

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Tanya A. Gee, Circuit Court Judge

Case No: 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger to Wachovia Bank, NA Respondent,

v.

Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy, ... Appellants

RECORD ON APPEAL

Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for Appellants

Stanley McGuffin, Esquire
John G. Tamasitis, Esquire
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, Suite 2400
Post Office Box 11889
Columbia, South Carolina 29211
(803) 779-3080

Sarah P. Spruill, Esquire
ONE North Main, 2nd Floor
Greenville, SC 29601-3200
(864) 240-3200

Attorneys for Respondent

RECEIVED
APR 26 2016
SC Court of Appeals

INDEX

Order Denying Defendant's Motion for Summary Judgment and Granting Plaintiff's Motion to Strike Jury Demand of May 5, 2015	1
Order Denying Defendants' Motion for Reconsideration dated June 30, 2015.....	10
Complaint with Exhibits attached dated November 19, 2014	11
Answer and Counterclaims of Defendant Don A. Nummy, II dated January 22, 2015	50
Answer and Counterclaims of Defendants Dee S. Nummy and Don A. Nummy dated January 22, 2015	58
Plaintiff's Reply to Counterclaims of Don A. Nummy, II, dated February 24, 2015.....	66
Plaintiff's Reply to Counterclaims of Dee S. Nummy and Don A. Nummy, dated February 24, 2015.....	70
Plaintiff's Motion to Strike Defendants' Jury Demand and Memorandum of Law in Support dated February 24, 2015	74
Defendants' Memorandum in Opposition to Motion to Strike Jury Demand dated April 16, 2015	81
Defendant's Motion for Summary Judgment with attached Affidavits of Don A. Nummy, II, Dee S. Nummy and Don A. Nummy dated March 25, 2015	96
Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment dated April 15, 2015	127
Defendants' Reply to Memorandum in Opposition to Motion for Summary Judgment dated April 22, 2015	168
Defendants' Motion to Reconsider Order Denying Motion for Summary Judgment and Granting Motion to Strike Jury Trial dated May 22, 2015	195
Notice of Appeal dated July 15, 2015	211
Certificate of Counsel	223

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-32-04259

ORIGINAL

Wells Fargo, N.A. as successor by merger to Wachovia Bank,
National Association

Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: Denying defendant's motion for summary judgment and granting plaintiff's motion to strike jury demand

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge

2756
Judge Code

5/4/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the 18 day of May, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 18 day of May 15 to attorneys of record or to parties (when appearing pro se) as follows:

Louise M. Johnson

Richard Gleissner

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT AND
GRANTING PLAINTIFF'S MOTION TO
STRIKE JURY DEMAND**

FILED

This matter is before me on Defendant Don A. Nummy, II's, Defendant Dee S. Nummy's, and Defendant Don A. Nummy's (collectively, "Defendants") Motion for Summary Judgment and Plaintiff Wells Fargo, N.A. as successor by merger to Wachovia Bank, National Association's ("Plaintiff") Motion to Strike Defendants' Jury Demand. A hearing was held before me on April 22, 2015. Plaintiff appeared through its attorneys, John G. Tamasitis and Stanley H. McGuffin, and Defendants appeared through their attorney, Richard R. Gleissner. As set forth more fully below, Defendant's Motion for Summary Judgment is denied and Plaintiff's Motion to Strike Defendants' Jury Demand is granted.

This case is an action for suit on guaranties signed by Defendants in connection with a promissory note that was executed by Danco Construction, Inc. ("Danco") on July 25, 2006, and delivered to Plaintiff in the original amount of Six Hundred Thousand and 00/100 (\$600,000) Dollars (the "Note"). Defendants executed and delivered to Plaintiff identical Unconditional Guaranty agreements (the "Guaranty Agreements"), pursuant to which Defendants guaranteed the

1 of 7
JACJ
3

payment and performance of each and every debt of Danco. (Complt., Exhs. B and C.) Danco subsequently defaulted on the Note, and Plaintiff made demand upon the Defendants for payment on January 21, 2011. Defendants refused payment; and Plaintiff subsequently filed its Complaint on November 19, 2014.

Defendants' Motion for Summary Judgment asserts Plaintiff's action is barred by the statute of limitations. Plaintiff's Motion to Strike Defendants' Jury Demand was based on the grounds that Defendants had, as part of the Guaranty Agreements, waived their rights to a jury trial. For the reasons set forth below, this Court denies Defendants' Motion for Summary Judgment and grants Plaintiff's Motion to Strike the Jury Demand.

I. The Statute of Limitations Does Not Bar Plaintiff's Claims Because the Guaranty Agreements Were Executed Under Seal.

Defendants' contend in their motion that S.C. Code Ann. § 15-3-530 sets forth the applicable three-year state of limitations for this action. Defendants are correct that, as a general rule, a three-year statute of limitations applies to contract actions in South Carolina. See S.C. Code Ann. § 15-3-530(1). However, when an instrument is executed under seal, S.C. Code Ann. § 15-3-520 provides that the appropriate statute of limitations is twenty years after the cause of action accrues. Thus, the dispositive issue here is whether the Guaranty Agreements executed by Defendants were under seal.

S.C. Code Ann. § 15-3-520(b) provides, in relevant part, that "an action upon a sealed instrument, other than a sealed note and personal bond for the payment of money only" must be brought within twenty years. Defendants' rely on our Court of Appeals' decision in *Carolina Marine Handling v. Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005) for the proposition that words contained in mere boilerplate clauses are not indicia of the intent of the parties to create a

2 of 7

JME

“sealed instrument.” Further, Defendants argue that the Guaranty Agreements were not executed under seal because nowhere in the Guaranty Agreements is there a seal affixed to the documents.

At the outset, it is true that there is not a physical seal affixed to any of the Guaranty Agreements at issue in this case. However, S.C. Code Ann. § 19-1-160 unambiguously provides:

Whenever it shall appear from the attestation clause or from any other part of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a sealed instrument although no seal be actually attached thereto.

(emphasis added). “The clear language of section 19-1-160 imposes a statutory rule of evidence and requires that the determination of whether a non-sealed instrument should be considered a sealed instrument be gleaned from the instrument.” *Carolina Marine Handling, Inc.*, 363 S.C. at 173, 609 S.E.2d at 550-51. If it appears from the instrument that the parties intended for the instrument to be sealed, then the court will deem it sealed. *Id.* at 173, 609 S.E.2d at 551. Therefore, we must look to the Guaranty Agreements themselves to determine if the parties intended for the documents to be executed under seal.

Both Guaranty Agreements contain identical attestation clauses that state:

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

[signatures of parties] (SEAL)

(Compl., Exh. B, at p. 6 and Exh. C, at p. 6.)

In *Carolina Marine Handling, Inc.*, the Court of Appeals explained that a “boilerplate attestation clause, *by itself*,” is not enough to establish the intention of the parties to execute an instrument under seal. 383 S.C. at 175, 609 S.E.2d at 552 (emphasis in original). Indeed, the court cautioned that if such a boilerplate clause required a finding of intent to create a sealed instrument,

3 of 7
JME

then it “would likely transform the twenty-year statute of limitations into the standard period of limitations for contract actions in this state.” *Id.* Thus, the court held that the availability of the twenty-year limitations period under S.C. Code Ann. § 15-3-520 exists only “where the contract clearly evidences an intent to create a sealed instrument.” *Id.*

Here, the Guaranty Agreements do not merely contain boilerplate attestation clauses, but they also noted “(SEAL)” next to the parties’ signatures. The Court of Appeals construed a similar instrument in *South Carolina Department of Social Services v. Winyah Nursing Homes, Inc.*, 282 S.C. 556, 320 S.E.2d 464 (Ct. App. 1984). In that case, following the standard language in the attestation clause “the parties hereto have set their hands and seals,” the contract noted “L.S.” next to the parties’ signatures. *Id.* at 561, 320 S.E.2d at 467. The inclusion of L.S. was significant because, as explained by the court in *Carolina Marine Handling*, L.S. was an abbreviation for “*Locus sigilli*,” which means “the place of the seal; the place occupied by the seal of written instruments.” *Carolina Marine Handling, Inc.*, 363 S.C. at 174, 609 S.E.2d at 551 (discussing the holding in *Winyah Nursing Homes*). For that reason, the Court of Appeals held that the parties’ intended for the contract to be a sealed instrument. *Winyah Nursing Homes*, 282 S.C. at 556, 320 S.E.2d at 467.

The Guaranty Agreements in this case are similar to the instrument in *Winyah Nursing Homes* and show that the parties intended the agreements to be sealed instruments. Not only do they contain language in the attestation clause that the agreements were “to be executed under seal,” but they also note “SEAL” next to the parties’ signatures. As was the case in *Winyah Nursing Homes*, this language is significant and, perhaps, even more so here because the agreements use common language to evidence the parties’ intention for the Guaranty Agreements to be executed under seal.

4 of 7
JAG

Accordingly, the Guaranty Agreements are deemed to have been executed under seal and the twenty-year statute of limitations, as provided in S.C. Code Ann. § 15-3-520, applies to this action. Therefore, because Plaintiff's suit on the Guaranty Agreements was brought within twenty-years after its causes of action accrued, it is not barred by the statute of limitations and Defendants' Motion for Summary Judgment is denied.

II. Defendants Waived Their Right to a Jury Trial in the Guaranty Agreements

Finding that Plaintiff's cause of action is not barred by the statute of limitations, the Court now turns its attention to Plaintiff's Motion to Strike Defendants' Jury Demand. In their Answer and Counterclaim, Defendants made a demand for a jury trial. It is well established in South Carolina that "[a] party may waive the right to a jury trial by contract." *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 332, 755 S.E.2d 437, 443 (2014) (quoting *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63, 566 S.E.2d 863., 866 (Ct. App. 2002)). "A person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it." *Id.* at 332-33, 755 S.E.2d at 443 (citing *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003)). South Carolina law does not "impose a duty on the bank to explain to an individual what he could learn from simply reading the document." *Id.* (citing *Citizens & S. Nat'l Bank of S.C. v. Lanford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994)).

The Guaranty Agreements signed by the Defendants contain identical jury trial waivers:

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN

5 of 7
JAE

DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

(Compl., Exh. A, at p. 6; Exh. B, at p. 6.) By signing the Guaranty Agreements, Defendants are charged with having read their contents.

Further, the jury trial waivers are conspicuous and unambiguous, and therefore, Defendants knowingly and voluntarily waived their rights to a jury trial. Indeed, in *Blackburn*, our Supreme Court held that virtually identical jury trial waivers were conspicuous and unambiguous because “[u]nlike the other provisions in the . . . guaranties, the waivers are printed in all capital letters and have a bold heading called ‘**WAIVER OF JURY TRIAL.**’ They are located at the very end of the six-page document, directly above the signature line, thus making the conspicuous font even more noticeable, even at a quick glance.” *Blackburn*, 407 S.C. at 333 n.8, 755 S.E.2d at 443 n.8. Similarly, the jury trial waivers in this case, unlike the other provisions in the Guaranty Agreements, have bold headings called “**WAIVER OF JURY TRIAL**” and they are located at the very end of the six-page Guaranty Agreements, directly above the signature lines.

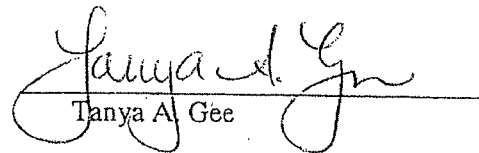
Finally, Defendants’ counterclaims are covered by the jury trial waivers. The *gravamen* of Defendants’ breach of contract counterclaim is that Plaintiff breached the covenant of good faith and fair dealing when it refused to extend any further credit to Danco under the original promissory

6 of 7
JAG

note. (Def. Don A. Nummy II Answer and Countercl. p. 5, at ¶¶ 29-30; Defs. Dee S. Nummy and Don A. Nummy Answer and Countercl. p. 5, at ¶¶ 29-30.) As a result, Defendants assert that this breach of contract "created a substitute contract and/or imposed risk on the Defendants fundamentally different" from the original agreement, thus, giving rise to Defendants' second counterclaim for surety defenses. (Def. Don A. Nummy II Answer and Countercl. p. 6, at ¶ 39; Defs. Dee S. Nummy and Don A. Nummy Answer and Countercl. p. 6, at ¶ 39.) The jury trial waivers apply to these counterclaims because the waivers cover "any litigation based on, or arising out of, under or in connection with . . . the loan documents or any agreement contemplated to be executed in connection with this guaranty, or any course of conduct, course of dealing . . . or actions of any party with respect hereto." (Compl., Exh. A, at p. 6; Exh. B, at p. 6.) Therefore, Defendants cannot avoid the effects of the jury trial waivers, and the waivers are enforceable and applicable to all of the Defendants' counterclaims.

Based on the foregoing, Defendants' Motion for Summary Judgment is **DENIED** and Plaintiff's Motion to Strike Defendants' Jury Demands is **GRANTED**.

AND IT IS SO ORDERED.


Tanya A. Gee

May 4, 2015

7-16-7

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-32-4259

ORIGINAL

Wells Fargo, N.A., et al,

Don A. Nummy, II, Dee S. Nummy, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCp; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Reconsideration is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

James A. Gee
Circuit Court Judge

2756

Judge Code

June 30, 2015

Date

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS

Wells Fargo, N.A. as successor by merger to
Wachovia Bank, National Association,

CIVIL ACTION COVERSHEET

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2014-CP -

vs.

Don A. Nummy, II, Dee S. Nummy, and Don A.
Nummy,

Defendants.

2014CP3204259

Submitted By: Louise M. Johnson
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, SC 29211-1889SC Bar #: 16586
Telephone #: (803) 779-3080
Fax #: (803) 765-1243
E-mail: cjohnson@hsblawfirm.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

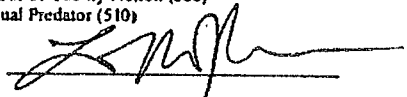
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts
☐ Constructions (100)
☒ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | | |

Submitting Party Signature: 

Date: November 17, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (11/09)

Page 1 of 2

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

COPY
FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-

2014 NOV 19 P 3:36

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

SUMMONS
(Suit on Guaranty)
(Non-Jury)

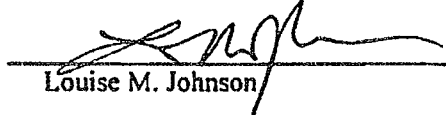
2014 CP 3204259

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the persons whose names are subscribed below at Post Office Box 11889, Columbia, South Carolina 29211-1889, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

HAYNSWORTH SINKLER BOYD, P.A.

By:


 Louise M. Johnson

 Post Office Box 11889
 Columbia, South Carolina 29211-1889
 (803) 779.3080 Tel
 (803) 765.1243 Fax

 Attorneys for Wells Fargo, N.A. as successor
 by merger to Wachovia Bank, National
 Association

November 17, 2014

COPY
FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-

NOV 19 P 3:36

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SCWells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

COMPLAINT
(Suit on Guaranty)
(Non-Jury)

2014CP3204259

Plaintiff Wells Fargo, N.A. as successor by merger to Wachovia Bank, National Association ("Plaintiff"), complaining of the above-captioned defendants, alleges as follows:

1. Plaintiff is a national association organized and existing under the laws of the United States, and Plaintiff is authorized to conduct business in South Carolina.
2. Upon information and belief, defendant Don A. Nummy, II is a resident and citizen of the County of Lexington, State of South Carolina.
3. Upon information and belief, defendant Dee S. Nummy is a resident and citizen of the County of Lexington, State of South Carolina.
4. Upon information and belief, defendant Don A. Nummy is a resident and citizen of the County of Lexington, State of South Carolina.
5. This Court has proper jurisdiction over the subject matter of and the parties to this action.
6. For valuable consideration given, on July 25, 2006, Danco Construction, Inc. ("Danco") executed and delivered to Plaintiff a Promissory Note in the original principal amount

of Six Hundred Thousand and 00/100 (\$600,000.00) Dollars, which was further renewed, modified, and/or extended on June 16, 2008 and August 6, 2009 (collectively, the "Note"). A true and correct copy of the Note is attached hereto as Exhibit A and the terms thereof are incorporated herein by reference.

7. On September 9, 2013, Danco filed for relief under Chapter 7 of the Bankruptcy Code. Any payments received from the trustee will be credited toward the balance.

8. On July 25, 2006, Don A. Nummy, II executed and delivered to Plaintiff that certain Unconditional Guaranty agreement (collectively, "Don Nummy"), pursuant to which Don A. Nummy, II guaranteed the payment and performance of each and every debt of Danco then in existence or which, in the future, might come into existence. A true and correct copy of the Don Nummy Guaranty is attached hereto as Exhibit B and the terms thereof are incorporated herein by reference.

9. On July 25, 2006, Dee S. Nummy and Don A. Nummy executed and delivered to Plaintiff that certain Unconditional Guaranty agreement (collectively, "Dee and Don Nummy Guaranty"), pursuant to which Dee S. Nummy and Don A. Nummy guaranteed the payment and performance of each and every debt of Danco then in existence or which, in the future, might come into existence. A true and correct copy of the Dee and Don Nummy Guaranty is attached hereto as Exhibit C and the terms thereof are incorporated herein by reference.

10. The Don Nummy Guaranty and the Dee and Don Nummy Guaranty may hereinafter be referred to collectively as the "Guaranties.")

11. The Note provides that:

DEFAULT. If any of the following occurs, a default under this Note shall exist. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Nonpayment; Nonperformance. The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents.

12. Danco is in default under the terms of the Note by reason, among others, of its failure to make payments under the terms of the Note when due.

13. Plaintiff has notified Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy of the default and demanded payment, but Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy have failed and refused, and continues to fail and refuse, to cure their contractual default.

14. Plaintiff has and does hereby elect to declare the total unpaid balance of principal and interest under the Guaranties due and payable.

15. There is due and owing on the Note, as of October 2, 2014, the total sum of Four Hundred Eighty One Thousand Four Hundred Fifty and 33/100 (\$481,450.33) Dollars consisting of:

(a) Principal balance	\$453,089.87
(b) Accrued but unpaid interest	\$28,360.46
Total balance due on Note	\$481,450.33

16. There is due and owing on the Guaranties, as of October 2, 2014, the total sum of Four Hundred Eighty One Thousand Four Hundred Fifty and 33/100 (\$481,450.33) Dollars, plus interest accruing daily at the rates set forth in the Note.

17. Don A. Nummy, II has not paid the aforesaid amounts due under the Don Nummy Guaranty.

18. Dee S. Nummy and Don A. Nummy have not paid the aforesaid amounts due under the Dee and Don Nummy Guaranty.

19. The Guaranties provides, in part, "Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations,

including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding."

20. Plaintiff has placed this matter with the undersigned attorneys for collection.

21. Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy have waived notice of presentment and demand for payment or performance, and have waived notice of dishonor. See Exhibit B, page 2 and Exhibit C, page 2.

WHEREFORE, Plaintiff prays that the Court inquire into the matters hereinabove alleged, and enter judgment in Plaintiff's favor as follows:

1. Judgment against Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy on the Guaranties in the amount of \$481,450.33, as of October 2, 2014, plus interest accruing from October 2, 2014, at the rate contained in the Note and thereafter, at the judgment rate;
2. For attorneys' fees and costs incurred by Plaintiff in bringing this action; and
3. For such other and further relief as the Court deems just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Louise M. Johnson

Post Office Box 11889
Columbia, South Carolina 29211-1889
(803) 779.3080 Tel
(803) 765.1243 Fax

Attorneys for Wells Fargo, N.A. as successor
by merger to Wachovia Bank, National
Association

November 17, 2014

06209P305105

PROMISSORY NOTE**\$600,000.00****July 25, 2006**

Danco Construction, Inc.
3665 Augusta Hwy.
Gilbert, South Carolina 29054
 (Hereinafter referred to as "Borrower")

Wachovia Bank, National Association
Greenville, South Carolina 29601
 (Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America, at its office indicated above or wherever else Bank may specify, the sum of Six Hundred Thousand and No/100 Dollars (\$600,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereto, this "Note").

LINE OF CREDIT. Borrower may borrow, repay and reborrow, and, upon the request of Borrower, Bank shall advance and readvance under this Note from time to time (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if a demand for payment is made under this Note or if a Default (as defined in the other Loan Documents) under any Loan Document occurs or in any event, on the first anniversary hereof unless renewed or extended by Bank in writing upon such terms then satisfactory to Bank. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date.

If Borrower subscribes to Bank's cash management services and such services are applicable to this line of credit, the terms of such service shall control the manner in which funds are transferred between the applicable demand deposit account and the line of credit for credit or debit to the line of credit.

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: for working capital.

SECURITY. Borrower has granted Bank a security interest in the collateral described in the Loan Documents, including, but not limited to, personal property collateral described in that certain Security Agreement of even date herewith.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the LIBOR Market Index Rate plus 2.0%, as that rate may change from day to day in accordance with changes in the LIBOR Market Index Rate ("Interest Rate"). "LIBOR Market Index Rate", for any day, means the rate for 1 month U.S. dollar deposits as reported on Telerate page 3750 as of 11:00 a.m., London time, on such day, or if such day is not a London business day, then the immediately preceding London business day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

DEFAULT RATE. In addition to all other rights contained in this Note, if a default in the payment of Obligations occurs, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates,

235073 (Rev. 11.0)

CNOTE

PS11263773210001

CDCNOTEXXX

NOTE 001

EXHIBIT A

05200P305105

shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from demand until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective interest yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective rate exceeding the nominal rate.

REPAYMENT TERMS. This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on August 25, 2008, and continuing on the same day of each month thereafter until fully paid. In any event, this Note shall be due and payable in full, including all principal and accrued interest, on demand.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. Upon the occurrence of a default in the payment of the Obligations or a Default (as defined in the other Loan Documents) under any other Loan Document, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. Loan Documents. The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). Obligations. The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. Certain Other Terms. All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof, unless such late payment is in an amount not greater than the highest periodic payment due hereunder.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

06209P305105

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEMAND NOTE. This is a demand Note and all Obligations hereunder shall become immediately due and payable upon demand. In addition, the Obligations hereunder shall automatically become immediately due and payable if Borrower or any guarantor or endorser of this Note commences or has commenced against it a bankruptcy or insolvency proceeding.

REMEDIES. Upon the occurrence of a default in the payment of the Obligations or a Default (as defined in the other Loan Documents) under any other Loan Document, Bank may at any time thereafter, take the following actions: Bank Lien. Foreclose its security interest or lien against Borrower's accounts without notice. Cumulative. Exercise any rights and remedies as provided under the Note and the other Loan Documents, or as provided by law or equity.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default (as defined in the other Loan Documents) shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. **Assignment.** This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Organization; Powers.** Borrower represents that Borrower (i) is (a) an adult individual and is not a minor, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated;

052094305105

and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. Compliance with Laws. Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, any federal or state laws relating to liquor (including 18 U.S.C. § 3617, et seq.) or narcotics (including 21 U.S.C. § 801, et seq.) and/or any commercial crimes; all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/sanctions/>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. Applicable Law; Conflict Between Documents. This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and construed under the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. Borrower's Accounts. Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's accounts with Bank and any of its affiliates. Swap Agreements. All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. Jurisdiction. Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. Severability. If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable 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 or other such document. Notices. Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. Plural; Captions. All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. Advances. Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. Posting of Payments. All payments received during normal banking hours after 2:00 p.m. local time at the office of Bank first shown above shall be deemed received at the opening of the next banking day. Joint and Several Obligations. If there is

06209P305105

more than one Borrower, each is jointly and severally obligated. Fees and Taxes. Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. Patriot Act Notice. To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **FINAL AGREEMENT.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

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

Danco Construction, Inc.

By: Don S. Nummy (SEAL)
Don S. Nummy, President

Don A. Nummy II (SEAL)
Don A. Nummy, II, Vice President

Don A. Nummy (SEAL)
Don A. Nummy, Secretary

Tracting #: 1253717259
Facility ID 1253773210

DE209091015

more than one Borrower, each is jointly and severally obligated. Fees and Taxes. Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES. EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. Patriot Act Notice. To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. FINAL AGREEMENT. This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

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

Danco Construction, Inc.

By: Don S. Nummy (SEAL)
Don S. Nummy, President

Don A. Nummy, II (SEAL)
Don A. Nummy, II, Vice President

Don A. Nummy (SEAL)
Don A. Nummy, Secretary

Tracking #: 1263717308
Facsimile ID: 1263773210

08171E165009

PROMISSORY NOTE

\$800,000.00

June 16, 2008

Danco Construction, Inc.
 3885 Augusta Highway
 Gilbert, South Carolina 29054
 (Hereinafter referred to as "Borrower")

Wachovia Bank, National Association
 Greenville, South Carolina 29601
 (Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Six Hundred Thousand and No/100 Dollars (\$800,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

RENEWAL/MODIFICATION. This Promissory Note renews, extends and/or modifies that certain Promissory Note dated July 26, 2006, in the original amount of \$800,000.00, as renewed and/or extended from time to time (the "Original Promissory Note"). This Promissory Note is not a novation.

LINE OF CREDIT. Borrower may borrow, repay and reborrow, and, upon the request of Borrower, Bank shall advance and readvance under this Note from time to time (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if a demand for payment is made under this Note or if a Default (as defined in the other Loan Documents) under any Loan Document occurs or in any event, on the first anniversary hereof unless renewed or extended by Bank in writing upon such terms then satisfactory to Bank. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date.

If Borrower subscribes to Bank's cash management services and such services are applicable to this line of credit, the terms of such service shall control the manner in which funds are transferred between the applicable demand deposit account and the line of credit for credit or debit to the line of credit.

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: for working capital.

SECURITY. Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, personal property collateral described in that certain Security Agreement, dated July 26, 2006.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the LIBOR Market Index Rate plus 2.25%, so that rate may change from day to day in accordance with changes in the LIBOR Market Index Rate ("Interest Rate"). "LIBOR Market Index Rate", for any day, means the rate for 1 month U.S. dollar deposits as reported on Telerate Successor Page 3750 as of 11:00 a.m., London time, on such day, or if such day is not a London business day, then the immediately

333220 6/16/08 20 01
 C-012

WPSI2071722840001

CDCNOTEXXX

6/16/08

081712165010

preceding London business day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

DEFAULT RATE. In addition to all other rights contained in this Note, if a default in the payment of Obligations occurs, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from demand until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective interest yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective rate exceeding the nominal rate.

REPAYMENT TERMS. This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on July 25, 2008, and continuing on the same day of each month thereafter until fully paid. In any event, this Note shall be due and payable in full, including all principal and accrued interest, on demand.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. Upon the occurrence of a default in the payment of the Obligations or a Default (as defined in the other Loan Documents) under any other Loan Document, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. Loan Documents. The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 6% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof, unless such late payment is in an amount not greater than the highest periodic payment due hereunder.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

08171E165017

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEMAND NOTE. This is a demand Note and all Obligations hereunder shall become immediately due and payable upon demand. In addition, the Obligations hereunder shall automatically become immediately due and payable if Borrower or any guarantor or endorser of this Note commences or has commenced against it a bankruptcy or insolvency proceeding.

REMEDIES. Upon the occurrence of a default in the payment of the Obligations or a Default (as defined in the other Loan Documents) under any other Loan Document, Bank may at any time thereafter, take the following actions: Bank Lien. Foreclose its security interest or lien against Borrower's deposit accounts and investment property without notice. Cumulative. Exercise any rights and remedies as provided under the Note and the other Loan Documents, or as provided by law or equity.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default (as defined in the other Loan Documents) shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower, and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. Assignment. This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the

08171E165012

Obligations. Organization; Powers. Borrower represents that Borrower (i) is (a) an adult individual and is ~~an~~ an ~~individual~~ or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Compliance with Laws.** Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's deposit accounts and investment property with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in the Bank's address on the first page hereof. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable 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 or other such document. **Payments.** All payments shall be mailed to Bank at Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or other such address as provided by Bank in writing. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor,

08171E105013

person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the address for payments set forth above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated together with all other parties obligated for the Obligations. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **Final Agreement.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

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

Danco Construction, Inc.

By: Don S. Nummy (SEAL)
Don S. Nummy, President

By: Don A. Nummy, II (SEAL)
Don A. Nummy, II, Vice President

By: Don A. Nummy (SEAL)
Don A. Nummy, Secretary

08172E165014

CAT - DocID 2871716476 PostKey ID 2871722649

PROMISSORY NOTE

\$500,000.00

August 6, 2008

Danco Construction, Inc.
3885 Augusta Highway
Gilbert, South Carolina 29054
(Hereinafter referred to as "Borrower")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

RENEWAL/MODIFICATION. This Promissory Note renews, extends and/or modifies that certain Promissory Note dated June 18, 2008, in the original amount of \$600,000.00, as renewed and/or extended from time to time (the "Original Promissory Note"). This Promissory Note is not a novation.

LINE OF CREDIT. Borrower may borrow, repay and reborrow, and, upon the request of Borrower, Bank shall advance and readvance under this Note from time to time until the maturity hereof (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if Borrower is in Default. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date. 30-Day Payout. During the term of the Note, Borrower agrees to pay down the outstanding balance to a maximum of \$100.00 for 30 consecutive days annually.

If Borrower subscribes to Bank's cash management services and such services are applicable to this line of credit, the terms of such service shall control the manner in which funds are transferred between the applicable demand deposit account and the line of credit for credit or debit to the line of credit.

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: for working capital.

SECURITY. Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, personal property collateral described in that certain Security Agreement, dated July 25, 2008, as modified, restated or replaced from time to time.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the greater of LIBOR Market Index Rate plus 3.87%, or the Floor Rate, as that rate may change from day to day in accordance with changes in the LIBOR Market Index Rate ("Interest Rate"). "LIBOR Market Index Rate", for any day, means the rate for 1 month U.S. dollar deposits as reported on Telerate Successor Page 3750 as of 11:00 a.m., London time, on such day, or if such day is not a London business day, then the immediately preceding London business day (or if not so reported, then as

322050 (Rev 2/07)
C220113

WPSI2096302399001

CDCNOTEXXX

Page 002

09230P104009

determined by Bank from another recognized source or interbank quotation). "Floor Rate" shall mean an interest rate of 5.00%.

DEFAULT RATE. In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and as long as a Default continues, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective interest yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective rate exceeding the nominal rate.

REPAYMENT TERMS. This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on September 25, 2009, and continuing on the same day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on February 25, 2010.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. If a Default occurs, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. Loan Documents. The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation,

reasonable arbitration, parategals, attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEFAULT. If any of the following occurs, a default ("Default") under this Note shall exist: Nonpayment; Nonperformance. The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents. False Warranty. A warranty or representation made or deemed made in the Loan Documents or furnished Bank in connection with the loan evidenced by this Note proves materially false, or if of a continuing nature, becomes materially false. Cross Default. At Bank's option, any default in payment or performance of any obligation under any other loans, contracts or agreements of Borrower, any Subsidiary or Affiliate of Borrower, any general partner of or the holder(s) of the majority ownership interests of Borrower with Bank or its affiliates ("Affiliate" shall have the meaning as defined in 11 U.S.C. § 101, as in effect from time to time, except that the term "Borrower" shall be substituted for the term "Debtor" therein; "Subsidiary" shall mean any business in which Borrower holds, directly or indirectly, a controlling interest). Cessation; Bankruptcy. The death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or commencement of any bankruptcy or insolvency proceeding by or against Borrower, its Subsidiaries or Affiliates, if any, or any general partner of or the holder(s) of the majority ownership interests of Borrower, or any party to the Loan Documents. Material Capital Structure or Business Alteration. Without prior written consent of Bank, (i) a material alteration in the kind or type of Borrower's business or that of Borrower's Subsidiaries or Affiliates, if any; (ii) the sale of substantially all of the business or assets of Borrower, any of Borrower's Subsidiaries or Affiliates or any guarantor, or a material portion (10% or more) of such business or assets if such a sale is outside the ordinary course of business of Borrower, or any of Borrower's Subsidiaries or Affiliates or any guarantor, or more than 50% of the outstanding stock or voting power of or in any such entity in a single transaction or a series of transactions; (iii) the acquisition of substantially all of the business or assets or more than 50% of the outstanding stock or voting power of any other entity; or (iv) should any Borrower or any of Borrower's Subsidiaries or Affiliates or any guarantor enter into any merger or consolidation. Material Adverse Change. Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Obligations are impaired or there has occurred a material adverse change in the business or prospects of Borrower, financial or otherwise.

REMEDIES UPON DEFAULT. If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: Bank Lien. Foreclose its security interest or lien against Borrower's deposit accounts and investment property without notice. Acceleration Upon Default. Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable. Cumulative. Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

FINANCIAL COVENANTS. Borrower agrees to the following provisions from the date hereof until final payment in full of the Obligations, unless Bank shall otherwise consent in writing, using the financial

0923GP104010

Information for Borrower, its subsidiaries, affiliates and its holding or parent company, as applicable: Deposit Relationship. Borrower shall maintain its primary depository account with Bank.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. Assignment. This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. Organization; Powers. Borrower represents that Borrower (i) is (a) an adult individual and is an individual, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. Compliance with Laws. Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at

09230P104012

<http://www.treas.gov/offices/enforcement/ofac/edn/index.shtml>, or as otherwise published from time to time, or (B) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. Applicable Law; Conflict Between Documents. This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. Borrower's Accounts. Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's deposit accounts and investment property with Bank and any of its affiliates. Swap Agreements. All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. Jurisdiction. Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in the Bank's address on the first page hereof. Severability. If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable 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 or other such document. Payments. All payments shall be mailed to Bank at Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or other such address as provided by Bank in writing. Notices. Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. Plural; Captions. All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. Advances. Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. Posting of Payments. All payments received during normal banking hours after 2:00 p.m. local time at the address for payments set forth above shall be deemed received at the opening of the next banking day. Joint and Several Obligations. If there is more than one Borrower, each is jointly and severally obligated together with all other parties obligated for the Obligations. Fees and Taxes. Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES. EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. Patriot Act Notice. To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to

obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. Telephone Communication Monitoring. Borrower agrees that Borrower's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. Final Agreement. This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

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

Danco Construction, Inc.

By: Don S. Nummy (SEAL)
Don S. Nummy, President

By: Don A. Nummy II (SEAL)
Don A. Nummy, II, Vice President

By: Don A. Nummy (SEAL)
Don A. Nummy, Secretary

CAT - Doc # 2004002300 Fax # 2004002300

06209P 505104

UNCONDITIONAL GUARANTY

July 25, 2006

Danco Construction, Inc.
3685 Augusta Hwy.
Gibert, South Carolina 29054
(Hereinafter referred to as "Borrower")

Don A. Nummy, II
117 Hollyleaf Lane
Lexington, South Carolina 29072
(Hereinafter referred to as "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated hereunder. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor, and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including

1.00 (Rev. 12-01)

PSI1263773210002

CDGUARXXXX

PAGE 001

EXHIBIT B

05200P305104

any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 28-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guarantees held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or

06209P305104

participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; and (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities. Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

06209P 305104

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. **Assignment.** This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is not ~~is~~ not a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Documents to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and construed under the laws of the state named in Bank's address shown above without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's accounts with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address shown above. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable 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 Guaranty or other Loan Documents. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or

06209P305104

Interpretation of the Loan Documents. Binding Contract. Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty, Amendments, Waivers and Remedies. No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **FINAL AGREEMENT.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

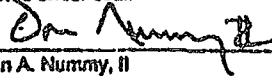
FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced or its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

06209P305104

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

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

 (SEAL)
Dan A. Nummy, II

Tracking #: 1283717208
Facility ID 1283773210

UNCONDITIONAL GUARANTY

July 25, 2006

Danco Construction, Inc.
3685 Augusta Hwy.
Gilbert, South Carolina 29054
(Hereinafter referred to as "Borrower")

Don A. Nummy
113 Point Drive
Lexington, South Carolina 29072

Dea S. Nummy
113 Point Drive
Lexington, South Carolina 29072
(Individually and collectively, "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated hereunder. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

58415a (Rev. 10-01)
C-101A

PSI1263773210001

CDGUARXXXX

0-20-020

EXHIBIT C

05209P30510

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-23 and 49-26, *et seq.*, N.C.G.S. §§ 26-7, *et seq.*, Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that

062008305103

Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates: (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; and (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of such swap agreements, and, Bank and its affiliates may exercise any rights and

06209P305103

remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is single, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and construed under the laws of the state named in Bank's address shown above without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's accounts with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address shown above. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable 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 Guaranty or other Loan Documents. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail,

002092305103

return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty, Amendments, Waivers and Remedies. No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **FINAL AGREEMENT.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced or its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or

attachment against any property of or debts due. Retire or Repurchase Capital Stock. Retire or otherwise acquire any of its capital stock.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

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

 (SEAL)
Don A. Mummy

 (SEAL)
Don S. Mummy

Tracking #: 1283717200
Facility ID 1283773210

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2014 NOV 19 P 3:36

Case No. 2014-CP-

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SCWells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association.

Plaintiff.

VERIFICATION

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy.

Defendants.

2014 CP 3204259

PERSONALLY appeared before me. Laurie McGonigle who, being duly sworn, deposes and says:

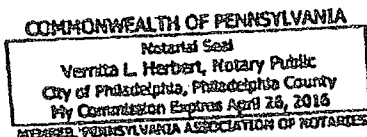
That she is an Assistant Vice President of the Plaintiff herein, Wells Fargo, N.A. as successor by merger to Wachovia Bank, National Association, and as such, it is an integral part of her employment to be familiar with Wells Fargo, N.A. as successor by merger to Wachovia Bank, National Association's records and accounting procedures. Further, he has personally reviewed the account at issue and the Complaint and exhibits attached thereto represent the balance outstanding on this account. Further, that all other allegations in the Complaint and the exhibits attached thereto are true and correct based on her knowledge, information and belief.

Wells Fargo, N.A. as successor by merger to Wachovia
Bank, National Association

By: Laurie McGonigle AVP
Laurie McGonigle
Its: Assistant Vice President

SWORN TO AND SUBSCRIBED BEFORE ME
this 7th day of October, 2014.

Vernita L. Herbert
Notary Public for Pennsylvania
My commission expires: 4/26/16



FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2014 NOV 19 P 3: 36 Case No. 2014-CP-

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SCWells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association.

Plaintiff.

VERIFIED STATEMENT OF ACCOUNT

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy.

Defendants.

2014 CP 3204259

PERSONALLY appeared before me, Laurie McGonigle who, being duly sworn, deposes
and says:

1. I am an Assistant Vice President of the Plaintiff in the above-captioned matter.
2. I have a personal knowledge of the information contained in this Affidavit.
3. The Defendants above-named are currently in arrears to Plaintiff in the amount of \$481,450.33 plus interest having accrued thereon since October 2, 2014, plus attorney's fees and additional costs and expenses.
4. Although duly demanded, no part of the same has been paid by cash, discount or otherwise with all credits justly due.

Wells Fargo, N.A. as successor by merger to Wachovia
Bank, National Association

By:

Laurie McGonigle

Its:

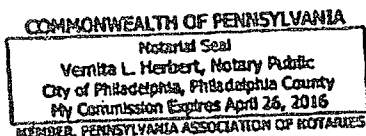
Assistant Vice President

SWORN TO AND SUBSCRIBED BEFORE ME
this 14th day of October, 2014.

Vernita L. Herbert
Notary Public for Pennsylvania

My commission expires:

4/26/2016



IN THE STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
)

Wells Fargo, N.A., as successor by merger
to Wachovia Bank, National Association,

) Civil Action No.: 2014-CP-32-4259
)

Plaintiff,

vs.

) **ANSWER AND COUNTERCLAIMS**
)

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

) **(Jury Trial Demanded)**
)

Defendants.

TO: LOUISE M. JOHNSON, ESQUIRE, HAYNSWORTH SINKLER BOYD, P.A.,
ATTORNEYS FOR PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED

The Defendants, Don A. Nummy II ("Dax" or the "Defendant"), by and through his undersigned attorney provides the following responses to the Plaintiff's Complaint, in the above referenced matter.

FOR A FIRST DEFENSE
(General Denial)

1. All allegations of the Complaint are denied unless otherwise admitted herein.
2. Upon information and belief, the Defendant denies the allegations of paragraph 1 and would show that according to the South Carolina Secretary of State, there is a Wells Fargo Bank, N.A. authorized to do business in South Carolina but there is no Wells Fargo, N.A. authorized to do business in South Carolina.
3. The Defendant denies the allegations of paragraph 2 of the Complaint and would show that Don Nummy, II ("Dax") has recently moved to Louisiana and is now a resident of Louisiana.

4. The Defendant admits the allegations of paragraphs 3, 4, and 5.

5. The Defendant denies the allegations of paragraphs 6 of the Complaint and would respectfully show that in 2006, Danco Construction, Inc. ("Danco") received a line of credit with the maximum credit limit of Six Hundred Thousand Dollars (\$600,000). The maximum credit limit remained at \$600,000 upon maturity of the 2006 obligation in the 2008 renewal. The maximum credit limit was reduced by \$500,000 in the final renewal of August 8, 2009. This line of credit matured on February 25, 2010.

6. Upon information and belief, although not included in the documents presented by the Plaintiff, Wachovia Bank and Danco then entered into an agreement to extend the maturity date until January 21, 2011. On January 11, 2011, Wachovia Bank notified Danco and the Defendants that no further extension would be made to the line of credit. Further, Wachovia Bank made demand upon Danco and the Defendants for full payment of the balance due on the line of credit and demand full payment by January 21, 2011. When Danco and the Defendants were unable to pay the line of credit on January 21, 2011, Wachovia Bank, the plaintiff's predecessor, defaulted the line of credit and declared the entire balance due and owing.

7. The Defendant admits the allegations of paragraph 7.

8. Upon information and belief, as to the allegations of paragraph 8, Dax did sign a guarantee of the line of credit in 2006 and the signature on Exhibit B appears to be his signature, thus upon information and belief, and reserving the right to later deny this allegation if evidence is shown that Exhibit B is not the guarantee that he executed, the Defendants admit the allegation of paragraph 8 of the Complaint.

9. Upon information and belief, as to the allegations of paragraph 9, Don Nummy ("Don") and Dee Nummy ("Dee") did sign a guarantee of the line of credit in 2006 and the

signatures on Exhibit C appear to be their signatures, thus upon information and belief, and reserving the right to later deny this allegation if evidence is shown that Exhibit C is not the guarantee that was executed, the Defendants admit the allegation of paragraph 9 of the Complaint.

10. Reserving the rights as expressed in paragraphs 7 and 8 of this Answer and Counterclaim, the Defendant admits the allegations of paragraph 10 of the Complaint.

11. Defendant admits the allegation of paragraph 11 but would show that there are three different lines of credit and many, many terms of default, in addition to the one referred to in paragraph 11.

12. The Defendant admits the allegations of paragraph 12 that Danco defaulted on this obligation on January 21, 2011 when the last extension of the lines of credit matured and the full payment demanded by the Plaintiff was not made.

13. The Defendant admits the allegations of paragraph 13 that on January 11, 2011, the Plaintiff notified the Defendants and made the demand for payment.

14. The Defendant denies the allegations of paragraph 14, 15, and 16.

15. The Defendant admits the allegations of paragraph 17 and 18 that none of the guarantors have ever made a payment under the guarantees or under the lines of credit to Danco.

16. The Defendant denies the allegations of paragraph 19, 20 and 21 of the Complaint and denies the allegations contained in the Plaintiff's prayer for relief.

**SECOND DEFENSE
(Statute of Limitations)**

The Defendant re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

17. The Plaintiff's action against the Defendants is for breach of contract.

18. Breach of contract has a three year statute of limitations.

19. More than three years have transpired since the Plaintiff's cause of action accrued.

20. The Defendants believe that the cause of action accrued when their guarantees were accepted by the Plaintiff in 2006. Thus, the statute of limitations bars any action brought after 2009.

21. In the alternative, the Plaintiff defaulted Danco construction and made demand upon the Defendants on January 21, 2011. The statute of limitations bars any action brought after January 21, 2014. This action was brought after January 21, 2014.

22. Wherefore, the Plaintiff's action against the Defendants is barred by the Statute of limitations.

**THIRD DEFENSE AND
BY WAY OF FIRST COUNTERCLAIM
(Breach of Contract)**

The Defendant re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

23. In 2006, when the Defendants entered into agreements with Wachovia, they understood that each contract in South Carolina includes the covenant of good faith and fair dealing.

24. The Defendants were running a construction company. Construction companies make money by performing construction projects. These construction projects require the construction company to build a project. Thus, the construction company will spend money building either a commercial or residential building. They will get paid partly, through progress payments, for work performed during the project but, they will usually have funds expended on the project that will only be paid upon the projects completion.

25. Thus, construction companies, like Danco Construction, need lines of credits that will allow them to have the funds necessary to complete a project and then get paid upon that completion.

26. In 2006, when the Defendants guaranteed the line of credit for Danco Construction, the Defendants and the Plaintiff understood that the line of credit would be the life blood of Danco

Construction.

27. In 2008, 2009, and 2010, when the line of credit came up for renewal, the Plaintiff fully understood Danco's need for this line of credit and cooperated in the extension of this line of credit that allowed Danco to stay in business. In fact, Danco's business was so good that in 2009, the parties agreed that the maximum available amount to be extended on the line of credit could be reduced to \$500,000.

28. As the end of 2010, Danco had never missed a payment on the lines of credit. Danco had never defaulted on any of its obligations under the lines of credit. Danco was in full compliance with its duties and obligations under the lines of credit.

29. On January 11, 2011, with the credit line about to expire on January 21, 2011, the Plaintiff refused any further extensions on the line of credit. In January 2011, the Plaintiff failed to act in a commercially reasonable manner and failed to act in good faith.

30. In January 2011, by calling the line of credit, by accelerating the debt and by defaulting Danco and the Defendants, the Plaintiff breached the covenant of good faith and fair dealing with the Defendants.

31. Prior to the actions of the Plaintiff, Danco was a thriving business that had survived the economic down turn of 2007-2008. Danco had projects on the books and had the potential to make significant profits for the Defendants.

32. Because of the actions of the Plaintiff, Danco was not able to make those profits and the Defendants were not able to share in the benefits of all of the work that they had done for Danco.

33. Wherefore, as a direct and proximate result of the actions of the Plaintiff, Danco filed bankruptcy in 2013. As a direct and proximate result of the Plaintiff's breach of contract and breach of the covenant of good faith and fair dealing, the Defendants lost all of their equity in and

investments in Danco Construction.

34. Wherefore, the Defendants are entitled to damages, as to be shown at trial, for the Plaintiff's breach of the covenant of good faith and fair dealing.

FOURTH DEFENSE AND
BY WAY OF SECOND COUNTERCLAIM
(Surety Defenses and Causes of Action)

The Defendant re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

35. The Defendants are accommodating parties to Danco Construction and received no direct benefit from the Plaintiff.

36. In this case, the actions of the Plaintiff after defaulting the lines of credit on January 11, 2011, modified the relationship between the Plaintiff and Danco Construction significantly.

37. At that point, Danco Construction no longer had access to its construction line of credit. At that point, Danco Construction's ability to perform jobs and building construction projects was significantly and detrimentally impacted.

38. In January 2011 and thereafter, the Plaintiff refused to extend the line of credit, refused to term out the line of credit and instead defaulted Danco Construction and demanded full payment of the line of credit.

39. In addition, the Plaintiff's failures in early 2011 and thereafter created a substituted contract and/or imposed risks on the Defendants fundamentally different from those imposed pursuant to the transaction prior to 2011. As such, the Defendants are completely discharged from all liability to the Plaintiff.

40. Further, the Plaintiff changed the risks imposed on the Defendants and therefore, the Defendants have a claim against the Plaintiff for the damages associated with this increased risk.

41. Wherefore, the Defendants are entitled to the surety defenses and are entitled to

damages as a result of the increased risk.

WHEREFORE, the Defendants, having fully responded to the Complaint of the Plaintiff would respectfully pray that this Court issue its order:

- a. Denying the Plaintiff's prayer for relief;
- b. Dismissing this suit;
- c. Granting judgment against the Defendants for the damages caused by the Plaintiffs breach of contract and under the surety causes of action;
- d. Granting the Defendants an award of attorney fees and costs in defending this action against the Plaintiff;
- e. Award such other and further relief as the court deems just and proper.

Respectfully submitted,



Richard R. Gleissner, Esquire
 S.C. Bar Number 15139
 Gleissner Law Firm, L.L.C.
 1237 Gadsden Street, Suite 200A
 Columbia, South Carolina 29201
 (803) 787-0505
 Facsimile (803) 712-4283
 Attorneys for the Defendant
 Don A. Nummy, II

Dated: 1-19-15

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

2015 JAN 22 P 12:21

FILED

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Case No.: 2014-CP-32-04259

Plaintiff,

vs.

CERTIFICATE OF SERVICE

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

I, the undersigned employee of the Gleissner Law Firm, LLC, attorneys for the Defendant, Don A. Nummy, II, do hereby certify that I have served a copy of the documents listed below in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Documents served

Defendant's Answer to Complaint

Counsel served

Louise M. Johnson, Esquire
Stanley McGuffin, Esquire
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, Suite 2400
Post Office Box 11889
Columbia, South Carolina 29211

BETH A. CAMPBELL
CLERK OF COURT
LEXINGTON, SC

2015 JAN 22 P 12:21

FILED



Richard R. Gleissner

1-19, 2015

IN THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)

Wells Fargo, N.A., as successor by merger)
to Wachovia Bank, National Association,)

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and)
Don A. Nummy,)

Defendants.)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

ANSWER AND COUNTERCLAIMS

(Jury Trial Demanded)

TO: LOUISE M. JOHNSON, ESQUIRE, HAYNSWORTH SINKLER BOYD, P.A.,
ATTORNEYS FOR PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED:

The Defendants, Dee S. Nummy ("Dee") and Don A. Nummy ("Don") (Collectively the
"Defendants"), by and through their undersigned attorney provides the following responses to the
Plaintiff's Complaint, in the above referenced matter.

FOR A FIRST DEFENSE
(General Denial)

1. All allegations of the Complaint are denied unless otherwise admitted herein.
2. Upon information and belief, the Defendants deny the allegations of paragraph 1 and would show that according to the South Carolina Secretary of State, there is a Wells Fargo Bank, N.A. authorized to do business in South Carolina but there is no Wells Fargo, N.A. authorized to do business in South Carolina.
3. The Defendants deny the allegations of paragraph 2 of the Complaint and would show that Don Nummy, II ("Dax") has recently moved to Louisiana and is now a resident of Louisiana.
4. The Defendants admit the allegations of paragraphs 3, 4, and 5.

5. The Defendants deny the allegations of paragraphs 6 of the Complaint and would respectfully show that in 2006, Danco Construction, Inc. ("Danco") received a line of credit with the maximum credit limit of Six Hundred Thousand Dollars (\$600,000). The maximum credit limit remained at \$600,000 upon maturity of the 2006 obligation in the 2008 renewal. The maximum credit limit was reduced by \$500,000 in the final renewal of August 8, 2009. This line of credit matured on February 25, 2010.

6. Upon information and belief, although not included in the documents presented by the Plaintiff, Wachovia Bank and Danco then entered into an agreement to extend the maturity date until January 21, 2011. On January 11, 2011, Wachovia Bank notified Danco and the Defendants that no further extension would be made to the line of credit. Further, Wachovia Bank made demand upon Danco and the Defendants for full payment of the balance due on the line of credit and demand full payment by January 21, 2011. When Danco and the Defendants were unable to pay the line of credit on January 21, 2011, Wachovia Bank, the plaintiff's predecessor, defaulted the line of credit and declared the entire balance due and owing.

7. The Defendants admit the allegations of paragraph 7.

8. Upon information and belief, as to the allegations of paragraph 8, Dax did sign a guarantee of the line of credit in 2006 and the signature on Exhibit B appears to be his signature, thus upon information and belief, and reserving the right to later deny this allegation if evidence is show that Exhibit B is not the guarantee that he executed, the Defendants admit the allegation of paragraph 8 of the Complaint.

9. Upon information and belief, as to the allegations of paragraph 9, Don and Dee did sign a guarantee of the line of credit in 2006 and the signatures on Exhibit C appear to be their signature, thus upon information and belief, and reserving the right to later deny this allegation if

evidence is show that Exhibit C is not the guarantee that was executed, the Defendants admit the allegation of paragraph 9 of the Complaint.

10. Reserving the rights as expressed in paragraphs 7 and 8 of this Answer and Counterclaim, the Defendants admit the allegations of paragraph 10 of the Complaint.

11. Defendant admits the allegation of paragraph 11 but would show that there are three different lines of credit and many, many terms of default, in addition to the one referred to in paragraph 11.

12. The Defendants admits the allegations of paragraph 12 that Danco defaulted on this obligation on January 21, 2011 when the last extension of the lines of credit matured and the full payment demanded by the Plaintiff was not made.

13. The Defendants admit the allegations of paragraph 13 that on January 11, 2011, the Plaintiff notified the Defendants and made the demand for payment.

14. The Defendant denies the allegations of paragraph 14, 15, and 16.

15. The Defendants admit the allegations of paragraph 17 and 18 that none of the guarantors have ever made a payment under the guarantees or under the lines of credit to Danco.

16. The Defendants deny the allegations of paragraph 19, 20 and 21 of the Complaint and deny the allegations contained in the Plaintiff's prayer for relief.

SECOND DEFENSE
(Statute of Limitations)

The Defendant re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

17. The Plaintiff's action against the Defendants is for breach of contract.

18. Breach of contract has a three year statute of limitations.

19. More than three years have transpired since the Plaintiff's cause of action accrued.

20. The Defendants believe that the cause of action accrued when their guarantees were accepted by the Plaintiff in 2006. Thus, the statute of limitations bars any action brought after 2009.

21. In the alternative, the Plaintiff defaulted Danco construction and made demand upon the Defendants on January 21, 2011. The statute of limitations bars any action brought after January 21, 2014. This action was brought after January 21, 2014.

22. Wherefore, the Plaintiff's action against the Defendants is barred by the Statute of limitations.

**THIRD DEFENSE AND
BY WAY OF FIRST COUNTERCLAIM
(Breach of Contract)**

The Defendant re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

23. In 2006, when the Defendants entered into agreements with Wachovia, they understood that each contract in South Carolina includes the covenant of good faith and fair dealing.

24. The Defendants were running a construction company. Construction companies make money by performing construction projects. These construction projects require the construction company to build a project. Thus, the construction company will spend money building either a commercial or residential building. They will get paid partly, through progress payments, for work performed during the project but, they will usually have funds expended on the project that will only be paid upon the projects completion.

25. Thus, construction companies, like Danco Construction, need lines of credits that will allow them to have the funds necessary to complete a project and then get paid upon that completion.

26. In 2006, when the Defendants guaranteed the line of credit for Danco Construction, the Defendants and the Plaintiff understood that the line of credit would be the life blood of Danco Construction.

27. In 2008, 2009, and 2010, when the line of credit came up for renewal, the Plaintiff fully understood Danco's need for this line of credit and cooperated in the extension of this line of credit that allowed Danco to stay in business. In fact, Danco's business was so good that in 2009, the parties agreed that the maximum available amount to be extended on the line of credit could be reduced to \$500,000.

28. As the end of 2010, Danco had never missed a payment on the lines of credit. Danco had never defaulted on any of its obligations under the lines of credit. Danco was in full compliance with its duties and obligations under the lines of credit.

29. On January 11, 2011, with the credit line about to expire on January 21, 2011, the Plaintiff refused any further extensions on the line of credit. In January 2011, the Plaintiff failed to act in a commercially reasonable manner and failed to act in good faith.

30. In January 2011, by calling the line of credit, by accelerating the debt and by defaulting Danco and the Defendants, the Plaintiff breached the covenant of good faith and fair dealing with the Defendants.

31. Prior to the actions of the Plaintiff, Danco was a thriving business that had survived the economic down turn of 2007-2008. Danco had projects on the books and had the potential to make significant profits for the Defendants.

32. Because of the actions of the Plaintiff, Danco was not able to make those profits and the Defendants were not able to share in the benefits of all of the work that they had done for Danco.

33. Wherefore, as a direct and proximate result of the actions of the Plaintiff, Danco filed bankruptcy in 2013. As a direct and proximate result of the Plaintiff's breach of the covenant of good faith and fair dealing, the Defendants lost all of their equity in and investments in Danco Construction.

34. Wherefore, the Defendants are entitled to damages, as to be shown at trial, for the Plaintiff's breach of the covenant of good faith and fair dealing.

FOURTH DEFENSE AND
BY WAY OF SECOND COUNTERCLAIM
(Surety Defenses and Causes of Action)

The Defendant re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

35. The Defendants are accommodating parties to Danco Construction and received no direct benefit from the Plaintiff.

36. In this case, the actions of the Plaintiff after defaulting the lines of credit on January 11, 2011, modified the relationship between the Plaintiff and Danco Construction significantly.

37. At that point, Danco Construction no longer had access to its construction line of credit. At that point, Danco Construction's ability to perform jobs and building construction projects was significantly and detrimentally impacted.

38. In January 2011 and thereafter, the Plaintiff refused to extend the line of credit, refused to term out the line of credit and instead defaulted Danco Construction and demanded full payment of the line of credit.

39. In addition, the Plaintiff's failures in early 2011 and thereafter created a substituted contract and/or imposed risks on the Defendants fundamentally different from those imposed pursuant to the transaction prior to 2011. As such, the Defendants are completely discharged from all liability to the Plaintiff.

40. Further, the Plaintiff changed the risks imposed on the Defendants and therefore, the Defendants have a claim against the Plaintiff for the damages associated with this increased risk.

41. Wherefore, the Defendants are entitled to the surety defenses and are entitled to damages as a result of the increased risk.

WHEREFORE, the Defendants, having fully responded to the Complaint of the Plaintiff would respectfully pray that this Court issue its order:

- a. Denying the Plaintiff's prayer for relief;
- b. Dismissing this suit;
- c. Granting judgment against the Defendants for the damages caused by the Plaintiffs breach of contract and under the surety causes of action;
- d. Granting the Defendants an award of attorney fees and costs in defending this action against the Plaintiff;
- e. Award such other and further relief as the court deems just and proper.

Respectfully submitted,



Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Facsimile (803) 712-4283
Attorneys for the Defendants
Dee S. Nummy, and Don A. Nummy

Dated: 1-16-14

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

FILED

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Case No.: 2014-CP-32-04259

JAN 20 P 12:15

Plaintiff,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

vs.

CERTIFICATE OF SERVICE

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

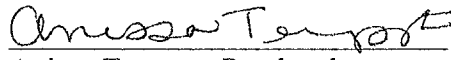
I, the undersigned employee of the Gleissner Law Firm, LLC, attorneys for the Defendants, ~~Don A. Nummy, II~~, Dee S. Nummy, and Don A. Nummy, do hereby certify that I have served a copy of the documents listed below in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Documents served

Defendants' Answer to Complaint

Counsel served

Louise M. Johnson, Esquire
Stanley McGuffin, Esquire
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, Suite 2400
Post Office Box 11889
Columbia, South Carolina 29211


Anissa Terpstra, Paralegal

January 16, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

**PLAINTIFF'S REPLY TO COUNTERCLAIM
OF DON A. NUMMY, II**

Plaintiff replies to the counterclaims of Don A Nummy, II ("Defendant") as follows:

FOR A FIRST DEFENSE

1. Plaintiff currently lacks sufficient information or belief to admit or deny paragraphs 23, 24, 25, 26 and 27 and therefore denies same.
2. Plaintiff denies Paragraph 28.
3. In response to paragraph 29, Plaintiff would admit that the line of credit expired on January 21, 2011 and that it was not further extended. Plaintiff denies the remaining allegations of paragraph 29.
4. Plaintiff denies paragraph 30.
5. Plaintiff currently lacks sufficient information or belief to admit or deny paragraph 31, and therefor denies same.
6. Plaintiff denies paragraphs 32, 33, 34, 35 and 36.
7. Plaintiff admits so much of paragraph 37 as alleges that after January 11, 2011, it no longer had access to the line of credit. Plaintiff currently lacks sufficient information or belief to admit or deny the remaining allegations of paragraph 37, and therefore denies same.

8. Plaintiff admits paragraph 38, but would qualify the response by asserting that plaintiff did not default Danco Construction. However, Danco Construction did default under the terms of the line of credit by failing to pay the line of credit according to its terms.

9. Plaintiff denies paragraphs 39, 40 and 41.

10. Plaintiff denies each allegation not specifically admitted, qualified or explained.

FOR A SECOND DEFENSE DEFENSE

11. Plaintiff asserts that Defendant has waived and released various claims by the terms of the guaranty, including but not limited to counterclaims, setoffs and various defenses, including, invalidity, insufficiency, unenforceability and impairment.

FOR A THIRD DEFENSE DEFENSE

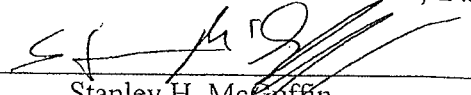
12. Plaintiff would assert that the three (3) year statute of limitation is not applicable because the subject guaranty is a guaranty under seal and therefore subject to a twenty (20) year statute of limitations.

13. Plaintiff would further assert that payments and acknowledgements of the debt were made during the asserted three year statute window which revived any running of an asserted three (3) year limitations period.

Accordingly, Plaintiff submits that the counterclaims should be dismissed and that Plaintiff

should be awarded judgment as prayed for in its Complaint.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Stanley H. McGuffin

SC Bar No. 3830

1201 Main Street, Suite 2200

Post Office Box 11889 (29211-1889)

Columbia, South Carolina 29201

(803) 779.3080 Tel

(803) 765.1243 Fax

Email Address: smcguffin@hsblawfirm.com

Attorneys for Wells Fargo, N.A. as successor
by merger to Wachovia Bank, National
Association

February 24, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

CERTIFICATE OF SERVICE

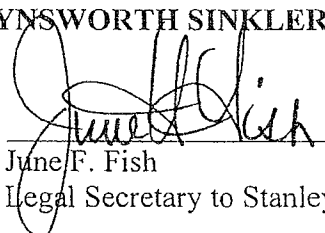
I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the addresses shown below.

1. **PLAINTIFF'S REPLY TO COUNTERCLAIM OF
DON A. NUMMY, II**

Parties of Record

Richard R. Gleissner, Esq.
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, SC 29201

HAYNSWORTH SINKLER BOYD, P.A.

By: 

June F. Fish

Legal Secretary to Stanley H. McGuffin

Date: February 24, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

**PLAINTIFF'S REPLY TO COUNTERCLAIM
OF DEE S. NUMMY and DON A. NUMMY**

Plaintiff replies to the counterclaims of Dee S. Nummy and Don A. Nummy (collectively "the Defendant") as follows:

FOR A FIRST DEFENSE

1. Plaintiff currently lacks sufficient information or belief to admit or deny paragraphs 23, 24, 25, 26 and 27 and therefore denies same.
2. Plaintiff denies Paragraph 28.
3. In response to paragraph 29, Plaintiff would admit that the line of credit expired on January 21, 2011 and that it was not further extended. Plaintiff denies the remaining allegations of paragraph 29.
4. Plaintiff denies paragraph 30.
5. Plaintiff currently lacks sufficient information or belief to admit or deny paragraph 31, and therefor denies same.
6. Plaintiff denies paragraphs 32, 33, 34, 35 and 36.

7. Plaintiff admits so much of paragraph 37 as alleges that after January 11, 2011, it no longer had access to the line of credit. Plaintiff currently lacks sufficient information or belief to admit or deny the remaining allegations of paragraph 37, and therefore denies same.

8. Plaintiff admits paragraph 38, but would qualify the response by asserting that plaintiff did not default Danco Construction. However, Danco Construction did default under the terms of the line of credit by failing to pay the line of credit according to its terms.

9. Plaintiff denies paragraphs 39, 40 and 41.

10. Plaintiff denies each allegation not specifically admitted, qualified or explained.

FOR A SECOND DEFENSE DEFENSE

11. Plaintiff asserts that Defendant has waived and released various claims by the terms of the guaranty, including but not limited to counterclaims, setoffs and various defenses, including, invalidity, insufficiency, unenforceability and impairment.

FOR A THIRD DEFENSE DEFENSE

12. Plaintiff would assert that the three (3) year statute of limitation is not applicable because the subject guaranty is a guaranty under seal and therefore subject to a twenty (20) year statute of limitations.

13. Plaintiff would further assert that payments and acknowledgements of the debt were made during the asserted three year statute window which revived any running of an asserted three (3) year limitations period.

Accordingly, Plaintiff submits that the counterclaims should be dismissed and that Plaintiff

should be awarded judgment as prayed for in its Complaint.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Stanley H. McGuffin

SC Bar No. 3830

1201 Main Street, Suite 2200

Post Office Box 11889 (29211-1889)

Columbia, South Carolina 29201

(803) 779.3080 Tel

(803) 765.1243 Fax

Email Address: smcguffin@hsblawfirm.com

Attorneys for Wells Fargo, N.A. as successor
by merger to Wachovia Bank, National
Association

February 24. 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

CERTIFICATE OF SERVICE

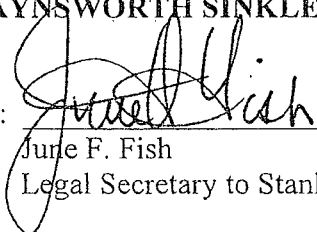
I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the addresses shown below.

1. **PLAINTIFF'S REPLY TO COUNTERCLAIM OF
DEE S. NUMMY and DON A. NUMMY**

Parties of Record

Richard R. Gleissner, Esq.
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, SC 29201

HAYNSWORTH SINKLER BOYD, P.A.

By: 

June F. Fish

Legal Secretary to Stanley H. McGuffin

Date: February 24, 2015

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Wells Fargo, N.A. as successor by merger to
Wachovia Bank, National Association,
☒ Plaintiff

v.

Don A. Nummy, II, Dee S. Nummy, and Don A.
Nummy,
☐ Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.

2014-CP-32-04259

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Stanley H. McGuffin, Bar No. 3830
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, SC 29211-1889
phone: 803-779-3080 fax: 803-765-1243
email: smcguffin@hsblawfirm.com

Defendants' Attorney:
Richard R. Gleissner
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, SC 29201
Phone: 803-787-0505 fax: 803-712-1283
email: Rick@GleissnerLaw.com

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Strike Jury Demand

Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

☐ MOTION FEE COLLECTED: _____

SCCA/233 (11-03)

☐ 75 CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

TO: RICHARD R. GLEISSNER, ESQ., ATTORNEY FOR DEFENDANTS

**MOTION TO STRIKE DEFENDANTS' JURY DEMAND AND
MEMORANDUM OF LAW IN SUPPORT**

Plaintiff Wells Fargo, N.A., as successor by merger to Wachovia Bank, National Association ("Plaintiff") hereby moves pursuant to Rule 12(f) of the South Carolina Rule of Civil Procedure to strike the demands for jury trial of Defendants Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy (hereinafter collectively referred to as "Defendants") included in the Defendants' Answers and Counterclaims filed on or about January 22, 2015. The grounds for this motion are that Defendants have waived their right to a jury trial by signing guaranty agreements, each of which contain a waiver of jury trial provision.

INTRODUCTION

This case is an action for suit on guaranties signed by Defendants in connection with a promissory note that was executed by Danco Construction, Inc. ("Danco") on July 25, 2006 and delivered to Plaintiff in the original amount of Six Hundred Thousand and 00/100 (\$600,000) Dollars. Defendants executed and delivered to Plaintiff Unconditional Guaranty agreements

("Guaranty Agreements"), pursuant to which Defendants guaranteed the payment and performance of each and every debt of Danco. A true and correct copy of the Guaranty Agreements are attached hereto as **Exhibits A and B**.

Danco subsequently defaulted under the terms of the promissory note and filed for relief under Chapter 7 of the Bankruptcy Code. Plaintiff subsequently brought this action against Defendants to recover for the amounts due pursuant to the Guaranty Agreements. In their Answers and Counterclaims, Defendants denied the majority of the allegations in Plaintiff's Complaint and made additional factual allegations. Additionally, the Defendants asserted counterclaims for breach of contract and surety defenses against Plaintiff.

ARGUMENT

Defendants' jury demands should be stricken because they waived their right to a trial by jury in the Guaranty Agreements. "A party may waive the right to a jury trial by contract." *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 332, 755 S.E.2d 437, 443 (2014) (quoting *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63, 566 S.E.2d 863, 866 (Ct. App. 2002)). "A person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it." *Id.* at 332-33, 755 S.E.2d at 443 (citing *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003)). "Instead, when a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents." *Id.* at 333, 755 S.E.2d at 443 (citations omitted). South Carolina law does not "impose a duty on the bank to explain to an individual what he could learn from simply reading the document." *Id.* (citing *Citizens & S. Nat'l Bank of S.C. v. Lanford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994)).

The guaranties signed by the Defendants contain identical jury trial waivers:

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

(Exhibit A, p. 6; Exhibit B, p. 6.) By signing the Guaranty Agreements, Defendants are charged with having read their contents.

Further, the waivers are conspicuous and unambiguous, as a matter of law. Indeed, in *Blackburn*, our Supreme Court held that virtually identical jury trial waivers were conspicuous and unambiguous because “[u]nlike the other provisions in the . . . guaranties, the waivers are printed in all capital letters and have a bold heading called ‘**WAIVER OF JURY TRIAL.**’ They are located at the very end of the six-page document, directly above the signature line, thus making the conspicuous font even more noticeable, even at a quick glance.” *Blackburn* at 333 n.8, 755 S.E.2d at 443 n. 8.

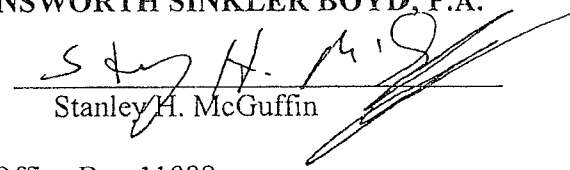
Finally, Defendants’ counterclaims are covered by the jury trial waivers. The gravamen of Defendants’ breach of contract counterclaim is that Plaintiff breached the covenant of good faith and fair dealing when it refused to extend any further credit to Danco under the original promissory note. (Defendant Don A. Nummy II Answer and Counterclaims p. 5, ¶¶ 29-30; Defendants Dee S. Nummy and Don A. Nummy Answer and Counterclaims p. 5, ¶¶ 29-30.) As a result, Defendants

assert that this breach of contract "created a substitute contract and/or imposed risks on the Defendants fundamentally different" from the original agreement, thus, giving rise to Defendants' second counterclaim for surety defenses. (Defendant Don A. Nummy II Answer and Counterclaims p. 6, ¶¶ 39; Defendants Dee S. Nummy and Don A. Nummy Answer and Counterclaims p. 6, ¶¶ 39.) It cannot be disputed that the jury trial waivers apply because the waivers cover "any litigation based on, or arising out of, under or in connection with . . . the loan documents or any agreement contemplated to be executed in connection with this guaranty, or any course of conduct, course of dealing . . . or actions of any party with respect hereto." (Exhibit A, p. 6; Exhibit B, p. 6.) Therefore, Defendants cannot avoid the effects of the jury trial waivers and the waivers are enforceable and applicable to all of Defendants' counterclaims.

CONCLUSION

For the reasons set forth above, Plaintiff requests that Defendants' jury trial demands be stricken, and for such other and further relief as the Court may deem proper.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Stanley H. McGuffin

Post Office Box 11889
Columbia, South Carolina 29211-1889
(803) 779.3080 Tel
(803) 765.1243 Fax

Attorneys for Wells Fargo, N.A. as successor
by merger to Wachovia Bank, National
Association

February 24, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

CERTIFICATE OF SERVICE

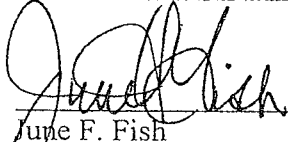
I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the addresses shown below.

1. **MOTION TO STRIKE DEFENDANTS' JURY
DEMAND AND MEMORANDUM OF LAW IN
SUPPORT**

Parties of Record

Richard R. Gleissner, Esq.
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, SC 29201

HAYNSWORTH SINKLER BOYD, P.A.

By: 

June F. Fish

Legal Secretary to Stanley H. McGuffin

Date: February 24, 2015

IN THE STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Wells Fargo, N.A., as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2014-CP-32-4259

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

FILED
CLERK OF COURT
SOUTH CAROLINA
LEXINGTON
JAN 11 2015

The Plaintiff, Wells Fargo, N.A. (“Wells Fargo” or the “Bank”) has moved to strike the Defendant’s request for a jury in the above-captioned matter. The sole reason for this motion to strike is the existence of an alleged waiver of jury trials in the personal bonds in this case. Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy (the “Defendants”) files this memorandum in opposition to the Motion to Strike and believes that the waiver should not be enforced as a knowing and voluntary waiver of the jury demand in this case.

STANDARD OF REVIEW

The proper standard to apply to a motion to strike is the same as the standard for a motion to dismiss under Rule 12(b)(6), of the South Carolina Rules of Civil Procedure. See *Robinson v. Code*, 384 S.C. 582, 682 S.E.2d 495 (2009); *McCormick v. England*, 328 S.C. 627, 632, 494 S.E.2d 431, 433 (Ct.App.1997). Where a pleading is attacked, “the pleading must be liberally construed in favor of the pleader and sustained if the facts and reasonable inferences to be drawn therefrom entitle the pleader to relief on any theory of the case.” *Robinson*, 384 S.C. at 585, 682 S.E.2d at 496; *Burns v. Wannamaker*, 286 S.C. 336, 339, 333 S.E.2d 358, 360 (Ct.App.1985).

INTRODUCTION

On July 25, 2006, the Defendants executed six page document entitled unconditional guaranty (the "Personal Bonds") to Wachovia Bank, National Association. Just as a surety gives their bond to be responsible for the obligations of another, in the Personal Bonds, the Defendants promise to be responsible, for money only, for the obligations of Danco Construction, Inc. ("Danco" or the "Primary Obligor"). On page 6 of the Personal Bonds is the following statement:

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATING TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY THIS GUARANTY.

Personal Bond, p. 6 (capitalization and bold in original, font size not to scale).

On January 11, 2011, the Plaintiff defaulted the Primary Obligor on the underlying note, defaulted the Defendants on the Personal Bonds and made demand upon the Defendants on the Personal Bonds. The Defendants have moved for summary judgment on the issue of whether

this action is barred by the statute of limitations. A copy of the demand letter defaulting the Primary Obligor and making demand on the Defendants is attached to the motion for summary judgment as Exhibit 3.

As a result of the Primary Obligors default and as a consequence, the Plaintiff now seeks as consequential damages for this default the amount still owing by the Primary Obligor. But, in the Personal Bonds, the Plaintiff specifically waives liability for **“INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES”**. See Personal Bond, p. 5 (capitalization and bold in original, font size not to scale). Thus, the Plaintiff has specifically waived the right to seek the damages that it now seeks to collect in this action. Supreme Court has stated:

The damages recoverable for a breach of contract are those which follow as a natural consequence of the breach, or which may reasonably be supposed to have been within the contemplation of the parties at the time the contract was entered into. 22 Am.Jur.2d, Damages, Section 56; *Hiers v. South Carolina Power Co.*, 198 S.C. 280, 17 S.E.2d 698.

Hutson v. Cont'l Assur. Co., 269 S.C. 322, 332-33, 237 S.E.2d 375, 379-80 (1977) overruled by O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (1993). Thus, the Plaintiff is seeking to recover the damages that are a “consequence of the breach”. In other words, the Plaintiff seeks to recover consequential damages it has specifically waived.

After the default by the Primary Obligor, the Plaintiff refused to modify, extend, or treat this obligation as anything but in default after January 21, 2011. More than three years have transpired since the Plaintiff's cause of action accrued on January 21, 2011. The statute of limitations bars any action brought after January 21, 2014. This action was brought after January 21, 2014. Similarly, the Statute of Limitations prohibits the enforcement of any alleged waiver included in the Personal Bonds.

LEGAL ARGUMENT

The Plaintiff's action is an action for money damages and affords the opposing party a right to trial by jury as it is a legal claim. See *Mitchell v. Hamilton*, 98 S.C. 289, 82 S.E. 425, 427 (1914)(holding in an action of foreclosure “[a]ll issues--both legal and equitable--can be disposed of in one action,” but “the legal must be submitted to a jury, and the equitable must be tried by the court”). Similarly, the counterclaims raised by Defendant all relate to the Plaintiff's breach of the Personal Bond and are legal in nature. Thus, the Plaintiff's motion to strike should be denied.

I. The Defendants are Entitled To A Trial By Jury.

The Defendants are entitled under South Carolina law to demand a trial by jury for the legal action brought against them by Plaintiff and its counterclaims asserted against Plaintiff. The action by Plaintiff does not even sound in equity. See *Bartles v. Livingston*, 282 S.C. 448, 319 S.E.2d 707 (Ct. App. 1984). The money judgment the Plaintiff seeks is for a sum certain. Such an action, as a legal action, carries with it the right to trial by jury. Similarly, the compulsory counterclaims regarding the Plaintiff's breach of the Personal Bonds carry with them the right to trial by jury. Therefore, the Plaintiff's motion to strike should be denied.

A. In seeking money damages, the Plaintiff has brought an action providing Defendant with a right to trial by jury

The Defendant is entitled to a jury trial as a constitutional right when the Plaintiff primarily seeks a judgment award of money damages. Article 1, Section 14 of the South Carolina Constitution plainly states “[t]he right of trial by jury shall be preserved inviolate.” The Supreme Court has found that part of the purpose, design, and policy of this right as follows;

“The great right of trial by jury has existed from time immemorial in all those forms of actions at common law which were in use before the adoption of the Code, such as assumpsit, debt, covenant, trover, trespass vi et armis, to try titles, and case, etc., and no

doubt such right exists in the actions provided by the Code as a substitute for these common-law actions [...]"

Frazee v. Bratton, 26 S.C. 348, 2 S.E. 125, 127 (1887)(emphasis added). Since the Plaintiff has prayed for money damages, and it seeks no equitable relief, under the "main purpose" doctrine, the main purpose of this action is a legal claim. *Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956); *Ogilvie v. Smith*, 215 S.C. 300, 54 S.E.2d 860 (1949); and *Alford v. Martin*, 176 S.C. 207, 180 S.E. 13 (1935). The main purpose of the action should generally be ascertained from the body of the complaint. *Id.* However, if necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action. *Bramlett*, *supra*.

Assuming the allegations of the complaint to be true, only one primary right of the Plaintiff has been alleged to have been violated; that is the right to have the terms of the Personal Bond complied with, and the wrong complained of is the noncompliance or breach of the Personal Bond. A suit for breach of contract, regardless of how brought, has the adequate remedy at common law of a monetary judgment by the court of common pleas. See *Smith & Co. v. Bryce*, 17 S.C. 538 (1882)(a suit seeking ordinary remedy at common law entitles a defendant to have his case tried by a jury). Thus, any action seeking a monetary judgment affords the parties a right to a trial by jury under the South Carolina Constitution. See *White v. Kendrick*, 3 S.C.L. 469, 472 (S.C. Const. App. 1805)(stating the summary jurisdiction of the court of common pleas provided either party the right to demand a trial by jury); see also *Airfare, Inc. v. Greenville Airport Comm'n*, 249 S.C. 265, 269, 153 S.E.2d 846, 848 (1967)(holding an action for damages for a breach of contract is an action at law and either party has the right of trial by jury); *Johnson v.*

South Carolina National Bank, 292 S.C. 51, 354 S.E.2d 895 (1987)(holding action against guarantor was legal and that it entitled the guarantor a jury trial); *S. Bank & Trust Co. v. Harley*, 295 S.C. 423, 368 S.E.2d 908 (1988)(holding that an action on a guarantee seeking a deficiency was an action of law). The Plaintiff's suit seeking money damages necessarily provides the Defendants the right of a trial by jury.

The legal remedy of money damages sought by the Plaintiff entitles the Defendant to a right to have the legal claims against it tried by a jury. The cause of action of the Plaintiff as set forth in its complaint is one at law. The counterclaims of Defendants for breach of the Personal Bonds are similarly ones at law.

II. The Plaintiff Is Unable to Enforce the Personal Bonds against the Defendants and, Therefore, Cannot Rely Upon It To Preclude the Defendant's Right to a Trial by Jury.

The Plaintiff's motion to strike Defendants' demand for jury trial should be denied as it improperly relies upon a right to enforce provisions of the Personal Bond against the Defendants. First, the Personal Bond is unenforceable as it is barred by the Statute of Limitations. Second, the waivers relied upon in the Personal Bonds clearly establish that the Plaintiff is not entitled to the consequential damages that it seeks in this law suit. Third, the waiver was not a voluntary and knowing waiver and finally the waiver is unconstitutional. Therefore, the Plaintiff's motion should be denied.

A. The Note is unenforceable as barred by the Statute of Limitations.

The Note and Mortgage on which the Plaintiff seeks recovery are barred by the Statute of Limitations. The Defendants are entitled to judgment as a matter of law on this issue and have moved for summary judgment on this issue. If the Court were to find that there exists a genuine

issue of material fact as to the granting of summary judgment, the Court must also find a genuine issue of material fact as to the enforcement of the waiver provision on jury issues. Summary judgment and motions to strike are appropriate when it is clear there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Café Assocs., Ltd. v. Gerngross*, 305 S.C. 6, 406 S.E.2d 162 (1991). Summary judgment and motions to strike should not be granted when there is a dispute as to the evidentiary facts or if there is a dispute as to the conclusions to be drawn therefrom. *MacFarlane v. Manly*, 274 S.C. 392, 264 S.E.2d 838 (1980). In the Court denies the Defendants motion for summary judgment it must find that a genuine issue of material fact exists as to the enforcement of the Personal Bonds. If the Court grants the Plaintiff's motion to strike, it must find that no genuine issue of material fact exists as to the enforcement of the Personal Bonds. Such findings, by their very nature, are inconsistent. In essence, to enforce the waiver of jury rights, the court must find there are no genuine issues of material fact and by finding there are no genuine issues of material fact, must also grant the Defendants' Motion for Summary Judgment. In this case, the Personal Bonds are unenforceable.

B. The waiver provision within the Personal Bonds prohibits the Plaintiff from seeking the consequential damages that it seeks to claim against the Defendants from the Primary Obligor's default.

Basic contract law provides that when a contract is clear and unambiguous, the language alone determines the contract's force and effect. *C.A.N. Enterprises, Inc. v. South Carolina Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 373 S.E.2d 584 (1988). It is not the function of the court to rewrite contracts for parties. See *Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310 S.E.2d 814 (1983). South Carolina law has generally accepted the principal that parties may

contract as they see fit, provided the contract terms do not offend public policy. See *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 615, 732 S.E.2d 626, 628 (2012).

In this case, the Plaintiff is seeking consequential damages. Specifically, the Plaintiff is seeking damages against the Defendants on the Personal Bonds as consequence of the Primary Obligors' default. But, the contract specifically, says, in bold, capitalized print, that the Plaintiff waives liability for **"INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES"**. See Personal Bond, p. 5 (capitalization and bond in original, font size not to scale).

C. Waivers of the right to trial by jury for compulsory counterclaims have been held unenforceable.

The waiver provision in the Personal Bond in no way waived the Defendant's right to trial by jury. Any party may demand a jury trial on all issues triable as of right by a jury. S.C.R.C.P. 38(b). Rule 39(a) of the South Carolina Rules of Civil Procedure provides that once a party has made a timely demand for a jury trial under Rule 38;

[t]he trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist.

Here, nothing in the record indicates the parties or their attorneys either by written stipulation filed with the court or by oral stipulation made in open court and entered in the record consented to a trial by the court without a jury.

The Defendants have in no way waived their right to a jury trial as to their counterclaims in this action. While the court may find that a party may waive the right to a jury trial by contract, the right to a trial by jury is a substantial right, and the Court must "strictly construe" such waivers. *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63, 566 S.E.2d 863, 866 (Ct.App.2002). Such

waivers are construed “according to the terms the parties used, understood in their plain, ordinary, and popular sense.” *S.C. Farm Bureau Mut. Ins. Co. v. Oates*, 356 S.C. 378, 381, 588 S.E.2d 643, 645 (Ct.App.2003). The waiver provision of the Personal Bond should be found to be unenforceable and not to provide for a waiver of the Defendants of the right to a jury trial as to their counterclaims. The rules of procedure “shall be construed to secure the just, speedy, and inexpensive determination of every action.” Rule 1, SCRPC. The purpose of Rule 13(a) is “to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters.” *Beach Co.*, supra at 351 S.C. 56, 62, 566 S.E.2d 863, 865. Given the express purpose behind the civil rules of procedure and the mandatory nature of compulsory counterclaims, provision in a contract “purporting to waive [a party’s] right to assert a compulsory counterclaim in [an action for breach of that contract] is unenforceable.” *Id.*, 351 S.C. 56, 63, 566 S.E.2d 863, 866. Here, the Plaintiff seeks to prevent the Defendants’ right to a jury trial on compulsory counterclaims and as such, this provision must be found to be unenforceable.

D. The waiver contained in the Personal Bonds were not knowingly and voluntarily waivers of the right to a jury in this case.

The Defendants did not and could not have knowingly and voluntarily agreed to waive their rights to a trial by jury for claims it did not yet know would arise. South Carolina law is clear, “[a] person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it.” *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct.App.2003) (citing *Sims v. Tyler*, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981); *Evans v. State Farm Mut. Auto. Ins. Co.*, 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977)).

Instead, when a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents. *Id.* at 663–64, 582 S.E.2d at 440 (citing several of this Court's cases). “The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document.” *Id.* at 664, 582 S.E.2d at 440 (citing *Citizens & S. Nat'l Bank of S.C. v. Lanford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994)). Pursuant to the plain, ordinary, and popular sense of the Personal Bonds, the provisions at issue could not have knowingly and voluntarily waived the right to a jury for the Defendants’ counterclaims. Thus, the Defendants are entitled to a jury trial on its counterclaims.

The Plaintiff is asking this court to enforce a waiver of the right to a jury before any default occurred, before any litigation was brought, before any knowledge of the conduct on the part of the Plaintiff occurred. How can such a waiver of a jury trial possibly be “knowing” when one doesn’t even know that one has a cause of action against the party seeking the waiver. ‘Waiver has been frequently defined as the voluntary relinquishment of a known right and may be express or implied.’ *Farmers’ & Merchants’ Bank v. People’s First National Bank of Charleston*, 161 S.C. 286, 159 S.E. 617 (1931). There should be a presumption that a waiver contained in an un-negotiated document that contains a waiver of the right to a jury trial is not a knowing and voluntary waiver. The Supreme Court in *Johnson v. South Carolina Nat’l Bank*, stressed that no matter which option the trial judge chooses, great care should be taken to insure that a party's right to a jury trial is not infringed. *Id.* at 52, 354 S. E. 2d at 896 (1987). In the *Howard* Case, the Georgia Court of Appeal’s makes the excellent point, how can a waiver be a knowing and voluntary waiver of events that have not yet transpired? *Howard v. Bank South*,

N.A., 209 Ga.App. 407(4), 433 S.E.2d 625 (1993). Simply, one cannot knowingly and voluntarily waive the right to a jury for unknown events and for events that have not yet occurred.

In criminal matters, before allowing a person accused of a crime to plead guilty and thereby waive the accused's right to a jury trial, the trial court must consider a multitude of factors in determining whether the accused is knowingly and voluntarily waving the right to a jury trial. See Rule 14, SCRCrimP, ("In all cases, the trial judge shall ensure that the defendant's rights under the state and federal constitutions to a trial by jury are preserved."). The trial court does not and would not enforce a waiver that occurred prior to even the crime being committed. That is exactly what the Plaintiff is asking this court to do.

E. The waiver provision within the Personal Bonds are unconstitutional.

The waiver provision within the Personal Bond is repugnant to the Constitution of South Carolina and should be held as unconstitutional. The waiver provision provides for the waiver of the constitutional right of a trial by jury for unknown future causes of action. It is contained in a contract of adhesion where the party waiving its rights has no legitimate alternative. South Carolina law is clear. If an agreement is "manifestly repugnant to the constitution, the parties are not supposed to contract in reference to the act, but in reference to the constitution, as the paramount law." *Belcher ads. Commissioners of Orphan House of Charleston*, 13 S.C.L. 23, 25 (S.C. Const. App. 1822). The South Carolina Constitution has protected the right to a trial by Jury since 1790. Similarly, the statutes regarding waiver of such a right have contained almost the exact same language limiting waivers to certain circumstances. By their terms, both the statutes and the Constitution plainly contemplate the pendency of litigation regarding the right and at the timing of the waiver.

The constitutionality of pre-litigation waivers of the right to a jury have been addressed in California and in Georgia. Both States have held that such waivers are against public policy and cannot be enforced. See *Bank South, N.A. v. Howard*, 264 Ga. 339, 444 S.E.2d 799, (1994) (Georgia Law); *Grafton Partners L.P. v. Superior Court*, 36 Cal.4th 944, 116 P.3d 479, 32 Cal.Rptr.3d 5, (2005) (California Law).

In *Howard*, the Georgia Court of Appeals first looked at the issue of whether a waiver contained in a guaranty can be enforced because the trial court had stricken the jury demand. According to the Georgia Supreme Court, “The Court of Appeals reversed the trial court’s judgment, holding that a valid waiver of jury trial must be knowing and voluntary, and that since Howard could not have known when he signed the guaranty contract what the basis and circumstances of a future claim on the guaranty might be, his waiver could not have been knowing and voluntary. *Howard v. Bank South, N.A.*, 209 Ga.App. 407(4), 433 S.E.2d 625 (1993).” *Bank South, N.A. v. Howard*, 264 Ga. 339, 339, 444 S.E.2d 799, 799 (1994). The Georgia Supreme Court then granted certiorari to “consider whether a pre-litigation contractual waiver of jury trial is enforceable under the laws of Georgia.” *Id.* The Georgia Supreme Court held as follows:

Civil litigants in this state’s courts are guaranteed the right to a jury trial by the Constitution of Georgia and the Civil Practice Act. Waiver of that right is a matter which is “carefully controlled” by statute. *Manderson & Assocs. v. Gore*, 193 Ga.App. 723(5), 389 S.E.2d 251 (1989). The constitutional guarantee of the right to trial by jury refers to two circumstances in which the right may be waived: when no issuable defense is filed and when the parties fail to demand a jury trial. OCGA § 9-11-39(a) provides for waiver by express stipulation, either written and filed in the record or made orally in open court. By their terms, both the statute and the Constitution plainly contemplate the pendency of litigation at the time of the waiver. We conclude, therefore, that pre-litigation

contractual waivers of jury trial are not provided for by our Constitution or Code and are not to be enforced in cases tried under the laws of Georgia.

Id. at 264 Ga. 339, 339-340, 444 S.E.2d 799, 799-800. Similarly the Supreme Court of California examines the constitutional origin of the right to a jury and the statutory requirements associated with the waiver of that right. Finding that no statutory authority exists for a pre-litigation waiver of the right to a jury, the Supreme Court of California holds that such pre-litigation waivers are unenforceable. *Grafton Partners L.P. v. Superior Court*, 36 Cal.4th 944, 116 P.3d 479, 32 Cal.Rptr.3d 5, (2005). No South Carolina case addresses these issues.

In South Carolina, the requirements associated with the waiver of the right to a jury are equally as strict as Georgia and California. Rule 38(a) of the South Carolina Rules of Civil Procedure provides:

The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.

Rule 38(a), SCRPC. The only mechanism under the rules for waiving the right to a jury trial is found in Rule 38(d), SCRPC. This provision provides that “[t]he failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default under Rule 55(a).” Rule 38(d), SCRPC. In this case, the jury trial has been made and the Defendants do not consent to the withdrawal of this demand for a jury trial.

Simply, as in California, there is no procedure and no statute authorizing pre-litigation waivers of the right to a jury trial, let alone pre-dispute waivers of the right to a jury trial. Therefore, the Defendants believe that the South Carolina Supreme Court would join the Supreme Courts of Georgia and California in holding such pre-litigation waivers of the constitutional right to a jury trial unenforceable.

CONCLUSION

The Personal Bonds are unenforceable and any action on them is barred by the statute of limitations. The terms of the Personal Bonds specifically prohibit and waive the damages being sought by the Plaintiff in this action. The Defendants' decision to bring the counterclaims in this action in no way waive their right to a jury trial. Further, pursuant to the plain, ordinary, and popular sense of the Personal Bonds, the Defendants could not have knowingly and voluntarily waived the right to a jury for the events that transpired after the execution of the Personal Bonds. Thus, the Defendants are entitled to a jury trial.

Respectfully submitted,



Richard R. Gleissner, Esquire

S.C. Bar Number 15139

Gleissner Law Firm, L.L.C.

1237 Gadsden Street, Suite 200A

Columbia, South Carolina 29201

(803) 787-0505

Attorney for the Defendants Don A. Nummy, II

Dee S. Nummy and Don A. Nummy

April 14, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	
Wells Fargo, N.A. as successor by merger	)	Case No.: 2014-CP-32-04259
to Wachovia Bank, National Association,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
Don A. Nummy, II, Dee S. Nummy, and	)	
Don A. Nummy,	)	
	)	
Defendants.	)	
	)	

I, the undersigned employee of the Gleissner Law Firm, LLC, attorneys for the Defendants, do hereby certify that I have served a copy of the documents listed below in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Documents served

Defendants' Memorandum in Opposition to Plaintiff's Motion to Strike

Counsel served

Louise M. Johnson, Esquire
Stanley McGuffin, Esquire
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, Suite 2400
Post Office Box 11889
Columbia, South Carolina 29211

FILED
2015 APR 16 4:11:09
BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

Anissa Terpstra
Anissa Terpstra, Paralegal to
Richard R. Gleissner

April 14, 2015

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Wells Fargo, N.A., et al,

☐ Plaintiff

2015 MAR 25 AM 8:33

CASE NO.
2014-CP-32-4259

v.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SCMOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Don A. Nummy, II, Dee S. Nummy, Et Al

☒ Defendant.

Plaintiff's Attorney:

Louise M. Johnson, Esquire, Bar No.

Address:

Post Office Box 11889

Columbia, South Carolina 29211

phone: 803-404-6900 fax:

e-mail: other:

Defendant's Attorney:

Richard R. Gleissner, Bar No. 15139

Address:

1237 Gadsden Street, Suite 200A

Columbia, SC 29201

phone: 803-787-0505 fax: 803-712-4283

e-mail: Rick@Gleissnerlaw.com other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Summary Judgment

Estimated Time Needed: 15 minutes Court Reporter Needed: ☐ YES / ☒ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

March 20, 2015

Date submitted

SECTION III: Motion Fee☒ PAID - AMOUNT: 25.00☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

IN THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON 2015 MAR 29 AM 8:33

Wells Fargo, N.A., as successor by merger,) Civil Action No.: 2014-CP-32-4259
 to Wachovia Bank, National Association,)

Plaintiff,)
 vs.) **DEFENDANTS' MOTION FOR**
) **SUMMARY JUDGMENT**
 Don A. Nummy, II, Dee S. Nummy, and)
 Don A. Nummy,)
)
 Defendants.)
 _____)

TO: STANLEY MCGUFFIN, ESQUIRE, HAYNSWORTH SINKLER BOYD, P.A.,
 ATTORNEYS FOR PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED:

The Defendants, Don A. Nummy, II ("Dax"), Dee S. Nummy ("Dee") and Don A. Nummy ("Don") (Collectively the "Defendants"), by and through their undersigned attorney, does hereby provide notice that they will move on the tenth (10th) day after service hereof or as soon as thereafter as counsel can be heard before the Court of Common Pleas for Lexington County for an order granting summary judgment in favor of the Defendants and against Wells Fargo, N.A., as successor by merger to Wachovia Bank, National Association, (the "Plaintiff" or "Wells Fargo") pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. More specifically, this motion is based on the pleadings in this case, discovery conducted to date and such documents and affidavits which may be submitted prior to the hearing.

The Undisputed Facts

The Plaintiff's action against the Defendants is for breach of contract alleging that they failed to honor the terms of certain personal bond contracts. The first contract is allegedly signed by Don and Dee and is attached to this motion as Exhibit 1. It is also attached to the Complaint as the

personal bond that is being sued upon. The second contract is allegedly signed by Dax and is attached to this motion as Exhibit 2. It too is also attached to the Complaint as the personal bond that is being sued upon.

The Plaintiff defaulted the debtor on the underlying note, Danco Construction, and made demand upon the Defendants on these personal bonds on January 21, 2011. A copy of the demand letter defaulting Danco and making demand on the Defendants is attached hereto as Exhibit 3.

The Defendants have made no payments on this obligation. Attached hereto as Exhibits 4, 5 and 6 are the affidavit of the Defendants stating that they made no payments on this obligation, did not reaffirm this obligation after January 21, 2011, and that Wells Fargo refused to modify, extend, or treat this obligation as anything but in default after January 21, 2011.

More than three years have transpired since the Plaintiff's cause of action accrued on January 21, 2011. The statute of limitations bars any action brought after January 21, 2014. This action was brought after January 21, 2014.

The Law

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Under Rule 56(c), SCRPC: "summary judgment is proper when there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." See *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Id.* at 115, 410 S.E.2d at 545. Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.* at 112, 410 S.E.2d at 543. Nonetheless, the nonmoving party must demonstrate the

likelihood that further discovery will uncover additional relevant evidence. *Id.* at 112, 410 S.E.2d at 544. In this case, the Defendants support their motion with an affidavit and exhibits that unequivocally determine the facts relating to the running of the statute of limitations. The Defendants have carried their burden.

It is well settled that the non-moving party may not rely on mere allegations to resist summary judgment but must present some evidence in the form of affidavits or otherwise in support of its proposition. *Woodson v. DLI Props., LLC*, 406 S.C. 517, 753 S.E.2d 428 (2014). Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations of its pleadings. *See SSI Medical Services, supra*; *Moody v. McLellan*, 295 S.C. 157, 367 S.E.2d 449 (Ct. App. 1988).

Under South Carolina law, the Plaintiff's action cannot survive summary judgment. Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. *See Anonymous Taxpayer v. South Carolina Dept. of Revenue*, 377 S.C. 425, 661 S.E.2d 73 (2008). The period of time for commencing an action involving contracts is prescribed by S.C. Code Ann. § 15-3-530. It provides for a three-year statute of limitations for a cause of action accruing on or after April 5, 1988. A cause of action is barred if it is not brought within the appropriate period.

As the contracts in dispute matured on January 21, 2011, Plaintiff's action was brought more than three years after this action accrued. The action is barred under South Carolina Law. South Carolina law on this issue is clear and has been clear for a long time. In the recent case of *Coastal States Bank v. Cosman*, copy attached as Exhibit 5, the South Carolina Court of Appeals was dealing with the statute of limitations on a guarantee. The court states:

An action for breach of contract must be commenced within three years. S.C. Code Ann. § 15-3-530(1) (2005). Under "the discovery

rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered." *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). "The discovery rule applies to breach of contract actions." *Prince v. Liberty Life Ins. Co.*, 390 S.C. 166, 169, 700 S.E.2d 280, 282 (Ct. App. 2010). "Pursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach, or could or should have discovered the breach through the exercise of reasonable diligence." *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998). "[T]he statute of limitations on an action on an absolute guaranty, which is conditioned only on the debtor's default, begins to run when the obligation matures and the debtor defaults." 38 Am.Jur.2d *Guaranty* § 96, at 1040 (2010).

See exhibit 5 at p. 6. In this case, the debt matured on January 21, 2011 and the Defendants defaulted on January 21, 2011. The statute of limitation bars any action brought after January 21, 2014, including this action.

WHEREFORE the Defendants request that the Court issue an Order granting them summary judgment as a matter of law based upon the running of the statute of limitations.

Respectfully submitted,



Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Facsimile (803) 712-4283
Attorneys for the Defendants
Don A. Nummy, II, Dee S. Nummy and
Don A. Nummy

Dated: March 20, 2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) 2015 MAR 25 AM 8:33

Wells Fargo, N.A. as successor by merger) Case No.: 2014-CP-32-04259
 to Wachovia Bank, National Association,)

Plaintiff,)

vs.)

CERTIFICATE OF SERVICE

Don A. Nummy, II, Dee S. Nummy, and)
 Don A. Nummy,)

Defendants.)
 _____)

I, the undersigned employee of the Gleissner Law Firm, LLC, attorneys for the Defendants, do hereby certify that I have served a copy of the documents listed below in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Documents served

Defendants' Motion for Summary Judgment

Counsel served

Louise M. Johnson, Esquire
 Stanley McGuffin, Esquire
 Haynsworth Sinkler Boyd, P.A.
 1201 Main Street, Suite 2400
 Post Office Box 11889
 Columbia, South Carolina 29211


 Anissa Terpstra, Paralegal to
 Richard R. Gleissner

March 20, 2015

EXHIBIT 1

UNCONDITIONAL GUARANTY

July 25, 2006

Danco Construction, Inc.
3685 Augusta Hwy.
Gilbert, South Carolina 29054
(Hereinafter referred to as "Borrower")

Don A. Nummy
113 Point Drive
Lexington, South Carolina 29072

Dee S. Nummy
113 Point Drive
Lexington, South Carolina 29072
(Individually and collectively, "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated hereunder. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor, and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

531154 (Rev. 02-02)
CLUB

PSI1263773210001

CDGUARXXXX

EXHIBIT C

06209P303103

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that

06208P305103

Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; and (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and

06209P305103

remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. Organization; Powers. Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. Applicable Law; Conflict Between Documents. This Guaranty shall be governed by and construed under the laws of the state named in Bank's address shown above without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. Guarantor's Accounts. Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's accounts with Bank and its affiliates. Jurisdiction. Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address shown above. Severability. If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable 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 Guaranty or other Loan Documents. Notices. Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail,

00209P30510E

return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty, Amendments, Waivers and Remedies. No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **FINAL AGREEMENT.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or

06208P305103

attachment against any property of or debts due. Retire or Repurchase Capital Stock. Retire or otherwise acquire any of its capital stock.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

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

Don A. Mummy (SEAL)
Dee S. Mummy (SEAL)

Tracking #: 1263717208
 Facility ID 1263773210

EXHIBIT 2

06209P305104

UNCONDITIONAL GUARANTY

July 25, 2006

Danco Construction, Inc.
3685 Augusta Hwy.
Gilbert, South Carolina 29054
(Hereinafter referred to as "Borrower")

Don A. Nummy, II
117 Hollyleaf Lane
Lexington, South Carolina 29072
(Hereinafter referred to as "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated hereunder. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including

0.00 000 (Page 20 of 20)

PSI1263773210002

CDGUARXXXX

EXHIBIT B

06209P305104

any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guarantees held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or

06209P305104

participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; and (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

06209P 305104

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is single, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and construed under the laws of the state named in Bank's address shown above without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's accounts with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address shown above. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable 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 Guaranty or other Loan Documents. **Notice.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or

06209P305104

Interpretation of the Loan Documents. Binding Contract. Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty, Amendments, Waivers and Remedies. No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **FINAL AGREEMENT.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

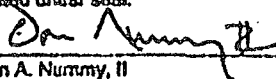
FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced or its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

06209P305104

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

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

 (SEAL)
Dan A. Nummy, II

Tracking #: 1283717208
Facility ID 1263773210

EXHIBIT 3

Wells Fargo Bank National Association
 Special Assets Management
 Telephone: (704) 383-6528
 Fax: (704) 374-6315

rec'd 1-19-2011

January 11, 2011

Danco Construction Inc.
 3665 Augusta Highway
 Gilbert, SC 29054

Re: Promissory Note dated July 25, 2006 executed by Danco Construction (the "Borrower") in favor of Wells Fargo Bank, National Association (the "Bank") in the original principal amount of \$500,000 (as modified and extended, the "Note")

Dear Borrower:

As you know, the Bank's obligation to make advances under the above referenced Note will expire / expired by its terms on January 21, 2011 (the "Expiration Date"). Please be advised that the Bank does **not** intend to extend the Expiration Date. Thus, the Borrower and/or the guarantors should be prepared to satisfy all amounts due and owing under the Note on or before the Expiration Date.

Should you have any questions or concerns regarding the foregoing, please contact me at your earliest convenience.

Sincerely,

Faye Gordon
 Faye Gordon

Portfolio Manager
 (704) 383-6528

Kevin Markland (803) 765-3481

682-4307 (Cell)

Faye Gordon
 left message
 1/19/2011

*He called back.
 then called Faye.
 He will be in the
 to work from the
 out*

EXHIBIT 4

IN THE STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

)) IN THE COURT OF COMMON PLEAS

Wells Fargo, N.A., as successor by merger
to Wachovia Bank, National Association,

))

)))

Civil Action No.: 2014-CP-32-4259

)

)

Plaintiff,

)

vs.

)

**AFFIDAVIT IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

)

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

)

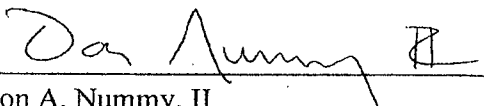
Defendants.

Personally appeared before me, Don A. Nummy, II ("Dax"), who, after being duly sworn, deposes and states:

1. My name is Don A. Nummy, II. I make this affidavit on my own personal knowledge in support of the motion for summary judgment filed on my behalf.
2. Attached to the Motion for Summary Judgment as Exhibit 2 is a copy of a contract that I allegedly signed as my personal bond (the "Personal Bond") to pay the obligations of Danco Construction Company, Inc. ("Danco"). This same contract is attached to the Complaint as the personal bond that is being sued upon in this case. The signature on Exhibit 2 appears to be my signature. I remember signing a personal bond such as this when Danco received its line of credit (the "Line of Credit").
3. On January 21, 2011, Danco and I received a demand letter from the Plaintiff indicating that the line of credit was maturing and the Plaintiff would not renew the line of credit. A copy of the demand letter defaulting Danco and myself is attached as Exhibit 3 to the Motion.
4. I have never made a payment on the obligation of Danco.
5. After January 21, 2011, the Plaintiff refused to negotiate on the Line of Credit. The Plaintiff continually informed us that the Line of Credit was in default. The Plaintiff refused to extend, modify or renew the Line of Credit. The Plaintiff continually demanded payment in full on the Line of Credit.
6. We were in default on the Line of Credit beginning in January 21, 2011 and never reaffirmed the personal bond or made a payment on the personal bond.
7. More than three years have transpired since the Plaintiff's cause of action

accrued on January 21, 2011.

FURTHER AFFIANT SAYETH NOT.


Don A. Nummy, II

Sworn to before me this 10
day of March, 2015.


NOTARY PUBLIC OF LOUISIANA

My Commission Expires: _____

Gina B. McBride
Notary Public No 68850
My Commission is for Life

1

EXHIBIT 5

Civil Action No.: 2014-CP-32-4259

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Personally appeared before me, Dee S. Nummy ("Dee"), who, after being duly sworn, deposes and states:

1. My name is Dee S. Nummy. I make this affidavit on my own personal knowledge in support of the motion for summary judgment filed on my behalf.
2. Attached to the Motion for Summary Judgment as Exhibit 1 is a copy of a contract that I allegedly signed as my personal bond (the "Personal Bond") to pay the obligations of Danco Construction Company, Inc. ("Danco"). This same contract is attached to the Complaint as the personal bond that is being sued upon in this case. The signature on Exhibit 1 appears to be my signature. I remember signing a personal bond such as this when Danco received its line of credit (the "Line of Credit").
3. On January 21, 2011, Danco and I received a demand letter from the Plaintiff indicating that the line of credit was maturing and the Plaintiff would not renew the line of credit. A copy of the demand letter defaulting Danco and myself is attached as Exhibit 3 to the Motion.
4. I have never made a payment on the obligation of Danco.
5. After January 21, 2011, the Plaintiff refused to negotiate on the Line of Credit. The Plaintiff continually informed us that the Line of Credit was in default. The Plaintiff refused to extend, modify or renew the Line of Credit. The Plaintiff continually demanded payment in full on the Line of Credit.
6. We were in default on the Line of Credit beginning in January 21, 2011 and never reaffirmed the personal bond or made a payment on the personal bond.
7. More than three years have transpired since the Plaintiff's cause of action accrued

on January 21, 2011.

FURTHER AFFIANT SAYETH NOT.

Dee S. Nummy
Dee S. Nummy

Sworn to before me this 12th
day of March, 2015.

Robin W. Bowers
NOTARY PUBLIC OF SOUTH CAROLINA
My Commission Expires: 9/7/16

EXHIBIT 6

IN THE STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
)

Wells Fargo, N.A., as successor by merger
to Wachovia Bank, National Association,

) Civil Action No.: 2014-CP-32-4259
)

Plaintiff,

)

vs.

)

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

)

)

)

Defendants.

)

)

Personally appeared before me, Don A. Nummy ("Don"), who, after being duly sworn,
deposes and states:

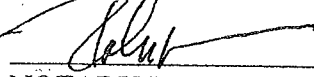
1. My name is Don A. Nummy. I make this affidavit on my own personal knowledge in support of the motion for summary judgment filed on my behalf.
2. Attached to the Motion for Summary Judgment as Exhibit 1 is a copy of a contract that I allegedly signed as my personal bond (the "Personal Bond") to pay the obligations of Danco Construction Company, Inc. ("Danco"). This same contract is attached to the Complaint as the personal bond that is being sued upon in this case. The signature on Exhibit 1 appears to be my signature. I remember signing a personal bond such as this when Danco received its line of credit (the "Line of Credit").
3. On January 21, 2011, Danco and I received a demand letter from the Plaintiff indicating that the line of credit was maturing and the Plaintiff would not renew the line of credit. A copy of the demand letter defaulting Danco and myself is attached as Exhibit 3 to the Motion.
4. I have never made a payment on the obligation of Danco.
5. After January 21, 2011, the Plaintiff refused to negotiate on the Line of Credit. The Plaintiff continually informed us that the Line of Credit was in default. The Plaintiff refused to extend, modify or renew the Line of Credit. The Plaintiff continually demanded payment in full on the Line of Credit.
6. We were in default on the Line of Credit beginning in January 21, 2011 and never reaffirmed the personal bond or made a payment on the personal bond.
7. More than three years have transpired since the Plaintiff's cause of action accrued

on January 21, 2011.

FURTHER AFFIANT SAYETH NOT.


Don A. Nummy

Sworn to before me this 12th
day of March, 2015.


NOTARY PUBLIC OF SOUTH CAROLINA
My Commission Expires: 9/7/16

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Wells Fargo, N.A. as successor by merger to Wachovia Bank, National Association ("Wells Fargo"), through its undersigned counsel, submits this Memorandum in opposition to Defendants Don A. Nummy, II, Dee S. Nummy and Don A. Nummy's (collectively, "Defendants") Motion for Summary Judgment and Affidavit of Robert M. Terway, attached hereto as **Exhibit A**.

FACTUAL BACKGROUND

This case is an action for suit on guaranties that were signed by Defendants in connection with a promissory note that was executed by Danco Construction, Inc. ("Danco") on July 25, 2006 and delivered to Plaintiff in the original amount of Six Hundred Thousand and 00/100 (\$600,000) Dollars (the "Note"). (See Affidavit of R. Terway, at ¶ 5; Answer of Defendants Dee S. Nummy and Don A. Nummy, at ¶ 12.) Defendants executed and delivered to Plaintiff Unconditional Guaranty agreements (the "Guaranty Agreements"), pursuant to which Defendants guaranteed the

payment and performance of each and every debt of Danco. (*See id.*, at ¶¶ 6-8; Answer of Defs. Dee S. Nummy and Don A. Nummy, at ¶¶ 8-9.)

Danco is in default under the terms of the promissory note. (*Id.*, at ¶ 9.) Additionally, Danco filed for relief under Chapter 7 of the Bankruptcy Code. (Compl., at ¶ 7; Answer of Defs. Dee S. Nummy and Don A. Nummy, at ¶ 7.) Upon Danco's default under the terms of the Note, Wells Fargo notified Defendants of the default and demanded payment. (Compl., at ¶ 13; Answer of Defs. Dee S. Nummy and Don A. Nummy, at ¶ 13.) However, Defendants failed and refused, and continue to fail and refuse, to cure their contractual default as set forth in the Guaranty Agreements. (Compl., at ¶ 13.)

Wells Fargo subsequently brought this action against Defendants to recover for the amounts due pursuant to the Guaranty Agreements. In their Answers and Counterclaims, Defendants denied the majority of the allegations in Wells Fargo's Complaint and made additional factual allegations. Further, Defendants asserted counterclaims for breach of contract and surety defenses against Wells Fargo. Defendants also filed a motion for summary judgment, which is currently before this Court, based on the grounds that more than three years have transpired since Wells Fargo's cause of action accrued and, therefore, Wells Fargo's claims under the Guaranty Agreements are barred by the applicable statute of limitations.

However, Wells Fargo's causes of action against Defendants for suit on the Guaranty Agreements are subject to a twenty-year statute of limitations, as prescribed in S.C. Code Ann. § 15-3-520. Thus, Wells Fargo's action is not time barred and this Court must deny Defendants' Motion for Summary Judgment.

ARGUMENT

I. Defendants' Motion for Summary Judgment Relies on the Wrong Statute to Determine the Applicable Limitations Period.

Defendants' assert in their motion that S.C. Code Ann. § 15-3-530 sets forth the applicable three-year statute of limitations for this action. (Defs.' Mot. for Summ. J., at p. 3.) Defendants are correct that, as a general rule, a three-year statute of limitations applies to contract actions in South Carolina. *See* S.C. Code Ann. § 15-3-530(1). However, Defendants' fail to recognize that the Guaranty Agreements that are the subject matter of this action were executed under seal. Therefore, a different statute of limitations applies.

Indeed, both Guaranty Agreements contain an attestation clause that states: "IN WITNESS HEREOF. Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be executed under seal." (Aff. of R. Terway, Ex A. at p. 6; Ex. B. at p. 6.) (emphasis added). Immediately following this language is:

[signatures of parties] (SEAL)

(*Id.*) South Carolina Code Section 19-1-160 provides:

Whenever it shall appear from the attestation clause or from any other part of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a sealed instrument although no seal be actually attached thereto.

"The clear language of section 19-1-160 imposes a statutory rule of evidence and requires that the determination of whether a non-sealed instrument should be considered a sealed instrument be gleaned from the instrument." *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 173, 609 S.E.2d 548, 550-51 (Ct. App. 2005). Thus, if it appears from the instrument that the parties

intended for the contract to be sealed, then the court will deem it sealed. *Id.* at 173, 609 S.E.2d at 551.

Here, the language in the Guaranty Agreements is not merely boilerplate. *Cf. id.* at 174-75, 609 S.E.2d at 551-52 (holding that a standard attestation clause — “IN WITNESS WHEREOF, the parties have hereunto set their hands and seals,” without more, is not enough to evidence intention to create a sealed instrument). Instead, the parties specifically set forth their intention that the Guaranty Agreements be considered sealed instruments by placing the term “SEAL” in all capitalized letters directly after Defendants’ signatures. Therefore, Section 15-3-520(b), which provides a twenty-year statute of limitations for certain actions to enforce “sealed instruments,” governs this action.

II. Defendants are Precluded from Asserting that the Guaranty Agreements are Actually Personal Bonds for the Purpose of Determining the Applicable Statute of Limitations.

Pursuant to S.C. Code Ann. § 15-3-520(b) “an action upon a sealed instrument, other than a sealed note and personal bond for the payment of money only” must be brought within twenty years. If the action is based on a “sealed note and personal bond for the payment of money only,” then the action must be brought within three years. *Id.*; *see also* S.C. Code Ann. § 15-3-530. Defendants, in their motion for summary judgment, have curiously attempted to cast the Guaranty Agreements executed by them in favor of Wells Fargo as “personal bond contracts” in an apparent effort to avoid the twenty-year statute of limitations clearly mandated by S.C. Code Ann. § 15-3-530.

However, Defendants’ Motion for Summary Judgment actually cites South Carolina case law in support of their arguments that deal with the statute of limitations on guarantees, not personal bonds. (Defs.’ Mot. for Summ. J., at pp. 3-4.) Perhaps even more significantly,

Defendants' admitted in their Answers to Wells Fargo's Complaint that the contracts they executed were, in fact, "a guarantee of" Danco's line of credit. (Answer of Defs. Dee S. Nummy and Don A. Nummy, at ¶ 9; Answer of Def. Don A. Nummy, II, at ¶ 8.) Further, Defendants' pleading of the statute of limitations as an affirmative defense in their Answers also characterizes the executed agreements as "guarantees." (Answer of Defs. Dee S. Nummy and Don A. Nummy, at ¶ 20; Answer of Def. Don A. Nummy, II, at ¶ 20 ("The Defendants believe that the cause of action accrued when their guarantees were accepted by the Plaintiff in 2006")).

Therefore, Defendants are precluded from arguing that the instrument they signed was a personal bond, rather than a guaranty. SCRCP 8(f); *see, e.g., Postal v. Mann*, 308 S.C. 385, 389, 418 S.E.2d 322, 387 ("It is well settled that parties are judicially bound by their pleadings, unless withdrawn, altered or stricken by amendment or otherwise. . . . [A]dmissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purposes of the action.") As such, this action is governed by the twenty-year statute of limitations, as provided by S.C. Code Ann. § 15-3-530.

III. The Agreements at Issue are Sealed Guarantees of Danco's Obligation

Even assuming that Defendants are not precluded from arguing that the agreements they entered into were personal bonds for the payment of money only, their arguments still fail. As set forth previously, Defendants have attempted to cast the Guaranty Agreements as personal bonds, even though the agreements are unambiguously titled "UNCONDITIONAL GUARANTY." (Aff. of R. Terway, Ex A. at p. 1; Ex. B. at p. 1.) Additionally, the Guaranty Agreements refer to Defendants throughout the documents as guarantors.

Under South Carolina law, “[a] guaranty of payment is an absolute or unconditional promise to pay a particular debt if it is not paid by the debtor at maturity.” *Citizens and S. Nat’l Bank of South Carolian v. Lanford*, 313 S.C. 540, 543, 443 S.E.2d 549, 550 (1994). A guaranty is, at bottom, a contract and should be construed based on the language used by the parties to express their intention. *Peoples Fed. Sav. & Loan Ass’n v. Myrtle Beach Retirement Group, Inc.*, 300 S.C. 277, 280, 387 S.E.2d 672, 673 (1989). The relevant portion of the Guaranty Agreements read as follows:

To induce Bank to make, extend or renew loans . . . to or for the benefit of Borrower, which are and will be the direct interest and advantage of the Guarantor . . . Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank . . . the timely payment and performance of all liabilities and obligations of Borrower to Bank

GUARANTOR’S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated hereunder. This Guaranty does not impose any obligation to Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. . . .

WAIVERS AND ACKNOWLEDGEMENTS. Guarantor waives and releases the following rights, demands and defenses Guarantor may have with respect to Bank . . . any law or statute that requires that Bank . . . make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations

(Aff. of R. Terway, Ex A. at p. 1-2; Ex. B. at p. 1-2.) (emphasis added).

On its face, the Guaranty Agreements establish the existence of an absolute guaranty of payment. It is well established under South Carolina law “that a guaranty of payment is an obligation separate and distinct from the original note.” *Lanford*, 313 S.C. at 544, 443 S.E.2d at 551; *see also AMA Management Corp. v. Strasburger*, 309 S.C. 213, 219, 420 S.E.2d 868, 872 (Ct. App. 1992) (“A guaranty of payment is an absolute or unconditional promise to pay a particular

debt if it is not paid by the debtor at maturity. It is a personal obligation running directly from the guarantor to the creditor which is immediately enforceable against the guarantor upon default of the debtor.”). To the contrary, a “bond” is “a promise that is defeasible upon a condition subsequent.” *Black's Law Dictionary* (10th ed. 2014) (emphasis added). Because the Guaranty Agreements are personal obligations that were not defeasible upon a condition subsequent and are separate and distinct from the promissory note itself, they are not personal bonds as contemplated by S.C. Code Ann. § 15-3-520(b). Thus, the Guaranty Agreements are subject to a twenty-year statute of limitations as provided in the statute.

This analysis is further bolstered by the South Carolina Court of Appeals’ decision in *TranSouth Fin. Corp. v. Cochran*, 324 S.C. 290, 478 S.E.2d 63 (Ct. App. 1996), a case with similar facts to the situation presented in this action. In that case, a used car dealership and TranSouth executed a promissory note whereby the dealership agreed to pay \$200,000 for the money loaned. *Id.* at 292, 478 S.E.2d at 64. Additionally, three of the dealership’s corporate officers and a related company all individually guaranteed the dealership’s liability to TranSouth and executed separate guaranty agreements. *Id.* The dealership subsequently defaulted on the note and TranSouth brought a collection action which resulted in a confession of judgment by the dealership and all of the guarantors other than Mr. Cochran. *Id.*

Approximately six years later, TranSouth filed an action against Cochran alleging that he was liable under his guaranty for the amount of the judgment. *Id.* at 292-93, 478 S.E.2d at 64. In his Answer, Cochran denied liability and asserted various affirmative defenses, including the statute of limitations. *Id.* at 293, 478 S.E.2d at 64. The case was tried before a jury and the judge directed a verdict in favor of Cochran on various grounds. *Id.* TranSouth appealed the decision of the trial court, which was ultimately reversed by the Court of Appeals. *Id.* at 293, 478 S.E.2d at

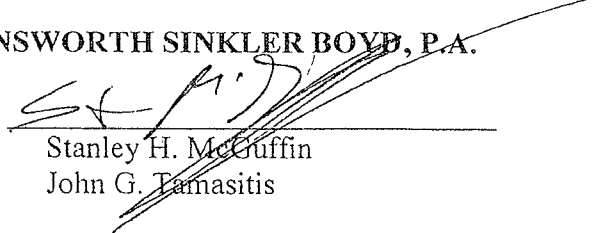
65. More than 10 years after the confession of judgment was entered, the case was retried before a jury. *Id.* At the conclusion of testimony, the trial judge again directed a verdict in favor of Cochran, finding that the confession of judgment had expired and Cochran no longer had an obligation on the guaranty. *Id.*

On appeal, the Court of Appeals ultimately held that Cochran had an independent contractual obligation to TranSouth, which was not extinguished by the expiration of the confession of judgment against the dealership. *Id.* at 294, 478 S.E.2d at 65. In so holding, the court noted that the action for suit on that guaranty was “an action upon a sealed instrument” and, thus, the statute of limitations was 20 years, as required by S.C. Code Ann. § 15-3-520(b). *Id.* at 294 n.2, 478 S.E.2d at 65 n.2.

The facts in this case are analogous to the facts in *TranSouth*. The Guaranty Agreements executed by Defendants represent an independent contractual obligation to Wells Fargo. As stated previously, the parties specifically set forth their intention that the Guaranty Agreements be considered sealed instruments. Therefore, S.C. Code Ann. § 15-3-520(b) mandates that the statute of limitations for this action is 20 years.

Based on the foregoing, Defendants’ motion for summary judgment should be denied.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Stanley H. McGuffin

John G. Tamasitis

Post Office Box 11889
Columbia, South Carolina 29211-1889
(803) 779.3080 Tel
(803) 765.1243 Fax

*Attorneys for Wells Fargo, N.A. as successor
by merger to Wachovia Bank, National
Association*

April 16, 2015



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Wells Fargo, N.A. as successor by merger to
Wachovia Bank, National Association,

Case No.: 2014-CP-32-4259

Plaintiff,

v.

Don A. Nummy, II, Dee S. Nummy, and Don
A. Nummy,

Defendants.

AFFIDAVIT OF ROBERT M. TERWAY

Personally appeared before me, Robert M. Terway, who, being duly sworn, deposes and states that:

1. I am a Vice President for Wells Fargo, N.A. as successor by merger to Wachovia Bank, National Association ("Plaintiff"), a national banking organization.

2. I am duly authorized to make this Affidavit.

3. I am personally familiar with the books and business records maintained by Plaintiff relating to its sales financing accounts.

4. I am the records custodian for Plaintiff's file in the above-referenced matter. The documents attached hereto as exhibits reflect true and correct copies of documents from Plaintiff's loan file in this matter.

5. On or about July 25, 2006, Danco Construction, Inc. executed and delivered to Plaintiff a Promissory Note in the original amount of Six Hundred Thousand and 00/100 (\$600,000.00) Dollars, which was further renewed, modified, and/or extended on June 16, 2008 and August 6, 2009 (collectively referred to as the "Note"). A true and accurate copy of the Note is attached hereto as **Exhibit A**.

6. On or about July 25, 2006, Don A. Nummy, II executed and delivered to Plaintiff that certain Unconditional Guaranty agreement ("Don Nummy Guaranty") which guaranteed the

payment and performance of each and every debt of Danco Construction, Inc. then in existence or which, in the future, might come into existence. A true and accurate copy of the Don Nummy Guaranty is attached hereto as **Exhibit B**.

7. On or about July 25, 2006, Dee S. Nummy and Don A. Nummy executed and delivered to Plaintiff that certain Unconditional Guaranty agreement ("Dee and Don Nummy Guaranty") which guaranteed the payment and performance of each and every debt of Danco Construction, Inc. then in existence or which, in the future, might come into existence. A true and accurate copy of the Dee and Don Nummy Guaranty is attached hereto as **Exhibit C**.

8. The Don Nummy Guaranty and the Dee and Don Nummy Guaranty will hereinafter be referred to collectively as the "Guaranties."

9. Danco Construction, Inc. is in default under the terms of the Note by reason of its failure to make monthly payments when due. Don A. Nummy, Dee S. Nummy, and Don A. Nummy, II are in default under the terms of the Guaranties.

10. As of April 22, 2015, there is due and owing Plaintiff the sum of approximately Four Hundred Eighty One Thousand Six Hundred Ten and 87/100 (\$481,610.87) Dollars, plus costs and attorneys' fees.

11. The last payment to Plaintiff was made on October 27, 2014, in the amount of Twelve Thousand Two Hundred Fifty and 00/100 (\$12,250.00) Dollars.

12. Plaintiff was forced to hire legal counsel to collect the debt owed by Don A. Nummy, Dee S. Nummy, and Don A. Nummy, II under the Guaranties.

Further Affiant Sayeth Not.

[signatures on following page]

WELLS FARGO, N.A. AS SUCCESSOR BY MERGER
TO WACHOVIA BANK, NATIONAL ASSOCIATION

BY:

Robert M. Terway

ITS: Vice President

SWORN TO AND SUBSCRIBED BEFORE ME

This 14 day of April, 2015

Notary Public for Philadelphia

My Commission Expires

4/26/16

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Vernita L. Herbert, Notary Public

City of Philadelphia, Philadelphia County

My Commission Expires April 26, 2016

MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

PROMISSORY NOTE

\$600,000.00

July 25, 2006

Danco Construction, Inc.
 3665 Augusta Hwy.
 Gilbert, South Carolina 29054
 (Hereinafter referred to as "Borrower")

Wachovia Bank, National Association
 Greenville, South Carolina 29601
 (Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America, at its office indicated above or wherever else Bank may specify, the sum of Six Hundred Thousand and No/100 Dollars (\$600,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

LINE OF CREDIT. Borrower may borrow, repay and reborrow, and, upon the request of Borrower, Bank shall advance and readvance under this Note from time to time (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if a demand for payment is made under this Note or if a Default (as defined in the other Loan Documents) under any Loan Document occurs or in any event, on the first anniversary hereof unless renewed or extended by Bank in writing upon such terms then satisfactory to Bank. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date.

If Borrower subscribes to Bank's cash management services and such services are applicable to this line of credit, the terms of such service shall control the manner in which funds are transferred between the applicable demand deposit account and the line of credit for credit or debit to the line of credit.

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: for working capital.

SECURITY. Borrower has granted Bank a security interest in the collateral described in the Loan Documents, including, but not limited to, personal property collateral described in that certain Security Agreement of even date herewith.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the LIBOR Market Index Rate plus 2.0%, as that rate may change from day to day in accordance with changes in the LIBOR Market Index Rate ("Interest Rate"). "LIBOR Market Index Rate", for any day, means the rate for 1 month U.S. dollar deposits as reported on Telerate page 3750 as of 11:00 a.m., London time, on such day, or if such day is not a London business day, then the immediately preceding London business day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

DEFAULT RATE. In addition to all other rights contained in this Note, if a default in the payment of Obligations occurs, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates,

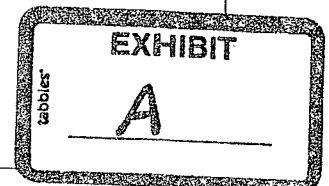
535080 (Rev 23.0)

PSI1263773210001

CDCNOTEXXX

Note doc

CNOTE



06209P305105

shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from demand until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective interest yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective rate exceeding the nominal rate.

REPAYMENT TERMS. This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on August 25, 2006, and continuing on the same day of each month thereafter until fully paid. In any event, this Note shall be due and payable in full, including all principal and accrued interest, on demand.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. Upon the occurrence of a default in the payment of the Obligations or a Default (as defined in the other Loan Documents) under any other Loan Document, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. Loan Documents. The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof, unless such late payment is in an amount not greater than the highest periodic payment due hereunder.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

06209P305105

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEMAND NOTE. This is a demand Note and all Obligations hereunder shall become immediately due and payable upon demand. In addition, the Obligations hereunder shall automatically become immediately due and payable if Borrower or any guarantor or endorser of this Note commences or has commenced against it a bankruptcy or insolvency proceeding.

REMEDIES. Upon the occurrence of a default in the payment of the Obligations or a Default (as defined in the other Loan Documents) under any other Loan Document, Bank may at any time thereafter, take the following actions: **Bank Lien.** Foreclose its security interest or lien against Borrower's accounts without notice. **Cumulative.** Exercise any rights and remedies as provided under the Note and the other Loan Documents, or as provided by law or equity.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default (as defined in the other Loan Documents) shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. Assignment. This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Organization; Powers.** Borrower represents that Borrower (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated;

501505P305105

and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Compliance with Laws.** Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, any federal or state laws relating to liquor (including 18 U.S.C. § 3617, et seq.) or narcotics (including 21 U.S.C. § 801, et seq.) and/or any commercial crimes; all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/sanctions/>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and construed under the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's accounts with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable 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 or other such document. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the office of Bank first shown above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is

06209P305105

more than one Borrower, each is jointly and severally obligated. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **FINAL AGREEMENT.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

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

Danco Construction, Inc.

By: Dee S. Nummy (SEAL)
Dee S. Nummy, President

Don A. Nummy II (SEAL)
Don A. Nummy, II, Vice President

Don A. Nummy (SEAL)
Don A. Nummy, Secretary

Tracking #: 1263717208
Facility ID 1263773210

PROMISSORY NOTE

\$600,000.00

June 16, 2008

Danco Construction, Inc.
 3665 Augusta Highway
 Gilbert, South Carolina 29054
 (Hereinafter referred to as "Borrower")

Wachovia Bank, National Association
 Greenville, South Carolina 29601
 (Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Six Hundred Thousand and No/100 Dollars (\$600,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

RENEWAL/MODIFICATION. This Promissory Note renews, extends and/or modifies that certain Promissory Note dated July 25, 2006, in the original amount of \$600,000.00, as renewed and/or extended from time to time (the "Original Promissory Note"). This Promissory Note is not a novation.

LINE OF CREDIT. Borrower may borrow, repay and reborrow, and, upon the request of Borrower, Bank shall advance and readvance under this Note from time to time (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if a demand for payment is made under this Note or if a Default (as defined in the other Loan Documents) under any Loan Document occurs or in any event, on the first anniversary hereof unless renewed or extended by Bank in writing upon such terms then satisfactory to Bank. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date.

If Borrower subscribes to Bank's cash management services and such services are applicable to this line of credit, the terms of such service shall control the manner in which funds are transferred between the applicable demand deposit account and the line of credit for credit or debit to the line of credit.

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: for working capital.

SECURITY. Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, personal property collateral described in that certain Security Agreement, dated July 25, 2006.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the LIBOR Market Index Rate plus 2.25%, as that rate may change from day to day in accordance with changes in the LIBOR Market Index Rate ("Interest Rate"). "LIBOR Market Index Rate", for any day, means the rate for 1 month U.S. dollar deposits as reported on Telerate Successor Page 3750 as of 11:00 a.m., London time, on such day, or if such day is not a London business day, then the immediately

08171E165069

535080 (Rev 29 0)

CNOTE

WPSI2071722840001

CDCNOTEXXX

Note doc

preceding London business day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

DEFAULT RATE. In addition to all other rights contained in this Note, if a default in the payment of Obligations occurs, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from demand until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective interest yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective rate exceeding the nominal rate.

REPAYMENT TERMS. This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on July 25, 2008, and continuing on the same day of each month thereafter until fully paid. In any event, this Note shall be due and payable in full, including all principal and accrued interest, on demand.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. Upon the occurrence of a default in the payment of the Obligations or a Default (as defined in the other Loan Documents) under any other Loan Document, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. Loan Documents. The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof, unless such late payment is in an amount not greater than the highest periodic payment due hereunder.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEMAND NOTE. This is a demand Note and all Obligations hereunder shall become immediately due and payable upon demand. In addition, the Obligations hereunder shall automatically become immediately due and payable if Borrower or any guarantor or endorser of this Note commences or has commenced against it a bankruptcy or insolvency proceeding.

REMEDIES. Upon the occurrence of a default in the payment of the Obligations or a Default (as defined in the other Loan Documents) under any other Loan Document, Bank may at any time thereafter, take the following actions: **Bank Lien.** Foreclose its security interest or lien against Borrower's deposit accounts and investment property without notice. **Cumulative.** Exercise any rights and remedies as provided under the Note and the other Loan Documents, or as provided by law or equity.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default (as defined in the other Loan Documents) shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. **Assignment.** This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the

08171E165012

Obligations. Organization; Powers. Borrower represents that Borrower (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Compliance with Laws.** Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's deposit accounts and investment property with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in the Bank's address on the first page hereof. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable 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 or other such document. **Payments.** All payments shall be mailed to Bank at Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or other such address as provided by Bank in writing. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor,

08171E165013

person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the address for payments set forth above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated together with all other parties obligated for the Obligations. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **Final Agreement.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED, TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

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

Danco Construction, Inc.

By: Dee S. Nummy (SEAL)
Dee S. Nummy, President

By: Don A. Nummy II (SEAL)
Don A. Nummy, II, Vice President

By: Don A. Nummy (SEAL)
Don A. Nummy, Secretary

CAT - Deal # 2071716478 Facility ID 2071722840

PROMISSORY NOTE

\$500,000.00

August 6, 2009

Danco Construction, Inc.
3665 Augusta Highway
Gilbert, South Carolina 29054
(Hereinafter referred to as "Borrower")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

RENEWAL/MODIFICATION. This Promissory Note renews, extends and/or modifies that certain Promissory Note dated June 16, 2008, in the original amount of \$600,000.00, as renewed and/or extended from time to time (the "Original Promissory Note"). This Promissory Note is not a novation.

LINE OF CREDIT. Borrower may borrow, repay and reborrow, and, upon the request of Borrower, Bank shall advance and readvance under this Note from time to time until the maturity hereof (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if Borrower is in Default. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date. **30-Day Payout.** During the term of the Note, Borrower agrees to pay down the outstanding balance to a maximum of \$100.00 for 30 consecutive days annually.

If Borrower subscribes to Bank's cash management services and such services are applicable to this line of credit, the terms of such service shall control the manner in which funds are transferred between the applicable demand deposit account and the line of credit for credit or debit to the line of credit.

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: for working capital.

SECURITY. Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, personal property collateral described in that certain Security Agreement, dated July 25, 2006, as modified, restated or replaced from time to time.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the greater of LIBOR Market Index Rate plus 3.67%, or the Floor Rate, as that rate may change from day to day in accordance with changes in the LIBOR Market Index Rate ("Interest Rate"). "LIBOR Market Index Rate", for any day, means the rate for 1 month U.S. dollar deposits as reported on Telerate Successor Page 3750 as of 11:00 a.m., London time, on such day, or if such day is not a London business day, then the immediately preceding London business day (or if not so reported, then as

09230P104008

535060 (Rev 32 0)

WPSI2096302399001

CDCNOTEXXX

Note doc

CNOTE

determined by Bank from another recognized source or interbank quotation). "Floor Rate" shall mean an interest rate of 5.00%.

DEFAULT RATE. In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and as long as a Default continues, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective interest yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective rate exceeding the nominal rate.

REPAYMENT TERMS. This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on September 25, 2009, and continuing on the same day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on February 25, 2010.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. If a Default occurs, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. Loan Documents. The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation,

reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEFAULT. If any of the following occurs, a default ("Default") under this Note shall exist: **Nonpayment; Nonperformance.** The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents. **False Warranty.** A warranty or representation made or deemed made in the Loan Documents or furnished Bank in connection with the loan evidenced by this Note proves materially false, or if of a continuing nature, becomes materially false. **Cross Default.** At Bank's option, any default in payment or performance of any obligation under any other loans, contracts or agreements of Borrower, any Subsidiary or Affiliate of Borrower, any general partner of or the holder(s) of the majority ownership interests of Borrower with Bank or its affiliates ("Affiliate" shall have the meaning as defined in 11 U.S.C. § 101, as in effect from time to time, except that the term "Borrower" shall be substituted for the term "Debtor" therein; "Subsidiary" shall mean any business in which Borrower holds, directly or indirectly, a controlling interest). **Cessation; Bankruptcy.** The death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or commencement of any bankruptcy or insolvency proceeding by or against Borrower, its Subsidiaries or Affiliates, if any, or any general partner of or the holder(s) of the majority ownership interests of Borrower, or any party to the Loan Documents. **Material Capital Structure or Business Alteration.** Without prior written consent of Bank, (i) a material alteration in the kind or type of Borrower's business or that of Borrower's Subsidiaries or Affiliates, if any; (ii) the sale of substantially all of the business or assets of Borrower, any of Borrower's Subsidiaries or Affiliates or any guarantor, or a material portion (10% or more) of such business or assets if such a sale is outside the ordinary course of business of Borrower, or any of Borrower's Subsidiaries or Affiliates or any guarantor, or more than 50% of the outstanding stock or voting power of or in any such entity in a single transaction or a series of transactions; (iii) the acquisition of substantially all of the business or assets or more than 50% of the outstanding stock or voting power of any other entity; or (iv) should any Borrower or any of Borrower's Subsidiaries or Affiliates or any guarantor enter into any merger or consolidation. **Material Adverse Change.** Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Obligations are impaired or there has occurred a material adverse change in the business or prospects of Borrower, financial or otherwise.

REMEDIES UPON DEFAULT. If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: **Bank Lien.** Foreclose its security interest or lien against Borrower's deposit accounts and investment property without notice. **Acceleration Upon Default.** Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable. **Cumulative.** Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

FINANCIAL COVENANTS. Borrower agrees to the following provisions from the date hereof until final payment in full of the Obligations, unless Bank shall otherwise consent in writing, using the financial

information for Borrower, its subsidiaries, affiliates and its holding or parent company, as applicable: **Deposit Relationship.** Borrower shall maintain its primary depository account with Bank.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. Assignment. This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Organization; Powers.** Borrower represents that Borrower (i) is (a) an adult individual and is *sui juris*, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Compliance with Laws.** Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at

09230P104012

<http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's deposit accounts and investment property with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in the Bank's address on the first page hereof. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable 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 or other such document. **Payments.** All payments shall be mailed to Bank at Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or other such address as provided by Bank in writing. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the address for payments set forth above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated together with all other parties obligated for the Obligations. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to

09230P104013

obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **Telephone Communication Monitoring.** Borrower agrees that Borrower's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

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

Danco Construction, Inc.

By: Dee S. Nummy (SEAL)
Dee S. Nummy, President

By: Don A. Nummy II (SEAL)
Don A. Nummy, II, Vice President

By: Don A. Nummy (SEAL)
Don A. Nummy, Secretary

CAT - Deal # 2096302395 Facility # 2096302399

UNCONDITIONAL GUARANTY

July 25, 2006

Danco Construction, Inc.
3665 Augusta Hwy.
Gilbert, South Carolina 29054
(Hereinafter referred to as "Borrower")

Don A. Nummy, II
117 Hollyleaf Lane
Lexington, South Carolina 29072
(Hereinafter referred to as "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated hereunder. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including

535104 (Rev 20 0)

PSI1263773210002

CDGUARXXXX

guar doc

EXHIBIT

B

06203P305104

any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, *et seq.*, N.C.G.S. §§ 26-7, *et seq.*, Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or

06209P305104

participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; and (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

06209P305104

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and construed under the laws of the state named in Bank's address shown above without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's accounts with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address shown above. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable 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 Guaranty or other Loan Documents. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or

06208P305104

Interpretation of the Loan Documents. Binding Contract. Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **FINAL AGREEMENT.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

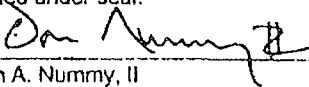
FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

06209P305104

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

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

 (SEAL)
Don A. Nummy, II

Tracking #: 1263717208
Facility ID 1263773210

UNCONDITIONAL GUARANTY

July 25, 2006

Danco Construction, Inc.
3665 Augusta Hwy.
Gilbert, South Carolina 29054
(Hereinafter referred to as "Borrower")

Don A. Nummy
113 Point Drive
Lexington, South Carolina 29072

Dee S. Nummy
113 Point Drive
Lexington, South Carolina 29072
(Individually and collectively, "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated hereunder. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

535104 (Rev 20 0)

PS11263773210001

CDGUARXXXX

guar.doc

GUAR

EXHIBIT

C

06209P305103

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that

06209P305103

Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; and (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and

remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and construed under the laws of the state named in Bank's address shown above without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's accounts with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address shown above. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable 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 Guaranty or other Loan Documents. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail,

0015005602990

return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **FINAL AGREEMENT.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

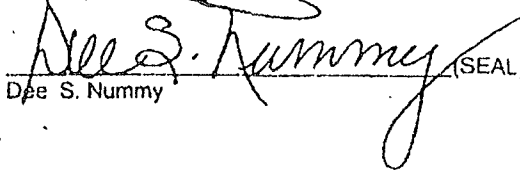
NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or

attachment against any property of or debts due. Retire or Repurchase Capital Stock. Retire or otherwise acquire any of its capital stock.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

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

 (SEAL)
Don A. Nummy

 (SEAL)
Dee S. Nummy

Tracking #: 1263717208
Facility ID 1263773210

05208P305103

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the addresses shown below.

1. Plaintiff's Memorandum in Opposition to Defendants'
2. Motion for Summary Judgment; and
Certificate of Service.

Parties of Record

Richard R. Gleissner, Esq.
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, SC 29201

HAYNSWORTH SINKLER BOYD, P.A.

By: Carol A. Shaffer
Carol A. Shaffer
Paralegal

Date: April 16, 2015

COPY

IN THE STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FILED

Wells Fargo, N.A., as successor by merger
to Wachovia Bank, National Association,

Civil Action No.: 2014-CP-132-423922 A 10:29

Plaintiff,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

vs.

**DEFENDANTS' REPLY TO
MEMORANDUM IN OPPOSITION TO
MOTION FOR SUMMARY
JUDGMENT**

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

TO: STANLEY MCGUFFIN, ESQUIRE, HAYNSWORTH SINKLER BOYD, P.A.,
ATTORNEYS FOR PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED:

The Defendants, Don A. Nummy, II ("Dax"), Dee S. Nummy ("Dee") and Don A. Nummy ("Don") (Collectively the "Defendants"), by and through their undersigned attorney, do hereby reply to the Plaintiff's Memorandum in Opposition to the Motion for Summary Judgment (the "Plaintiff's Memorandum"). In the Plaintiff's Memorandum, the Plaintiff does not create any genuine issue of material fact. Instead, the Plaintiff makes three arguments: (1) the documents in question are sealed instruments and therefore the twenty (20) year statute of limitations should apply (p. 3-4), (2) the documents in question are not personal bonds because they call them guarantees (p. 4-5), and (3) they are not a personal bond because a "bond" is "a promise that is defeasible upon a condition subsequent" p. 7.

The twenty (20) year statute of limitations

First, the documents are not executed under any seal. Nowhere in any document produced by the Plaintiff is there a seal present. Simply, there is a complete absence of a seal. In fact, the Plaintiff admits that there is no seal on any document and instead, discusses Section

19-1-160 of the South Carolina Code which discusses documents that should have the effect of being a “sealed instrument although no seal be actually attached thereto”.

Second, the case of *Carolina Marine Handling v. Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct.App.2005) (copy attached – Exhibit 1), is directly on point. Words contained in the boiler plate concluding clause are not indicia of the intent of the parties to create a “sealed instrument”. The court is to look at the body of the document to determine if it is the intent of the parties to seal the instrument. Nowhere in the body of this document does it suggest that the parties intended it to be a sealed instrument. In fact, the affidavit filed in opposition to the motion, does not even suggest that the intent of the parties was to create a sealed instrument. Simply, there is no genuine issue of material fact and this is not a sealed instrument. The twenty year statute of limitations does not apply.

Third, although not controlling, the United States District Court for the District of South Carolina has addressed these issues, including the use of the word “(SEAL)” after the signature. In a well-reasoned opinion, the District Court states:

Lastly, the performance bond at issue was a form document with the word “(Seal)” adjacent to the block for the parties' names. The context under which the term “(Seal)” appears does not make it evident that the parties intended to create a sealed instrument. The bond form contains blanks labeled with the terms “(Principal)” and “(Surety)” to indicate where the names of the parties and the signatures of their representatives should be placed. The bond form includes the notation “(Seal)” to reflect the location where the corporate seal is to be affixed if the parties desire to create a sealed instrument. Because no seal is in fact affixed by either of the parties in this case, there is a lack of intent to create a sealed instrument.

Midwest Dredge & Excavating, Inc., V. Bay Pointe Homeowner's Assoc., Inc., V.

American Manufacturers Mutual Ins. Co., C/A No. 2:06-2021-DCN. 2007 WL 7141921

(U.S.D.C. S.C. May 15, 2007) (copy attached as Exhibit 2). Thus, the fact that the parties used the word “(Seal)” after the signature line and not included a seal, has been found to be evidence that the parties did not intend to create a sealed instrument, in the granting of a motion for summary judgment on the statute of limitation. Thus, the inclusion of the word “Seal”, after the signatures without the use of a seal, does not create a genuine issue of material fact as it relates to the documents in this case, instead, it provides additional evidence that the document is not a sealed instrument.

Fourth, the documents in question are not “instruments”. In discussing guarantees, the South Carolina Supreme Court has stated on numerous occasions that guarantees are separate contracts and that guarantors are not even parties to an instrument. See *Citizens and Southern Nat. Bank of South Carolina v. Lanford*, 313 S.C. 540, 443 S.E.2d 549 (1994) (guarantees are not instruments and guarantors are not parties to the promissory notes which are instruments).

Fifth, in the motion for summary judgment, the movant cited at length of the recent case of *Coastal States Bank v. Cosman*, and provided a copy of the case as Exhibit 5 to the original motion. In the Cosman case, the South Carolina Court of Appeals was dealing with the statute of limitations on a guarantee. The court states:

An action for breach of contract must be commenced within three years. S.C. Code Ann. § 15-3-530(1) (2005). Under "the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered." *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). "The discovery rule applies to breach of contract actions." *Prince v. Liberty Life Ins. Co.*, 390 S.C. 166, 169, 700 S.E.2d 280, 282 (Ct. App. 2010). "Pursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach, or could or should have discovered the breach through the exercise of reasonable diligence." *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d

204, 207 (Ct. App. 1998). "[T]he statute of limitations on an action on an absolute guaranty, which is conditioned only on the debtor's default, begins to run when the obligation matures and the debtor defaults." 38 Am.Jur.2d *Guaranty* § 96, at 1040 (2010).

See exhibit 5 at p. 6. Attached hereto as Exhibit 3 are two of the guarantees involved in the Cosman case. Both state, "By signing under seal, I agree to the terms contained in this Guaranty" and both have included the "(Seal)" after the signature of George Cosman. Thus, again, there is no genuine issue of material fact, the documents in this case are not sealed instruments just like the documents in Cosman were not sealed instruments. The three year statute of limitations applies, not the twenty year statute.

The Documents in question are not personal bonds because they call them guarantees

In South Carolina, we look to the substance of a document, not the name put on it by the parties. In North Carolina, these types of obligations are not referred to as "guarantees". In *Fleet Real Estate Funding Corporation V. Blackwelder*, the court provided the following discussion:

Although contracts of guaranty and suretyship are, to some extent, analogous, and the labels are used interchangeably, there are, nevertheless, important distinctions between the two undertakings.... A guaranty is a promise to answer for the payment of a debt or the performance of some duty in the event of the failure of another person who is himself primarily liable for such payment or performance.... A surety is a person who is primarily liable for the payment of the debt or the performance of the obligation of another.... While both kinds of promises are forms of security, they differ in the nature of the promisor's liability. A guarantor's duty of performance is triggered at the time of the default of another.... On the other hand, a surety is primarily liable for the discharge of the underlying obligation, and is engaged in a direct and original undertaking which is independent of any default. [Citations omitted].

While the document at issue is entitled “guaranty agreement”, its label is not determinative of its character. It is appropriate to regard the substance, not the form, of a transaction as controlling, and we are not bound by the labels which have been appended to the episode by the parties.... The agreement expressly states that

“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 [Branch Banking and Trust] against the Borrower or any person, firm, or corporation;”

By affixing her signature to the document, defendant manifested her assent to enter into a suretyship contract which imposed primary liability upon her for the payment of her husband's debt to the bank. [Citations omitted].

Fleet Real Estate Funding Corp. v. Blackwelder, 83 N.C.App. 27, 29-30, 348 S.E.2d 611, 613 (1986). A suretyship contract is generally referred to as a “bond” and when the surety is an individual, it is generally thought of as a “personal bond”.

When the statute dealing with the twenty years limitations period was written, a personal bond was merely a personal undertaking of some sort. See *Steinmeyer v. Steinmeyer*, 55 S.C. 9, 33 S.E. 15(1899) (a note is referred to as a “personal bond”); *Gee v. Humphries*, 49 S.C. 253, 27 S.E. 101(1897) (note is referred to as a “personal bond”). Simply, you can call it whatever you want. The important distinction for the twenty year statute of limitations is simply whether it is for money only. In this case, the personal undertaking is for money only.

The documents are not a personal bond because a “bond” is “a promise that is defeasible upon a condition subsequent”.

In this case, and in all cases involving guarantees or personal bonds or whatever the court chooses to call the documents, the promise of payment from the secondary obligor is

defeasible by the payment of the primary obligor. Thus, if the only distinction that the Plaintiff can make between the documents in this case and a "bond" is the defeasible nature of the "bond", in this case, we are dealing with personal bonds defeasible upon the condition subsequent that he obligation is paid by the primary obligor. Thus, by the terms of the statute itself, the twenty year statute does not apply.

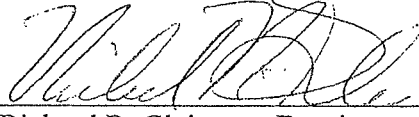
Conclusion

As stated in *Carolina Marine Handling v. Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct.App.2005):

"Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996). The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. See *Webb v. Greenwood County*, 229 S.C. 267, 276, 92 S.E.2d 688, 691 (1956); *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 231, 599 S.E.2d 462, 464 (Ct.App.2004). Significantly, "[s]tatutes of limitations provide potential defendants with certainty that after a set period of time, they will not be hailed [sic] into court to defend time-barred claims." *In re Elkay Indus., Inc.*, 167 B.R. 404, 408 (D.S.C.1994). "Moreover, limitations periods discourage plaintiffs from sitting on their rights." *Id.* at 408-09. Statutes of limitations are, indeed, fundamental to our judicial system.

In this case, it is without question that the statute of limitations has run, the plaintiff have sat on the rights, and the Plaintiff needs to be punished for its negligence.

Respectfully submitted,



Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Facsimile (803) 712-4283
Attorneys for the Defendants
Don A. Nummy, II, Dee S. Nummy and
Don A. Nummy

Dated: 4-22-2015

EXHIBIT 1

363 S.C. 169
Court of Appeals of South Carolina.

CAROLINA MARINE HANDLING, INC., Plaintiff,

v.

Warren Frank LASCH; Duane Grantham; Jack C. Sprott; Richard Lee Tapp, R. Keith Summey, Douglas McKay, III, Robert N. King, Don J. Hayes; W. Kurt Taylor; Gussie C. Greene; Stephen R. Ayer; Samuel L. Hart; A.C. Mitchum; Charlotte Gillespie; Dorothy K. Williams; Phoebe Miller; F. Browne Gregg; City of North Charleston; Charleston Naval Complex Redevelopment Authority; South Carolina State Budget and Control Board; S.C. State Ports Authority; Charleston Shipbuilders, Inc.; Charleston International Projects, Inc.; Charleston International Ports, LLC, Opportunity Research, Inc., Defendants, Charleston Shipbuilders, Inc., Third-Party Plaintiff,

v.

Herbert R. "Jock" Stender, Third-Party Defendant,
Of Whom: Charleston Shipbuilders, Inc. is Appellant,
and

Carolina Marine Handling, Inc. and Herbert R. "Jock" Stender are Respondents.

No. 3927. | Submitted Nov. 1, 2004. | Decided Jan. 24, 2005. | Rehearing Denied March 17, 2005.

Synopsis

Background: Commercial subtenant brought action against tenant, alleging that landlord had cancelled lease with tenant, and tenant counterclaimed against subtenant, alleging breach of contract by failure to pay rent, and filed third-party claim against subtenant's sole owner on theory of piercing the corporate veil. The Circuit Court, Charleston County, A. Victor Rawl, J., dismissed tenant's counterclaim and third-party claim on basis of three-year statute of limitations. Tenant appealed.

[Holding:] The Court of Appeals, Kittredge, J., held that lease was not under seal, and thus, general three-year statute of limitations applied.

Affirmed.

Attorneys and Law Firms

****550 *171** David J. Parrish and Stephen P. Groves, Sr., both of Charleston, for Appellant.

M. Dawes Cooke, Jr. and John W. Fletcher, both of Charleston, for Respondents.

Opinion

KITTREDGE, J.

In this breach of contract action involving a non-sealed instrument, the circuit court dismissed Appellant's counterclaim and third party claim on the basis that the claims were barred by the general three-year statute of limitations. S.C.Code Ann. § 15-3-530(1) (Supp.2003). Relying solely on the generic contract provision-"IN WITNESS WHEREOF, the parties have hereunto set their hands and seals"-Appellant seeks to invoke the twenty-year statute of limitations applicable to "sealed instruments." S.C.Code Ann. § 15-3-520(b) (Supp.2003). We concur with the circuit court and find the parties to the contract did not intend the contract to

be under seal. The circuit court, therefore, properly applied the general three-year statute of limitations and dismissed Appellant's claims. We affirm.

FACTS

Carolina Shipbuilders, Inc. (CSI) leased property on the former Charleston Naval Base Shipyard in December 1996 from the Charleston Naval Complex Redevelopment Authority (RDA). CSI later subleased the property to Carolina Marine Handling, Inc. (CMH). Among other things, the lease contract required CMH to make monthly rent payments to CSI.

RDA terminated its lease with CSI in May 1999, alleging CMH failed to make all required rent payments. CMH brought the present action against CSI and others in May *172 2002. In November 2002, CSI answered and counterclaimed against CMH, alleging CMH breached its contract by failing to pay rent to RDA, resulting in RDA's termination of its lease with CSI. CSI also filed a third party complaint against Herbert R. Stedner, CMH's sole owner.

CMH and Stedner sought dismissal based on the general three-year statute of limitations. CSI countered with the argument that the lease contract was made under seal and was subject to the twenty-year statute of limitations. The circuit court found the contract was subject to the three-year statute of limitations and dismissed CSI's claims. This appeal followed.

DISCUSSION

I.

The lease provides in part: "IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ____ day of December, 1996." The date of the contract's execution was written in the appropriate blank space, and the parties signed the contract. In essence, CSI asserts this language, standing alone, evidences the parties' intent to seal the contract as provided by South Carolina Code section 15-3-520(b) of the South Carolina Code.¹ We disagree.

As a general rule, a three-year statute of limitations applies to contract actions in South Carolina. S.C.Code Ann. § 15-3-530(1) (Supp.2003). Section 15-3-520 provides a twenty-year statute of limitations for certain actions. S.C.Code Ann. § 15-3-520 (Supp.2003). It is the "sealed instrument" provision of section 15-3-520(b) on which CSI rests its hopes to avoid application of the standard statute of limitations. Section 19-1-160 provides:

Whenever it shall appear from the attestation clause or from any other part of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a *173 sealed instrument although no seal be actually attached thereto.

S.C.Code Ann. § 19-1-160 (1976).

[1] [2] The clear language of section 19-1-160 imposes a statutory rule of evidence and requires that the determination-of whether **551 a non-sealed instrument should be considered a sealed instrument-be gleaned from the instrument. If it appears from a non-sealed instrument that the parties intended for the contract to be sealed, it will be deemed sealed. We recognize that a non-sealed instrument may include provisions and indicia that evidence an intent that the contract "be construed [as] a sealed instrument." *Id.* Two decisions of this court have found the requisite intent where no seal was placed on the contract.

In *Treadaway v. Smith*, 325 S.C. 367, 479 S.E.2d 849 (Ct.App.1996), we considered whether a non-sealed separation agreement entered into by former spouses was intended to be a sealed instrument, and thus subject to the twenty-year statute of limitations.² The agreement included future, contingent obligations, especially as related to Smith's responsibility for a portion of the parties' children's educational expenses. The agreement further contained the standard attestation clause—"In WITNESS WHEREOF, the parties have hereunto set their respective Hands and Seals"—found in many contracts. *Id.* at 378, 479 S.E.2d at 855. Immediately following this standard language in conspicuous type, was:

SIGNED SEALED AND DELIVERED IN THE PRESENCE OF

[signatures of parties and witnesses]

Id. We concluded that the language manifested the parties' intent to create a sealed instrument.

*174 We similarly construed a non-sealed instrument in *South Carolina Department of Social Services v. Winyah Nursing Homes, Inc.*, 282 S.C. 556, 320 S.E.2d 464 (Ct.App.1984). Following the standard language—"the parties hereto have set their hands and seals"—the contract noted "L.S." adjacent to the contracting parties' signatures. *Id.* at 561, 320 S.E.2d at 467. The inclusion of L.S. was a significant feature in *Winyah Nursing Homes*, for L.S. is an abbreviation for *Locus sigilli*, which means "the place of the seal; the place occupied by the seal of written instruments." L.S. usually appears on documents in place of, and serves the same purpose as, a seal. *Black's Law Dictionary*, 948 (6th ed.1990); see 68 Am.Jur.2d *Seals* § 6 (2004) (Use of the notation "L.S." is generally held as applicable to replace a physical seal on a document). Accordingly, we found the parties intended the contract in *Winyah Nursing Homes* to be a sealed instrument.³

[3] In the case before us, we find the parties did not intend to create a sealed instrument. The sophisticated parties to this lease arrangement could have easily manifested an intent to create a sealed instrument if they were so inclined. We recognize that CSI, by necessity of the posture of the case, must advance the argument that the standard attestation—"IN WITNESS WHEREOF, the parties have hereunto set their hands and seals,"⁴ compels a finding that the parties *552 parties *175 intended to create a sealed instrument. We further recognize, however, that such generic language is common in non-sealed contracts of all types. Were we to construe this boilerplate attestation clause, *by itself*, as requiring a finding of intent to create a sealed instrument in an otherwise non-sealed instrument, we would likely transform the twenty-year statute of limitations into the standard period of limitations for contract actions in this state. We adhere to our general three-year statute of limitations for most contract actions and acknowledge the availability of the twenty-year limitations period where the contract clearly evidences an intent to create a sealed instrument.⁵

[4] [5] [6] [7] "Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996). The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. See *Webb v. Greenwood County*, 229 S.C. 267, 276, 92 S.E.2d 688, 691 (1956); *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 231, 599 S.E.2d 462, 464 (Ct.App.2004). Significantly, "[s]tatutes of limitations provide potential defendants with *176 certainty that after a set period of time, they will not be haled [sic] into court to defend time-barred claims." *In re Elkay Indus., Inc.*, 167 B.R. 404, 408 (D.S.C.1994). "Moreover, limitations periods discourage plaintiffs from sitting on their rights." *Id.* at 408-09. Statutes of limitations are, indeed, fundamental to our judicial system.

The result we reach today, we believe, harmonizes the intent of the Legislature with respect to the general three-year statute of limitations in section 15-3-530 with the ability of contracting parties to create sealed instruments pursuant to section 19-1-160 and thereby invoke the twenty-year limitations period in section 15-3-520(b).

II.

CSI alternatively argues that its claim against Stender remains viable notwithstanding the three-year limitations period. We affirm the dismissal of CSI's third party complaint against Stender pursuant to Rule 220(b)(2), SCACR, and the following authorities: *Maier v. Tietex Corp.*, 331 S.C. 371, 376-77, 500 S.E.2d 204, 207 (Ct.App.1998) ("The discovery rule determines the date of accrual for a breach of contract action[,] and "[p]ursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach, or could or should have discovered the breach through the exercise of reasonable diligence"); *Rumpf v. Mass. Mut. Life Ins. Co.*, 357 S.C. 386, 394-95, 593 S.E.2d 183, 187 (Ct.App.2004) (noting that the "exercise of reasonable diligence" means "that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist"); *Republic Contracting Corp. v. South Carolina Dep't of Highways & Pub. Trans.*, 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct.App.1998) ("The statute of limitations begins to run when a plaintiff knows or should know of **553 a potential claim against another party, not when the plaintiff develops a full-blown theory of recovery.").⁶

*177 CONCLUSION

We find the presence of a standard attestation clause-such as, "IN WITNESS WHEREOF, the parties have hereunto set their hands and seals"-in an instrument which is neither sealed nor required to be sealed is insufficient, standing alone, to create a sealed instrument under section 19-1-160. We, therefore, find the parties to the December 1996, non-sealed contract did not intend to create a sealed instrument. Consequently, we find the claims of CSI barred by the general three-year statute of limitations under section 15-3-530. The circuit court's dismissal of CSI's claims against CMH and Stender is

AFFIRMED.

HUFF, and BEATTY, JJ., concur.

Parallel Citations

609 S.E.2d 548

Footnotes

- 1 CSI makes no argument that its counterclaim is timely under the three-year statute of limitations.
- 2 The separation agreement in *Treadaway* retained its separate contractual character because it was executed prior to our supreme court's decision in *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983). In *Moseley*, the court held that jurisdiction for all subsequent domestic matters, whether by decree or agreement, vested in the family court. *Id.* at 353, 306 S.E.2d at 627. *Moseley* further recognized that previously executed separation agreements which were incorporated, but not merged, into a divorce decree retained their separate contractual character. *Id.*
- 3 Our supreme court addressed a similar issue in *Cook v. Cooper*, 59 S.C. 560, 38 S.E. 218 (1901), although for purposes unrelated to the applicable statute of limitations. In *Cook*, the validity of a deed was at stake, and appellants argued the "deed is void for the reason that it is not under seal." *Id.* at 560, 38 S.E. at 219. While the deed lacked a seal "upon its face," the following three features were present: (1) the deed provided an attestation, "In witness whereof I hercunto sed [sic] my hand and seal this...;" (2) immediately adjacent to the grantor's signature was the word "seal;" and (3) the deed concluded with "Signed, Sealed and Delivered in the presents [sic] of [names of witnesses]." *Id.* The supreme court relied in part on the predecessor to section 19-1-160 and found that a sealed instrument had been intended.

- 4 The parties did not “set” their “seals” on the contract, and the contract does not otherwise evidence an intent to create a sealed instrument. Similarly, the parties executed a hold harmless agreement which contained the following attestation clause: “WITNESS the following signatures and seals.” Only signatures followed, and again, the related hold harmless agreement contains no evidence the parties intended to create a sealed instrument.
- 5 We have previously rejected other efforts to escape the barring effect of the standard three-year statute of limitations for contract actions. For example, in *Republic Contracting Corp. v. South Carolina Dep't of Highways & Pub. Trans.*, 332 S.C. 197, 503 S.E.2d 761 (Ct.App.1998), appellant argued the presence of “sealed instruments because [one of the parties] placed its professional engineer seal and endorsement on the plans pursuant to statutory requirement.” *Id.* at 205, 503 S.E.2d at 766. The suggestion that a statutorily mandated seal created a sealed instrument for statute of limitations purposes was dismissed, as we held that “[n]othing in the text of [the statute] leads to the inference that a purpose of the mandate for affixing a seal ... is to extend the time in which an action can be brought” *Id.* at 205-06, 503 S.E.2d at 766 (citing *Landmark Eng'g, Inc. v. Cooper*, 222 Ga.App. 752, 476 S.E.2d 63 (1996)) (holding that a statute requiring the stamp of a registered surveyor on certain documents ensures only that the surveyor takes responsibility for the work but does not allow a plaintiff to bring an action within the limitations period prescribed for documents under seal).
- 6 The claim of CSI against Stender is one to pierce the corporate veil. We recognize that an attempt to pierce the corporate veil often occurs post-judgment, and the issue comes to us in somewhat of an unusual posture. Our summary disposition of this issue-the attempted application of the discovery rule to toll the commencement of the statute of limitations-is simply a response to the narrow issue as framed in the circuit court and on appeal.

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 2

2007 WL 7141921

Only the Westlaw citation is currently available.

United States District Court,
D. South Carolina,
Charleston Division.

MIDWEST DREDGE & EXCAVATING, INC., Plaintiff,

v.

BAY POINTE HOMEOWNER'S ASSOC., INC., Defendant/Third-Party Plaintiff,

v.

AMERICAN MANUFACTURERS MUTUAL INS. CO., Third-Party Defendant.

C/A No. 2:06-2021-DCN. | May 15, 2007.

Attorneys and Law Firms

John D. Harrell, Harrell Law Firm, Charleston, SC, for Plaintiff.

Carmen Vaughn Ganjehsani, Charles Elford Carpenter, Jr., Carpenter Appeals and Trial Support, Columbia, SC, Marvin Coleman Jones, Ridgeland, SC, R. Morrison Payne, Scott and Payne, Walterboro, SC, for Defendant/Third-Party Plaintiff.

ORDER and OPINION

DAVID C. NORTON, District Judge.

*1 This matter is before the court upon third-party defendant American Manufacturers Mutual Insurance Company's ("AMMIC") motion to dismiss third-party plaintiff Bay Pointe Homeowner's Association's ("Bay Pointe") claim against it.

I. Background

This dispute stems from a contract between Midwest and Bay Pointe whereby Midwest was to dredge a private marina for Bay Pointe. In connection with the contract, Midwest and Bay Pointe also entered into a performance bond with AMMIC. AMMIC agreed to be bound to Bay Pointe for \$470,000 in the event Midwest failed to complete the dredging project. According to the underlying contract, all work was to be completed by Midwest no later than March 15, 2001.

In July 2001, Midwest brought suit against Bay Pointe in the South Carolina Court of Common Pleas, alleging that Bay Pointe never paid it for the work it performed although the work was complete. In August 2001, Bay Pointe filed its Answer and Counterclaim for breach of contract against Midwest. In its counterclaim, Bay Pointe alleged that Midwest had breached the contract and failed properly and timely to perform and complete the project. Midwest subsequently filed for bankruptcy in Indiana and became entitled to the benefits of the automatic stay provisions of 11 U.S.C. § 362. On December 4, 2001, the South Carolina Court of Common Pleas issued a form order dismissing the action initiated by Midwest.¹

On May 5, 2004, the United States Bankruptcy Court for the Southern District of Indiana issued an Order granting Bay Pointe relief from the automatic stay to pursue its rights against Midwest and to establish its claim under the performance bond issued by AMMIC. On September 15, 2005, the South Carolina Court of Common Pleas restored the case to the active roster and granted Bay Pointe leave to amend its Answer. In its Amended Answer, Bay Pointe asserted a third-party claim against AMMIC to recover under the bond issued by AMMIC. AMMIC then removed the case to this court and brought a motion to dismiss.

In its motion to dismiss, AMMIC argued: (1) the September 4, 2005 Order purportedly restoring the case to the active roster was an error and legal nullity; (2) the third-party complaint failed to allege derivative liability; and (3) the third-party claims are barred by the three year statute of limitations. During a hearing on September 13, 2006, this court determined that the September 4, 2005 state court order should have stayed rather than dismissed the state action. The court also granted without prejudice AMMIC's motion to dismiss for failure of the third-party complaint to allege derivative liability under Federal Rule of Civil Procedure 14.

Subsequently, this court granted Bay Pointe's motion to amend under Rule 20, and on January 23, 2007, Bay Pointe filed a second amended answer asserting a claim against AMMIC under Rule 20. AMMIC now seeks to dismiss the claim asserted against it.

II. Discussion

*2 AMMIC moves to dismiss on the grounds that Bay Pointe's claim is barred by South Carolina's three year statute of limitations for breach of contract actions. See S.C. Code § 15-3-530 (establishing a three year statute of limitations for actions brought upon a contract). According to AMMIC, Bay Pointe's claim accrued when Midwest breached the contract in 2001. Because Bay Pointe failed to bring suit against AMMIC until at least June 13, 2006, AMMIC argues the claim must be dismissed as time-barred.

As early as August 24, 2001, Bay Pointe filed its initial Answer and Counterclaim in this case and asserted a breach of contract claim against Midwest for its failure "to achieve a depth of 6 feet mean low water or to achieve a natural bottom." (Bay Pointe's Answer & Third Party Compl. ¶ 16.) Bay Pointe further asserted, "As a result of the Plaintiff's breach, it is not entitled to payment of its final invoices and it further is required to either complete the contract or refund the value of the project to the Defendant." (Bay Pointe's Answer and Third Party Compl. ¶ 17.) AMMIC argues that according to Bay Pointe's allegations, the contract was breached when Midwest failed to properly complete the work within the time required. Under the terms of the bond, AMMIC became liable to Bay Pointe when Bay Pointe declared the contractor, Midwest, to be in default under the contract.² Accordingly, AMMIC argues that Bay Pointe's claim against AMMIC expired on August 24, 2004, three years after Bay Pointe initially declared Midwest to be in default.

Bay Pointe makes two separate arguments in response to AMMIC's assertion that the claim against it is time-barred. Bay Pointe first argues that the terms of the performance bond itself extend the time for suit. Second, Bay Pointe argues that the performance bond is a sealed instrument governed by a twenty year statute of limitations. For the reasons stated below, this court rejects both of Bay Pointe's arguments.

a. The terms of the performance bond do not extend the time for suit

The performance bond at issue includes the provision: "Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due."³ (Performance Bond, AMMIC's Mot. to Dismiss, Ex. 3.) According to Bay Pointe, this provision extends the statute of limitations until two years after final payment becomes due; Bay Pointe further argues that because payment has not yet become due, the two year period has not started to run.

If the time for final payment under the contract had already become due, it is clear that the provision in question would be invalid in South Carolina as an attempt to shorten the three year statute of limitations. See S.C. Code § 15-3-140 ("No clause, provision or agreement in any contract of whatsoever nature ... whereby it is agreed that either party shall be barred from bringing suit upon any cause of action arising out of the contract if not brought within a period less than the time prescribed by the statute of limitations, ... shall bar such action"); see also, *McCrary v. United States Fid. & Guar. Co.*, 110 F.Supp. 545, 547 (D.S.C.1953) (holding the provision "That no suit, action or proceeding by reason of any default whatever shall be brought on this bond after two years from the day on which the final payment under the contract falls due" was inoperative as violative

of public policy by the courts of South Carolina) (citing *Barringer v. Fid. & Deposit Co.*, 161 S.C. 3, 159 S.E. 373 (1931)). Bay Pointe argues that the provision actually extends the limitations period for what, in this case, is an indefinite period of time.

*3 "A statute of limitations generally begins to run on the date a cause of action accrues, and a breach of contract action usually accrues at the time a contract is breached or broken." *State v. McLinton*, 369 S.C. 167, 173, 631 S.E.2d 895, 898 (2006). Despite this, Bay Pointe argues that the period of limitations for bringing suit has not commenced. This court disagrees. Plaintiff's interpretation of the provision at issue "would allow suits to be postponed indefinitely, for no good purpose, and to be brought in some cases at the virtually unlimited pleasure of the plaintiff." *Meyer v. Paschal*, 330 S.C. 175, 183, 498 S.E.2d 635, 638 (1998).

The performance bond establishes default by Midwest under the base contract as the trigger for AMMIC's liability to Bay Pointe. According to Bay Pointe's own allegations in its 2001 counterclaim, Midwest's default occurred no later than March 15, 2001, when the contract completion deadline passed without Midwest Dredge having completed the work. Because AMMIC is liable to Bay Pointe in the event Midwest breaches the contract, Bay Pointe's cause of action against AMMIC accrued at the time of Midwest's breach in 2001. Bay Pointe's suit against AMMIC is barred by the South Carolina's three year statute of limitations.

b. The performance bond is not a sealed instrument

Bay Pointe also argues that the statute of limitations has not expired because the performance bond and contract are sealed instruments. S.C.Code § 15-3-520 provides a twenty year statute of limitations for "an action upon a sealed instrument, other than a sealed note and personal bond for the payment of money only whereon the period of limitation is the same as prescribed in Section 15-3-530" According to Bay Pointe, although the performance bond at issue provides for money damages for a specific amount, it is not for the pure payment of money. Instead, it is a covenant under which AMMIC obligated itself to complete performance of the underlying contract between Bay Pointe and Midwest.

Bay Pointe contends that the very fact that the instrument is a bond implies that it is a sealed instrument. As support for this, Bay Pointe cites several cases decided more than a century ago. In *Cantey v. Duren*, the Constitutional Court of Appeals of South Carolina allowed a bond that was not sealed to provide recovery for the plaintiff. *Cantey v. Duren*, Harp. 434 (S.C.Const.1824). However, Bay Pointe misconstrues *Cantey*; contrary to Bay Pointe's interpretation, *Cantey* states that although the security (which did not have a seal) was not a bond, it was still enforceable as a satisfactory security. *See id.* (stating, "But if this is not the security intended by the act, still it is a good and binding agreement."). Bay Pointe also cites *Duncan v. City of Charleston*, 60 S.C. 532, 39 S.E. 265 (S.C.1901) as an example of a document that was found to be a sealed instrument despite its lack of a seal. However, in *Duncan*, the contract at issue repeatedly referenced the fact that the City of Charleston was executing the contract under its corporate seal. *Duncan*, 39 S.E. at 273. Thus, the facts of *Duncan* are also inapplicable to the case at bar.

*4 Bay Pointe argues that despite the lack of a seal, the performance bond complies with the requirements of a sealed document. Above the signature lines on the performance bond are the words "signed and sealed this 22nd day of December 2000." Just below the company names and above the signatures of the president of Midwest Dredge and the Attorney-in-Fact of AMMIC is the word "(Seal)" for each company. Although the company's impress or stamped seals are not used, Bay Pointe posits that no such formality is required. Under S.C.Code § 19-1-160,

Whenever it shall appear from the attestation clause or from any other part of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a sealed instrument although no seal be actually attached thereto.

Bay Pointe cites a number of South Carolina cases considering whether unsealed documents were in fact sealed instruments. For example, in *Carolina Marine Handling v. Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct.App.2005), the South Carolina Court of Appeals found that the parties did not intend to create a sealed instrument, despite their use of the words "IN WITNESS WHEREOF, the parties have hereunto set their hands and seals." *Id.* at 551, 363 S.C. at 174, 609 S.E.2d 548. In reaching this conclusion, the court of appeals stated

such generic language is common in non-sealed contracts of all types. Were we to construe this boilerplate attestation clause, by itself, as requiring a finding of an intent to create a sealed instrument in an otherwise non-sealed instrument, we would likely transform the twenty-year statute of limitations into the standard period of limitations for contract actions in this state. We adhere to our general three-year statute of limitations for most contract actions and acknowledge the availability of the twenty-year limitations period where the contract clearly evidences an intent to create a sealed instrument.

Id. at 552, 363 S.C. at 175, 609 S.E.2d 548.

However, in two prior cases, the South Carolina Court of Appeals found non-sealed agreements *were* intended to be sealed instruments. In *Treadaway v. Smith*, 479 S.E.2d 849, 325 S.C. 367 (Ct.App.1996), the court of appeals held that the inclusion of the standard attestation clause—"In WITNESS WHEREOF, the parties have hereunto set their respective Hands and Seals"—along with the statement "SIGNED SEALED AND DELIVERED IN THE PRESENCE OF [signatures of parties and witnesses]" evidenced an intent to create a sealed instrument. 479 S.E.2d at 855, 325 S.C. at 377-78.

Similarly, in *South Carolina Dep't of Soc. Serv. v. Winyah Nursing Homes, Inc.*, 320 S.E.2d 464, 282 S.C. 556 (Ct.App.1984), the court of appeals found an intent to create a sealed instrument where the attestation clause stated "the parties hereto have set their hands and seals" followed by the notation "L.S." adjacent to the contracting parties' signatures. 320 S.E.2d at 467, 282 S.C. at 561. According to Bay Pointe, the inclusion of the term "(Seal)" under the parties' names is analogous to the inclusion of "L.S." in *Winyah* and should therefore be held as evidence of intent to create a signed instrument.

*5 This court disagrees with Bay Pointe's arguments and finds the parties did not intend to create a sealed instrument. The body of the performance bond lacks any express language evidencing an intent that it be under seal, and there is no reason to believe the parties intended the document to have the effect of a sealed instrument. *Republic Contracting Corp. v. South Carolina Dep't of Highways and Public Transp.*, 332 S.C. 197, 503 S.E.2d 761 (Ct.App.1998); see also *Carolina Marine Handling*, 363 S.C. at 175, 609 S.E.2d 548 ("We adhere to our general three-year statute of limitations for most contract actions and acknowledge the availability of the twenty-year limitations period where the contract clearly evidences an intent to create a sealed instrument."). This court also agrees with AMMIC that a twenty year limitations period would serve no purpose in the context of a performance bond for the completion of contractual work which was scheduled to take less than six months to complete. Lastly, the performance bond at issue was a form document with the word "(Seal)" adjacent to the block for the parties' names. The context under which the term "(Seal)" appears does not make it evident that the parties intended to create a sealed instrument. The bond form contains blanks labeled with the terms "(Principal)" and "(Surety)" to indicate where the names of the parties and the signatures of their representatives should be placed. The bond form includes the notation "(Seal)" to reflect the location where the corporate seal is to be affixed if the parties desire to create a sealed instrument. Because no seal is in fact affixed by either of the parties in this case, there is a lack of intent to create a sealed instrument.

On the other hand, AMMIC's executed Power of Attorney conveying powers to its Attorney-in-Fact in South Carolina illustrates how AMMIC evidences its seal.⁴ The Power of Attorney includes an official stamp by the signatures. AMMIC argues that the absence of such a true corporate seal in the performance bond demonstrates that there was no intent to transform it into a sealed instrument. This court agrees.

Because the performance bond is not a sealed instrument, the twenty year statute of limitations does not apply. Additionally, Bay Pointe could have proceeded against AMMIC at any time despite the automatic stay of litigation against Midwest Dredge.⁵ Accordingly, Bay Pointe's claims are time-barred under South Carolina's general three-year breach of contract statute of limitations.

III. Conclusion

For the reasons stated above, it is therefore **ORDERED** that AMMIC's motion to dismiss be **GRANTED**.

AND IT IS SO ORDERED.

Footnotes

- 1 The form had several options that could be checked to dispose of the case, including "Action Dismissed" and "Action Stricken." While the form provided that an action could be stricken for bankruptcy, the court clerk mistakenly checked the "Action Dismissed" box, and included the explanation "per attorney Payne." The clerk also wrote "Bankruptcy filed."
- 2 The performance bond issued by AMMIC states:
Whenever Contractor shall be, and declared by Owner to be in default under the Contract the Owner having performed Owner's obligations thereunder, the Surety may promptly
 - 1) Complete the Contract in accordance with its terms and conditions, or
 - 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions.(Performance Bond, AMMIC's Mot. to Dismiss, Ex. 3.)
- 3 The contract between Bay Pointe and Midwest provided that final payment "shall be made by the Owner to the Contractor when: (1) the Contractor has fully performed the Contract ... and (2) a final Certificate for Payment has been issued by the Architect." (Contract, AMMIC's Mot. to Dismiss, Ex. 2 at 4.)
- 4 AMMIC's Power of Attorney was attached to Bay Pointe's pleadings and was thereby incorporated.
- 5 The Bankruptcy Court for the District of South Carolina has stated:
The power of the bankruptcy court to enjoin litigation which seeks to obtain a judgment against the estate or to interfere with property of the debtor has been long recognized. However, *where the litigation is directed against a subsidiary or affiliate of the debtor or against a guarantor or other third party liable upon the debts of the debtor, courts have rarely acted to issue injunctions*, on the ground that they lack jurisdiction to do so, *a view that should remain unchanged.*
Kash & Karry Wholesale, Inc. v. Mulberry Corp., 28 B.R. 66, 71 (Bankr.D.S.C.1982) (quoting 2 Collier on Bankruptcy ¶ 362.04 at pp. 362-28, 362-29 (15th ed.1979).

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 3

GUARANTY

(Continuing Debt - Unlimited)

7-19-07

DATE AND PARTIES. The date of this Guaranty is July 19, 2007. The parties and their addresses are:

LENDER:

COASTALSTATES BANK
P. O. Box 4800
Hilton Head Island, South Carolina 29938-4800
Telephone: (843) 341-9981

BORROWER:

HANOVER HOMES OF SOUTH CAROLINA, LLC
a South Carolina Limited Liability Company
807 SW ST JULIEN CT
PORT SAINT LUCIE, Florida 34986

GUARANTOR:

GEORGE COSMAN
807 S W ST JULIAN CT
PORT ST LUCIE, Florida 34986

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

- A. Pronouns. The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.
B. Note. "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
C. Property. "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce you, at your option, to make loans or engage in any other transactions with the Borrower from time to time, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 203613, dated July 19, 2007, from HANOVER HOMES OF SOUTH CAROLINA, LLC (Borrower) to you, in the amount of \$520,000.00.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation; overdrafts, letters of credit, guaranties, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

GEORGE COSMAN
South Carolina Guaranty
SC/4Isodemano098540005451076071907Y

©1996 Bankers Systems, Inc., St. Cloud, MN

EXHIBIT 6

Page 1

8. DEFAULT. I will be in default if any of the following occur:

- A. **Payments.** I fail to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.
- C. **Death or Incompetency.** I die or am declared legally incompetent.
- D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Guaranty.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
- F. **Other Agreements.** I am in default on any other debt or agreement I have with you.
- G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgment.** I fail to satisfy or appeal any judgment against me.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.
- K. **Property Transfer.** I transfer all or a substantial part of my money or property.
- L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.
- M. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

9. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers.** In addition, to the extent permitted by law, I consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to the Debt or this Guaranty.

- (1) You may renew or extend payments on the Debt, regardless of the number of such renewals or extensions.
- (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
- (3) You may release, substitute or impair any Property.
- (4) You, or any institution participating in the Debt, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guarantying or relating to the Debt.
- (7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.
- (8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.
- (9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. REMEDIES. After the Borrower or I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following.

- A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Guaranty immediately due.
- B. **Sources.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.
- C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.
- D. **Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.
- E. **Termination.** You may terminate my right to obtain advances and may refuse to make any further extensions of credit.
- F. **Set-Off.** You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Guaranty against any right I have to receive money from you.
My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty at the time you set-off.
Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay the Debt, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.
Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.
You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.
- G. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

GEORGE COSMAN
South Carolina Guaranty
SC/4Isodeman00985400005451076071907Y

©1996 Bankers Systems, Inc., St. Cloud, MN *Expert*

11. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

12. WARRANTIES AND REPRESENTATIONS. I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. RELIANCE. I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and I have signed this Guaranty to induce you to extend such credit. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from any loans and financial accommodations resulting in the creation of indebtedness guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. APPLICABLE LAW. This Guaranty is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

15. AMENDMENT, INTEGRATION AND SEVERABILITY. This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. ASSIGNMENT. If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Guaranty.

18. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Guarantor will be deemed to be notice to all Guarantors. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. AGREEMENT TO ARBITRATE. You or I may submit to binding arbitration any dispute, claim or other matter in question between or among you and me that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as you and I agree to in writing. For purposes of this section, this Transaction includes this Guaranty and any other document relating to the Debt, and proposed loans or extensions of credit that relate to this Guaranty. You or I will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws.

You and I must consent to arbitrate any Dispute concerning the Debt secured by real estate at the time of the proposed arbitration. You may foreclose or exercise any powers of sale against real property securing the Debt underlying any Dispute before, during or after any arbitration. You may also enforce the Debt secured by this real property and underlying the Dispute before, during or after any arbitration.

You or I may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law; seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to you or me; or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

You and I acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among you and me involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Guaranty, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Guaranty or another writing.

21. WAIVER OF TRIAL FOR ARBITRATION. You and I understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes through arbitration instead of litigation. If any Dispute is arbitrated, you and I voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

22. SIGNATURES. By signing under seal, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR

GEORGE COSMAN

Individually

(Seal)

GEORGE COSMAN

South Carolina Guaranty

SC/41sodeman00985400005451076071907Y

©1996 Bankers Systems, Inc., St. Cloud, MN *Express*

Page 3

7-19-07 **GUARANTY** (Continuing Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is July 19, 2007. The parties and their addresses are:

LENDER:

COASTAL STATES BANK
P. O. Box 4800
Hilton Head Island, South Carolina 29938-4800
Telephone: (843) 341-9981

BORROWER:

HANOVER HOMES OF SOUTH CAROLINA, LLC
a South Carolina Limited Liability Company
807 SW ST JULIEN CT
PORT SAINT LUCIE, Florida 34986

GUARANTOR:

HANOVER HOMES, INC
a Florida Corporation
807 SW ST JULIAN COURT
PORT ST LUCIE, Florida 34986

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

- A. Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.
- B. Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
- C. Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce you, at your option, to make loans or engage in any other transactions with the Borrower from time to time, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 203613, dated July 19, 2007, from HANOVER HOMES OF SOUTH CAROLINA, LLC (Borrower) to you, in the amount of \$520,000.00.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guaranties, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and

HANOVER HOMES, INC
South Carolina Guaranty
SC/4Isodemam00985400005451076071907Y

©1996 Bankers Systems, Inc., St. Cloud, MN **EXHIBIT 7**

have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

8. DEFAULT. I will be in default if any of the following occur:

- A. **Payments.** I fail to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.
- C. **Business Termination.** I merge, dissolve, reorganize, and my business or existence, or a partner or majority owner dies or is declared legally incompetent.
- D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Guaranty.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
- F. **Other Agreements.** I am in default on any other debt or agreement I have with you.
- G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgment.** I fail to satisfy or appeal any judgment against me.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.
- K. **Property Transfer.** I transfer all or a substantial part of my money or property.
- L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.
- M. **Material Change.** Without first notifying you, there is a material change in my business, including ownership, management, and financial conditions.
- N. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

9. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers.** In addition, to the extent permitted by law, I consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to the Debt or this Guaranty.

- (1) You may renew or extend payments on the Debt, regardless of the number of such renewals or extensions.
 - (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
 - (3) You may release, substitute or impair any Property.
 - (4) You, or any institution participating in the Debt, may invoke your right of set-off.
 - (5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.
 - (6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guarantying or relating to the Debt.
 - (7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.
 - (8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.
 - (9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.
- Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. REMEDIES. After the Borrower or I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following.

- A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Guaranty immediately due.
- B. **Sources.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.
- C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.
- D. **Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.
- E. **Termination.** You may terminate my right to obtain advances and may refuse to make any further extensions of credit.
- F. **Set-Off.** You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Guaranty against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay the Debt, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

G. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

11. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

12. **WARRANTIES AND REPRESENTATIONS.** I make to you the following warranties and representations which will continue as long as this Guaranty is in effect:

A. **Power.** I am duly organized, and validly existing and in good standing in all jurisdictions in which I operate. I have the power and authority to enter into this transaction and to carry on my business or activity as it is now being conducted and, as applicable, am qualified to do so in each jurisdiction in which I operate.

B. **Authority.** The execution, delivery and performance of this Guaranty and the obligation evidenced by this Guaranty are within my powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which I am a party or to which I am or any of my Property is subject.

C. **Name and Place of Business.** Other than previously disclosed in writing to you I have not changed my name or principal place of business within the last 10 years and have not used any other trade or fictitious name. Without your prior written consent, I do not and will not use any other name and will preserve my existing name, trade names and franchises.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. **RELiance.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and I have signed this Guaranty to induce you to extend such credit. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from any loans and financial accommodations resulting in the creation of indebtedness guaranteed hereby, and that this Guaranty is given for a business purpose. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion or the opinion of the directors or officers of my business, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. **APPLICABLE LAW.** This Guaranty is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. **ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Guaranty.

18. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Guarantor will be deemed to be notice to all Guarantors. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. **CREDIT INFORMATION.** I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. **AGREEMENT TO ARBITRATE.** You or I may submit to binding arbitration any dispute, claim or other matter in question between or among you and me that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as you and I agree to in writing. For purposes of this section, this Transaction includes this Guaranty and any other document relating to the Debt, and proposed loans or extensions of credit that relate to this Guaranty. You or I will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws.

You and I must consent to arbitrate any Dispute concerning the Debt secured by real estate at the time of the proposed arbitration. You may foreclose or exercise any powers of sale against real property securing the Debt underlying any Dispute before, during or after any arbitration. You may also enforce the Debt secured by this real property and underlying the Dispute before, during or after any arbitration.

You or I may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law; seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to you or me; or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

You and I acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among you and me involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Guaranty, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Guaranty or another writing.

21. **WAIVER OF TRIAL FOR ARBITRATION.** You and I understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes through arbitration instead of litigation. If any Dispute is arbitrated, you and I voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

22. SIGNATURES. By signing under seal, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:

HANOVER HOMES, INC.

By

PHILIP PETROZZELLI, PRESIDENT

(Seal)

HANOVER HOMES, INC
South Carolina Guaranty
SC/4Isodeman00985400005451076071907Y

©1996 Bankers Systems, Inc., St. Cloud, MN *Expend*™

§ 195 OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Wells Fargo, N.A., et al;

☐ Plaintiff

IN THE COURT OF COMMON PLEAS

FILED

CASE NO.
2014-CP-32-4259

v.

1 2015 MAY 25 P 3:10

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Don A. Nummy, II, Dee S. Nummy, Et Al.

☒ Defendant.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Plaintiff's Attorney:

Louise M. Johnson, Esquire, Bar No.

Address:

Post Office Box 11889

Columbia, South Carolina 29211

phone: 803-404-6900 fax:

e-mail: other:

Defendant's Attorney:

Richard R. Gleissner, Bar No. 15139

Address:

1237 Gadsden Street, Suite 200A

Columbia, SC 29201

phone: 803-787-0505 fax: 803-712-4283

e-mail: Rick@Gleissnerlaw.com other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider

Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

May 22, 2015

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

IN THE STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Wells Fargo, N.A., as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

IN THE COURT OF COMMON PLEAS

FILED

Civil Action No.: 2014-CP-32-4259

2015 MAY 26 P 3:13

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

**DEFENDANTS' MOTION TO
RECONSIDER ORDER DENYING
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
MOTION TO STRIKE JURY TRIAL**

TO: STANLEY MCGUFFIN, ESQUIRE, HAYNSWORTH SINKLER BOYD, P.A.,
ATTORNEYS FOR PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED:

The Defendants, Don A. Nummy, II ("Dax"), Dee S. Nummy ("Dee") and Don A. Nummy ("Don") (Collectively the "Defendants"), by and through their undersigned attorney, does hereby move pursuant to Rule 59 of the South Carolina Rules of Civil Procedure for the court to reconsider its Order entered on May 14, 2015 in which the Court denied the Defendants Motion for Summary Judgment and Granted the Plaintiff's Motion to Strike the Defendants Jury Trial Request (the "Order"). One of the purposes of a Rule 59 Motion under the Rules is to preserve issues for appeal that were presented before the trial court for consideration that may not have been directly ruled on by the Trial Court in its Order. See *Elam v. S. Carolina Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004).

Prior to the hearing on the Motion to Strike the Jury Trial, the Plaintiff filed a Motion to Strike and the Defendant filed a Memorandum in Opposition to the Motion to Strike. Prior to the hearing on the Defendant's motion, (a) the Defendants filed a motion for summary judgment; (b) the Plaintiff filed a memorandum in opposition to the motion for summary judgment; and (c)

the Defendants filed a supplemental memorandum in reply to the Plaintiff's opposition to the motion for summary judgment. Because many of the arguments raised by the Defendant in opposition to the motion to strike are not ruled upon in the Trial Court's order, the Defendant files to motion to make sure that the record is preserved so that the appeals court does not think that any of the issues weren't properly preserved for appeal and in case the Trial Court did not consider these arguments in its decision and wants to reconsider the ruling.

As it relates to the Motion for Summary Judgment, the Order appears to find that the Guarantees are signed "under seal" as a matter of law and therefore finds, again as a matter of law, that the twenty year statute of limitations applies. Because of the way the Order is written, it is possible that some future court may consider this determination to be "the law of the case." If this matter is a final determination of "the law of the case" then the decision is appropriately appealed, at this time. See *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 41, 21 S.E.2d 209, 212 (1942)("A judgment that determines what law is applicable but leaves questions of fact unsettled is not a final judgment"); *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 360, 409 S.E.2d 340, 341 (1991)("an order that is not directly appealable will nonetheless be considered if there is an appealable issue before the [c]ourt and a ruling on appeal will avoid unnecessary litigation."), overruled on other grounds by *Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995). Thus, the Defendants need to preserve all of the arguments made in support of the motion for summary judgment. Again, many of the arguments raised by the Defendants are not ruled upon in the Trial Court's Order and the Defendants files this motion to make sure the record is preserved so that the appeals court does not think that any of the issues weren't properly preserved for appeal and in case the Trial Court did not consider these arguments in its decision

and wants to reconsider the ruling.

Thus, this motion will proceed by providing (a) a summary of the arguments against the motion to strike the jury demand and then (b) a summary of the arguments relating to the Motion for Summary Judgment. In addition, although no evidence was presented by the Plaintiff relating to the intent of the parties and the Plaintiff merely relied upon the wording of the form document, the Defendants supplement the record with the Affidavits of the Defendants as Exhibit 1 to this motion showing that there was never an intent to seal these documents.

The Motion to Strike Jury Demand

The Plaintiff moved to strike the jury demand of the Defendants based upon the agreement signed by the Defendants that included a clause indicating the Defendants had waived the right to a jury trial. In response, the Defendants argued:

1. The Defendants are entitled to a jury trial, absent some finding that they voluntarily and knowingly waived their right to a jury trial;
2. The Plaintiff relies upon a provision in a contract that it cannot enforce. First, the Plaintiff cannot enforce the contract because the statute of limitations has run on any claims based upon the contract. Second, the Plaintiff cannot enforce the contract because it has specifically waived the damages that it now seeks to recover in the contract itself. Third, the Plaintiff cannot enforce the provision as it relates to compulsory counterclaims because to enforce such a provision as to compulsory counterclaims would require the Defendants to bring these compulsory counterclaims in a separate action and to require the Defendants to bring compulsory counterclaims in separate actions is unenforceable and against public policy.

3. The alleged waiver was not a knowing and voluntary waiver of the right to a jury trial based upon events that occur after the signing of the contract. Simply, how can someone “know” the future and knowingly waive rights that arise only in the future.
4. The South Carolina constitution preserves the right to a jury trial. The South Carolina Rules of Civil Procedure and the statutes of South Carolina preserve that right and provide only limited and specific ways to waive the right to a jury trial. Pre-default waivers of the right to a jury trial are not authorized under statute or the rules of Civil Procedure. Thus, the pre-default alleged waiver in this case is unconstitutional.

The Motion for Summary Judgment

The Defendants moved for summary judgment based upon the three year statute of limitation. There was never any question raised that more than three years has run between the time of the alleged default by the Plaintiff and the bringing of this action by the Plaintiff. The Plaintiff's sole defense to the running of the statute is the legal argument that because of the inclusion on the form document of the words “under seal” and the word “(Seal)” after the signature line, that the parties intended the document under seal. In response to this argument, the Defendants argued:

1. The agreements in question are not executed under seal and no evidence of any actual seal was ever offered by either party.
2. Pursuant to *Carolina Marine Handling v. Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct.App.2005), words contained in the boiler plate concluding clause are not indicia of the intent of the parties to create a “sealed instrument”.

3. Pursuant to *Midwest Dredge & Excavating, Inc., V. Bay Pointe Homeowner's Assoc., Inc., V. American Manufacturers Mutual Ins. Co.*, C/A No. 2:06-2021-DCN. 2007 WL 7141921 (U.S.D.C. S.C. May 15, 2007), the fact that the parties used the word “(Seal)” after the signature line and not included a seal, is evidence that the document is not a sealed instrument.
4. The agreements in question are not “instruments” as required by the statute of limitations providing for a 20 year limitation period for instruments signed under seal.
5. In the case of *Coastal States Bank v. Cosman*, the Court of Appeals made it clear that guarantees fall under the three years statute of limitations, not the twenty year statute of limitations. Further, the guarantees in the *Cosman* matter had both the “under seal” language and the word “(Seal)” after the signature line.
6. The agreements in this case are personal bonds for money only and are specifically exempted from the twenty year statute of limitations, even if they were actually sealed instruments.
7. The agreements in this case are personal bonds even under the definition of a personal bond as provided by the Plaintiff because they are “defeasible by a condition subsequent”.

Evidence of the Intent of the Parties

Lastly, during oral arguments, the Defendant mentioned that the affidavit supplied by the Plaintiff did not even mention the intent of the parties to have these documents “under seal.” To supplement this record, the Defendants provide the affidavits of all three Defendants. Simply, all three Defendants provide evidence that (a) the Bank never asked for the Personal Bond to be

sealed, (b) the closing attorney never asked for the Personal Bond to be sealed, (c) the Defendants were never requested to seal the Personal Bond, (d) the Bank never negotiated for the Personal Bond to be sealed, (e) the Defendants never intended for the Personal Bond to be sealed, (f) if at any time the Defendants would have been asked to seal the Personal Bond, they would have refused, (g) the Personal Bond was never intended to be a sealed instrument, and (h) the Personal Bond is for money only.

Conclusion

The Court's Order failed to address many of the arguments presented by the Defendants in opposition to the motion to strike the jury demand and in support of their motion for summary judgment. While, the Defendants are under the impression that the Court did consider these arguments, unless there is a specific finding that the court did consider the arguments, it is possible that the Appellate court will decide that these issues were not preserved for appeal. If the Court did not consider these issues, the Defendants request that the Court consider these issues and reconsider its Order. Thus, the Defendants file this motion to reconsider out of an abundance of caution in an effort to preserve the issues for appeal. Further, because the Plaintiff did not proffer any evidence as to the intent of the parties, except the form language contained in the documents themselves, the Defendants supplement the record with the evidence that they did not intend for the documents to be sealed instruments.

Respectfully submitted,



Richard R. Gleissner, Esquire
S.C. Bar Number 15139
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Facsimile (803) 712-4283
Attorneys for the Defendants
Don A. Nummy, II, Dee S. Nummy and
Don A. Nummy

Dated: 5/22/15

EXHIBIT 1

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
Wells Fargo, N.A., as successor by merger	)	Civil Action No.: 2014-CP-32-4259
to Wachovia Bank, National Association,	)	
	)	
Plaintiff,	)	
vs.	)	SUPPLEMENTAL AFFIDAVIT IN
	)	SUPPORT OF MOTION FOR
Don A. Nummy, II, Dee S. Nummy, and	)	SUMMARY JUDGMENT
Don A. Nummy,	)	
	)	
Defendants.	)	
_____	)	

Personally appeared before me, Don A. Nummy, II ("Dax"), who, after being duly sworn, deposes and states:

1. My name is Don A. Nummy, II. I make this affidavit on my own personal knowledge in support of the motion for summary judgment filed on my behalf.
2. Attached to the Motion for Summary Judgment as Exhibit 2 is a copy of a contract that I allegedly signed as my personal bond (the "Personal Bond") to pay the obligations of Danco Construction Company, Inc. ("Danco").
3. Wells Fargo N.A. (the "Bank") has suggested that the Personal Bond was intended to be a sealed instrument.
4. The Bank never asked for the Personal Bond to be sealed. The closing attorney never asked for the Personal Bond to be sealed. I was never requested to seal the Personal Bond.
5. The Bank never negotiated for the Personal Bond to be sealed.
6. I never intended for the Personal Bond to be sealed.
7. If at any time I would have been asked to seal the Personal Bond, I would have refused.
8. The Personal Bond was never intended to be a sealed instrument.
9. Lastly, the Personal Bond is for money only.

FURTHER AFFIANT SAYETH NOT.

THIS DOCUMENT NOT PREPARED BY
THE UNDERSIGNED NOTARY
ATTESTING TO SIGNATURES ONLY
Gina B. McBride, LA Notary Public No: 68850
My Commission is for Life

Don A. Nummy II
Don A. Nummy, II

Sworn to before me this 21st
day of May, 2015

Gina B. McBride
NOTARY PUBLIC OF LOUISIANA

My Commission Expires: _____
Gina B. McBride
Notary Public No 68850
My Commission is for Life

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
Wells Fargo, N.A., as successor by merger	)	Civil Action No.: 2014-CP-32-4259
to Wachovia Bank, National Association,	)	
	)	
Plaintiff,	)	
vs.	)	SUPPLEMENTAL AFFIDAVIT IN
	)	SUPPORT OF MOTION FOR
Don A. Nummy, II, Dee S. Nummy, and	)	SUMMARY JUDGMENT
Don A. Nummy,	)	
	)	
Defendants.	)	
_____	)	

Personally appeared before me, Dee S. Nummy ("Dee"), who, after being duly sworn, deposes and states:

1. My name is Dee S. Nummy. I make this affidavit on my own personal knowledge in support of the motion for summary judgment filed on my behalf.
2. Attached to the Motion for Summary Judgment as Exhibit 1 is a copy of a contract that I allegedly signed as my personal bond (the "Personal Bond") to pay the obligations of Danco Construction Company, Inc. ("Danco").
3. Wells Fargo N.A. (the "Bank") has suggested that the Personal Bond was intended to be a sealed instrument.
4. The Bank never asked for the Personal Bond to be sealed. The closing attorney never asked for the Personal Bond to be sealed. I was never requested to seal the Personal Bond.
5. The Bank never negotiated for the Personal Bond to be sealed.
6. I never intended for the Personal Bond to be sealed.
7. If at any time I would have been asked to seal the Personal Bond, I would have refused.
8. The Personal Bond was never intended to be a sealed instrument.
9. Lastly, the Personal Bond is for money only.

FURTHER AFFIANT SAYETH NOT.

Sworn to before me this 8th
day of MAY, 2015.

Michael R. Nummy
NOTARY PUBLIC OF SOUTH CAROLINA
My Commission Expires: 1-7-2019

Dee S. Nummy
Dee S. Nummy

IN THE STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
)

Wells Fargo, N.A., as successor by merger
to Wachovia Bank, National Association,

) Civil Action No.: 2014-CP-32-4259
)
)

Plaintiff,

vs.

**SUPPLEMENTAL AFFIDAVIT IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

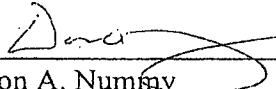
Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

Personally appeared before me, Don A. Nummy ("Don"), who, after being duly sworn, deposes and states:

1. My name is Don A. Nummy. I make this affidavit on my own personal knowledge in support of the motion for summary judgment filed on my behalf.
2. Attached to the Motion for Summary Judgment as Exhibit 1 is a copy of a contract that I allegedly signed as my personal bond (the "Personal Bond") to pay the obligations of Danco Construction Company, Inc. ("Danco").
3. Wells Fargo N.A. (the "Bank") has suggested that the Personal Bond was intended to be a sealed instrument.
4. The Bank never asked for the Personal Bond to be sealed. The closing attorney never asked for the Personal Bond to be sealed. I was never requested to seal the Personal Bond.
5. The Bank never negotiated for the Personal Bond to be sealed.
6. I never intended for the Personal Bond to be sealed.
7. If at any time I would have been asked to seal the Personal Bond, I would have refused.
8. The Personal Bond was never intended to be a sealed instrument.
9. Lastly, the Personal Bond is for money only.

FURTHER AFFIANT SAYETH NOT.


Don A. Nummy

Sworn to before me this 8th
day of MAY, 2015.


NOTARY PUBLIC OF SOUTH CAROLINA
My Commission Expires: 1-7-2019

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,)

Case No.: 2014-CP-32-04259

FILED

1 2015 MAY 26 P 3 12

Plaintiff,)

vs.)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SCDon A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,)

Defendants.)

I, the undersigned employee of the Gleissner Law Firm, LLC, attorneys for the Defendants, do hereby certify that I have served a copy of the documents listed below in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Documents served

Defendants' Motion to Reconsider Order Denying Motion for Summary Judgment and Granting Motion to Strike Jury Trial

Counsel served

Louise M. Johnson, Esquire
Stanley McGuffin, Esquire
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, Suite 2400
Post Office Box 11889
Columbia, South Carolina 29211

Anissa Terpstra
Anissa Terpstra, Paralegal to
Richard R. Gleissner

May 22, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Case No: 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger to Wachovia Bank, National Association,
Respondent,

v.

Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy,
Appellants.

RECEIVED
JUL 15 2015
SC Court of Appeals

NOTICE OF APPEAL

Defendants/Appellants, Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy, file this Notice of Appeal in regard to the attached Order dated May 5, 2015 and received on or about May 6, 2015. The attached Order appears to be a finalized version of the ruling of Judge Tanya A. Gee in regard to the Defendants' Motion for Summary Judgment and Plaintiff's Motion to Strike Jury Demand.

Further, this Notice of Appeal is in regard to the attached Order on Motion to Reconsider dated July 6, 2015 and received on or about July 7, 2015. The attached Order appears to be a finalized version of the ruling of Judge Tanya A. Gee in regard to the Defendants' Motion to Reconsider the May 5, 2015 Order.



Richard R. Gleissner, Esquire
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for Appellants

Columbia, South Carolina
July 15, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Case No: 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger to Wachovia Bank, National Association,
Respondent,

v.

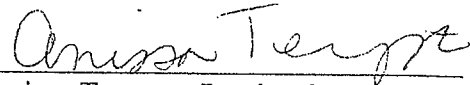
Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy,
Appellants.

RECEIVED
JUL 15 2015
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on July 15, 2015, addressed to its attorney of record as follows:

Stanley McGuffin, Esquire
Louise M. Johnson, Esquire
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, Suite 2400
Post Office Box 11889
Columbia, South Carolina 29211



Anissa Terpstra, Paralegal to
Richard R. Gleissner
Gleissner Law Firm, L.L.C.
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for the Appellants

Dated: July 15, 2015

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-32-04259

ORIGINAL

Wells Fargo, N.A. as successor by merger to Wachovia Bank,
National Association

Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

Denying defendant's motion for summary judgment and granting plaintiff's motion to strike jury demand

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge

2756
Judge Code

5/4/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the 18 day of May, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 18 day of May 15 to attorneys of record or to parties (when appearing pro se) as follows:

Louise M. Johnson

ATTORNEY(S) FOR THE PLAINTIFF(S)

Richard Gleissner

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32-04259

Wells Fargo, N.A. as successor by merger
to Wachovia Bank, National Association,

Plaintiff,

vs.

Don A. Nummy, II, Dee S. Nummy, and
Don A. Nummy,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT AND
GRANTING PLAINTIFF'S MOTION TO
STRIKE JURY DEMAND**

FILED

This matter is before me on Defendant Don A. Nummy, II's, Defendant Dee S. Nummy's, and Defendant Don A. Nummy's (collectively, "Defendants") Motion for Summary Judgment and Plaintiff Wells Fargo, N.A. as successor by merger to Wachovia Bank, National Association's ("Plaintiff") Motion to Strike Defendants' Jury Demand. A hearing was held before me on April 22, 2015. Plaintiff appeared through its attorneys, John G. Tamasitis and Stanley H. McGuffin, and Defendants appeared through their attorney, Richard R. Gleissner. As set forth more fully below, Defendant's Motion for Summary Judgment is denied and Plaintiff's Motion to Strike Defendants' Jury Demand is granted.

This case is an action for suit on guaranties signed by Defendants in connection with a promissory note that was executed by Danco Construction, Inc. ("Danco") on July 25, 2006, and delivered to Plaintiff in the original amount of Six Hundred Thousand and 00/100 (\$600,000) Dollars (the "Note"). Defendants executed and delivered to Plaintiff identical Unconditional Guaranty agreements (the "Guaranty Agreements"), pursuant to which Defendants guaranteed the

1 of 7
JAC
215

payment and performance of each and every debt of Danco. (Complt., Exhs. B and C.) Danco subsequently defaulted on the Note, and Plaintiff made demand upon the Defendants for payment on January 21, 2011. Defendants refused payment, and Plaintiff subsequently filed its Complaint on November 19, 2014.

Defendants' Motion for Summary Judgment asserts Plaintiff's action is barred by the statute of limitations. Plaintiff's Motion to Strike Defendants' Jury Demand was based on the grounds that Defendants had, as part of the Guaranty Agreements, waived their rights to a jury trial. For the reasons set forth below, this Court denies Defendants' Motion for Summary Judgment and grants Plaintiff's Motion to Strike the Jury Demand.

I. The Statute of Limitations Does Not Bar Plaintiff's Claims Because the Guaranty Agreements Were Executed Under Seal.

Defendants' contend in their motion that S.C. Code Ann. § 15-3-530 sets forth the applicable three-year state of limitations for this action. Defendants are correct that, as a general rule, a three-year statute of limitations applies to contract actions in South Carolina. *See* S.C. Code Ann. § 15-3-530(1). However, when an instrument is executed under seal, S.C. Code Ann. § 15-3-520 provides that the appropriate statute of limitations is twenty years after the cause of action accrues. Thus, the dispositive issue here is whether the Guaranty Agreements executed by Defendants were under seal.

S.C. Code Ann. § 15-3-520(b) provides, in relevant part, that "an action upon a sealed instrument, other than a sealed note and personal bond for the payment of money only" must be brought within twenty years. Defendants' rely on our Court of Appeals' decision in *Carolina Marine Handling v. Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005) for the proposition that words contained in mere boilerplate clauses are not indicia of the intent of the parties to create a

296-7
JME

"sealed instrument." Further, Defendants argue that the Guaranty Agreements were not executed under seal because nowhere in the Guaranty Agreements is there a seal affixed to the documents.

At the outset, it is true that there is not a physical seal affixed to any of the Guaranty Agreements at issue in this case. However, S.C. Code Ann. § 19-1-160 unambiguously provides:

Whenever it shall appear from the attestation clause or from any other part of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a sealed instrument although no seal be actually attached thereto.

(emphasis added). "The clear language of section 19-1-160 imposes a statutory rule of evidence and requires that the determination of whether a non-sealed instrument should be considered a sealed instrument be gleaned from the instrument." *Carolina Marine Handling, Inc.*, 363 S.C. at 173, 609 S.E.2d at 550-51. If it appears from the instrument that the parties intended for the instrument to be sealed, then the court will deem it sealed. *Id.* at 173, 609 S.E.2d at 551. Therefore, we must look to the Guaranty Agreements themselves to determine if the parties intended for the documents to be executed under seal.

Both Guaranty Agreements contain identical attestation clauses that state:

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

[signatures of parties] (SEAL)

(Compl., Exh. B, at p. 6 and Exh. C, at p. 6.)

In *Carolina Marine Handling, Inc.*, the Court of Appeals explained that a "boilerplate attestation clause, *by itself*," is not enough to establish the intention of the parties to execute an instrument under seal. 383 S.C. at 175, 609 S.E.2d at 552 (emphasis in original). Indeed, the court cautioned that if such a boilerplate clause required a finding of intent to create a sealed instrument,

3 of 7
JME

then it "would likely transform the twenty-year statute of limitations into the standard period of limitations for contract actions in this state." *Id.* Thus, the court held that the availability of the twenty-year limitations period under S.C. Code Ann. § 15-3-520 exists only "where the contract clearly evidences an intent to create a sealed instrument." *Id.*

Here, the Guaranty Agreements do not merely contain boilerplate attestation clauses, but they also noted "(SEAL)" next to the parties' signatures. The Court of Appeals construed a similar instrument in *South Carolina Department of Social Services v. Winyah Nursing Homes, Inc.*, 282 S.C. 556, 320 S.E.2d 464 (Ct. App. 1984). In that case, following the standard language in the attestation clause "the parties hereto have set their hands and seals," the contract noted "L.S." next to the parties' signatures. *Id.* at 561, 320 S.E.2d at 467. The inclusion of L.S. was significant because, as explained by the court in *Carolina Marine Handling*, L.S. was an abbreviation for "*Locus sigilli*," which means "the place of the seal; the place occupied by the seal of written instruments." *Carolina Marine Handling, Inc.*, 363 S.C. at 174, 609 S.E.2d at 551 (discussing the holding in *Winyah Nursing Homes*). For that reason, the Court of Appeals held that the parties' intended for the contract to be a sealed instrument. *Winyah Nursing Homes*, 282 S.C. at 556, 320 S.E.2d at 467.

The Guaranty Agreements in this case are similar to the instrument in *Winyah Nursing Homes* and show that the parties intended the agreements to be sealed instruments. Not only do they contain language in the attestation clause that the agreements were "to be executed under seal," but they also note "SEAL" next to the parties' signatures. As was the case in *Winyah Nursing Homes*, this language is significant and, perhaps, even more so here because the agreements use common language to evidence the parties' intention for the Guaranty Agreements to be executed under seal.

4 of 7
JAG

Accordingly, the Guaranty Agreements are deemed to have been executed under seal and the twenty-year statute of limitations, as provided in S.C. Code Ann. § 15-3-520, applies to this action. Therefore, because Plaintiff's suit on the Guaranty Agreements was brought within twenty-years after its causes of action accrued, it is not barred by the statute of limitations and Defendants' Motion for Summary Judgment is denied.

II. Defendants Waived Their Right to a Jury Trial in the Guaranty Agreements

Finding that Plaintiff's cause of action is not barred by the statute of limitations, the Court now turns its attention to Plaintiff's Motion to Strike Defendants' Jury Demand. In their Answer and Counterclaim, Defendants made a demand for a jury trial. It is well established in South Carolina that "[a] party may waive the right to a jury trial by contract." *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 332, 755 S.E.2d 437, 443 (2014) (quoting *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63, 566 S.E.2d 863., 866 (Ct. App. 2002)). "A person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it." *Id.* at 332-33, 755 S.E.2d at 443 (citing *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003)). South Carolina law does not "impose a duty on the bank to explain to an individual what he could learn from simply reading the document." *Id.* (citing *Citizens & S. Nat'l Bank of S.C. v. Lanford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994)).

The Guaranty Agreements signed by the Defendants contain identical jury trial waivers:

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN

5 of 7
JRG

DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

(Compl., Exh. A, at p. 6; Exh. B, at p. 6.) By signing the Guaranty Agreements, Defendants are charged with having read their contents.

Further, the jury trial waivers are conspicuous and unambiguous, and therefore, Defendants knowingly and voluntarily waived their rights to a jury trial. Indeed, in *Blackburn*, our Supreme Court held that virtually identical jury trial waivers were conspicuous and unambiguous because “[u]nlike the other provisions in the . . . guaranties, the waivers are printed in all capital letters and have a bold heading called ‘**WAIVER OF JURY TRIAL.**’ They are located at the very end of the six-page document, directly above the signature line, thus making the conspicuous font even more noticeable, even at a quick glance.” *Blackburn*, 407 S.C. at 333 n.8, 755 S.E.2d at 443 n.8. Similarly, the jury trial waivers in this case, unlike the other provisions in the Guaranty Agreements, have bold headings called “**WAIVER OF JURY TRIAL**” and they are located at the very end of the six-page Guaranty Agreements, directly above the signature lines.

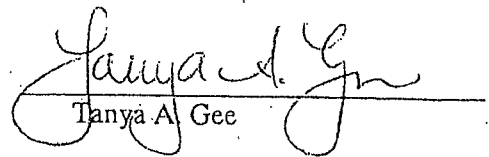
Finally, Defendants’ counterclaims are covered by the jury trial waivers. The *gravamen* of Defendants’ breach of contract counterclaim is that Plaintiff breached the covenant of good faith and fair dealing when it refused to extend any further credit to Danco under the original promissory

6 of 7
JAG

note. (Def. Don A. Nummy II Answer and Countercl. p. 5, at ¶¶ 29-30; Defs. Dee S. Nummy and Don A. Nummy Answer and Countercl. p. 5, at ¶¶ 29-30.) As a result, Defendants assert that this breach of contract "created a substitute contract and/or imposed risk on the Defendants fundamentally different" from the original agreement, thus, giving rise to Defendants' second counterclaim for surety defenses. (Def. Don A. Nummy II Answer and Countercl. p. 6, at ¶ 39; Defs. Dee S. Nummy and Don A. Nummy Answer and Countercl. p. 6, at ¶ 39.) The jury trial waivers apply to these counterclaims because the waivers cover "any litigation based on, or arising out of, under or in connection with . . . the loan documents or any agreement contemplated to be executed in connection with this guaranty, or any course of conduct, course of dealing . . . or actions of any party with respect hereto." (Compl., Exh. A, at p. 6; Exh. B, at p. 6.) Therefore, Defendants cannot avoid the effects of the jury trial waivers, and the waivers are enforceable and applicable to all of the Defendants' counterclaims.

Based on the foregoing, Defendants' Motion for Summary Judgment is **DENIED** and Plaintiff's Motion to Strike Defendants' Jury Demands is **GRANTED**.

AND IT IS SO ORDERED.


Tanya A. Gee

May 4, 2015

7 of 7

222 STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-32-4259

Wells Fargo, N.A., et al,

Don A. Nummy, II, Dee S. Nummy, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Reconsideration is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

James A. Gee
Circuit Court Judge

2756
Judge Code

June 30, 2015
Date

RECEIVED

APR 26 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Tanya A. Gee, Circuit Court Judge

Case No: 2014-CP-32-04259

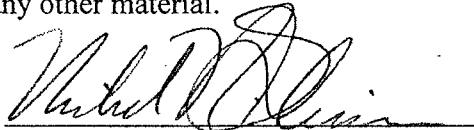
Wells Fargo, N.A. as successor by merger to Wachovia Bank, NA Respondent,

v.

Don A. Nummy, II, Dee S. Nummy, and Don A. Nummy, ... Appellants

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.



Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for Appellant

Columbia, South Carolina
April 6, 2016