. For value received, **Cedar Development II, LLC** made, executed and delivered a **Promissory Note** dated **June 29, 2011**, promising thereby to pay to the order of **Branch Banking and Trust Company** the sum of **Seven Hundred Thirty Thousand Four Hundred Eleven and 44/100 Dollars (\$730,411.44)**, with interest at the bank's prime rate plus 2.000% per annum. Other terms and conditions are stated in the note, which is of record herein.
5. To better secure the payment of the note described above the said Defendant **Cedar Development II, LLC** made, executed and delivered to **Branch Banking and Trust Company** a **Mortgage** in writing, dated **March 21, 2008**, covering real property in **Richland County**, which is the same as that described in the Complaint. The mortgage was filed on **March 24, 2008**, and is of record in the Office of the Register of Deeds for **Richland County** in **Book 1413, at page 1843**.
6. This mortgage constitutes a **first** lien on the subject property.
7. Payment due on the note has not been made as provided for in the note, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the note and mortgage in the hands of an attorney herein for collection.
8. This Court further finds that the subject property is secured by a commercial note and mortgage and therefore not subject to the Home Affordable

Modification Program (HMP) or the United States Treasury Supplemental Directive 09-01. The Court finds the stay arising out of Ex Parte Temporary Restraining Order issued by the Supreme Court of South Carolina on May 4, 2009, and replaced by Order dated May 22, 2009, and further supplemented by South Carolina Supreme Court Administrative Order (Order No. 2011-05-02-10), does not apply.

9. After carefully reviewing Plaintiff's Affidavit of Attorneys Fees and the various factors cited there, the sum of \$73,678.88 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage.

10. The amount due and owing on the note, with interest at the rate provided in the note, and other costs and expenses of collection, including an attorney's fee, secured by the note and mortgage is as follows:

(a) Principal due as of November 28, 2012	\$	709,103.07
(b) Interest through April 1, 2015 at 5.25% per annum	\$	96,495.69
(c) Costs of collection prior to hearing (service, filing, etc.)	\$	2,900.28
(d) Appraisal costs	\$	9,150.00
(e) Environmental Report Costs	\$	5,790.00
(f) Property Taxes	\$	18,542.10
(g) Attorney's fee	\$	73,678.88
TOTAL DEBT secured by note and mortgage including interest to date shown	\$	915,660.02

Interest for the period from the date shown in (b), above through the date of this judgment at above stated rate to be added to the above stated "total debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment

at the current rate of 5.25% per annum (pursuant to the terms of the note and mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by mortgage through the date to which such interest is computed.

11. The Plaintiff is seeking the usual foreclosure of the mortgage and has in the Complaint, or by amendment thereto, or by motion at the reference, expressly demanded the right to a deficiency judgment. Since a deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days, as prescribed by law. However upon the filing of a written notice with the court, the Plaintiff may waive its right to a deficiency judgment up to the time of sale.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of the mortgage.
2. The mortgaged property should be ordered sold at public auction after due advertisement. The sale shall be made subject to taxes and assessments that are due on the day of such sale.
3. That after making the required deposit the successful bidder at the sale shall be required to pay interest at the rate set forth in the obligation described in the Complaint from date of sale to the date of compliance.
4. The proceeds arising from such sale should be applied, first, to the costs and disbursements of this action, and next, to the payment and discharge of the amount of Plaintiff's debt and interest or so much thereof as the proceeds will pay, and any surplus should be held pending further order of the Court.

5. The Plaintiff is also entitled to have judgment therefore against the Defendant Cedar Development II, LLC.

Now, on motion of Plaintiff's attorneys, J. Kershaw Spong,

IT IS ORDERED, ADJUDGED AND DECREED:

1. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$915,660.02 representing the "Total Debt" due Plaintiff as set out in Paragraph 10, supra, together with interest at the rate provided in said obligation on the balance of principal from the aforesaid date to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in paragraph 10, supra, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 5.25% per annum.

3. That the Defendant liable for the aforesaid mortgage debt do, on or before the date of sale of the property hereinafter described, pay to the Plaintiff's attorneys, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Master in Equity, at public auction, at the Richland County Courthouse, in the City of Columbia, County of Richland and state aforesaid, on some convenient Salesday hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the Salesday shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

a. FOR CASH: the undersigned Master in Equity will require a deposit of 5% of the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within Twenty (20) days same to be forfeited and applied to the costs and Plaintiff's debt.

b. Interest on the balance of the bid shall be paid through the day of compliance at the rate of 5.25%.

c. The sale shall be subject to taxes and assessments due on the day of such sale, existing easements and easements and restrictions of record.

d. Purchaser to pay for the preparation of the deed, deed stamps and costs of recording the deed.

5. If Plaintiff be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. As a deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days after the date of sale as provided by law in such cases.

7. The undersigned Master in Equity will, by advertisement according to law, give notice of the time and place of such sale, and the terms thereof; and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within Twenty (20) days after date of sale, then the undersigned Master in

Equity may advertise the said premises for sale on the next or some other subsequent Salesday, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event the Plaintiff is the successful bidder, at its option, or the option of the assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this Order and hereinafter more fully described.

8. The undersigned Master in Equity to apply the proceeds of the sale as follows:

First: to payment of the amount of the costs and expenses of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court.

Next: to the payment to the Plaintiff or Plaintiff's attorneys, of the amount of Plaintiff's debt and interest, or so much thereof as the purchase money will pay on the same.

9. That the Plaintiff have judgment therefore against the Defendant Cedar Development II, LLC in the amount of \$915,660.02. Such judgment shall be entered and docketed in the Clerk's office immediately and in the same manner as other judgments pursuant to §29-3-650 SC Code of Laws (1976 as amended). Upon the sale of the subject property, this judgment shall be credited the amount paid to Plaintiff from the proceeds of the sale. §29-3-650 SC Code of Laws (1976 as amended).

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

11. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendants in possession of the subject

property and title by deed from the court is vested in such purchaser, the Sheriff of Richland County is ordered and directed to eject and remove from the property the occupant/s of the property sold, together with all personal property located thereon, and put the successful bidder or his or its assigns in full, quiet and peaceable possession of said property without delay, and to keep said successful bidder or his or its assigns in such peaceable possession.

12. In the event the successful purchaser is someone other than the Defendant(s) in possession of the subject property, and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, and title by deed from the court is vested in such purchaser, the purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

13. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

14. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant and the Defendants who were the titleholders of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the

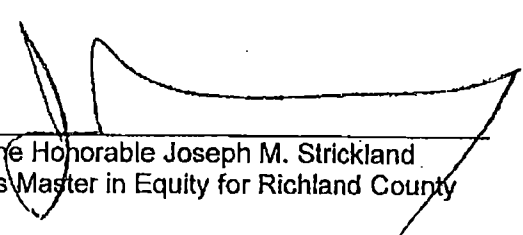
name of the grantee, and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

15. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a writ of assistance.

16. It is further ordered, that if the Plaintiff nor the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales date.

17. The premises herein ordered to be sold are described on Exhibit A attached hereto and made a part hereof.

18. All counterclaims asserted in this case against BB&T are hereby dismissed with prejudice.



The Honorable Joseph M. Strickland
As Master in Equity for Richland County

Columbia, South Carolina.

May 11, 2015.

EXHIBIT A

All that certain piece, parcel or lot of land, lying and being in the City of Columbia, County of Richland being further described as Parcel B on a survey prepared for Cedar Development 2, LLC by Collingwood Surveying dated August 20, 2007 revised February 21, 2008 recorded in the Office of the ROD for Richland County in Plat Book 1413 at Page 1849. For a more accurate description of the property reference to said survey is hereby craved.

This being a portion of the property conveyed unto Cedar Development 2, LLC by deed of Columbia Investment Corporation and John E. Light dated September 13, 2007 recorded September 17, 2007 in the Office of the ROD for Richland County in Deed Book R1358 at Page 1531.

TMS No. 06110-02-07 (Lot 22)

TMS No. 06110-02-03 (Lot 9)

LESS AND EXCEPTING

All that certain parcel, piece, or lot of land with the improvements thereon, if any, situate, lying and being in the County of Richland and State of South Carolina, shown and designated as Parcel 2, containing .30 acres, more or less, on the plat prepared by City of Columbia Department of Engineering for the City of Columbia dated May 22, 2008 and recorded in Plat Book 1443 at Page 1494 in the Office of the Richland County Register of Deeds and said lot having the boundaries and dimensions as shown on said plat which are incorporated herein by reference; be all measurements a little more or less.

This being a portion of the property conveyed unto Cedar Development 2, LLC by deed of Columbia Investment Corporation and John E. Light dated September 13, 2007 recorded September 17, 2007 in the Office of the ROD for Richland County in Deed Book R1358 at Page 1531.

Portion of TMS No. 06110-02-05

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS
)

Branch Banking and Trust Company,
Plaintiff,

) Case No.: 2013-CP-40-5115
)

v.

) Settlement Stipulation Pursuant to Rule
) 43(k), SCRPC
)

Cedar Development II, LLC a/k/a Cedar
Development 2, LLC,
Defendants.

Pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, the Plaintiff, Branch Banking and Trust Company ("BB&T"), and the Defendant, Cedar Development II, LLC a/k/a Cedar Development 2, LLC ("Cedar"), stipulate to the full and complete settlement of this case effective April 2, 2015 as follows:

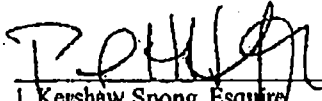
Settlement terms: Cedar hereby withdraws all defenses and dismisses with prejudice all counterclaims asserted in this case against BB&T, its successor and assigns, and will not contest the foreclosure action. In exchange for Cedar's compliance with the foregoing, BB&T will waive late charges, assess interest at the standard rate defined in the subject promissory note rather than the default rate, and will agree to a June foreclosure sale.

Cedar further agrees to cooperate and provide access to the building located at 3715 Broad River Road for inspections at reasonable times as needed before the foreclosure sale.

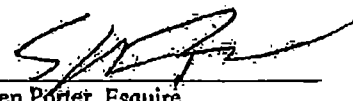
Signatures transmitted electronically shall be as fully effective as originals and the parties authorize the filing thereof with the appropriate Court.

[signature blocks on following page]

WE SO STIPULATE:



J. Kershaw Spong, Esquire
Paul H. Hoefer Esquire
Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, SC 29202
803-779-8900
Attorneys for Plaintiff



Stephen Porter, Esquire
Rogers Lewis Jackson Mann & Quinn, LLC
1330 Lady Street, Suite 400
Columbia, SC 29201
803-256-1268
Attorneys for Defendant

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Thomas E. Lydon
McAngus, Goudelock & Courie, LLC
1320 Main Street, 10th Floor
Post Office Box 12519
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803-779-2300
Attorney for Appellants

October 21, 2015

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SC Court of Appeals