

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.,
Presiding Judge

Case No. 2008-CP-10-3699

First Southern National Bank, successor in interest to
Community FirstBank, Respondent,

v.

James R. Rocco, Francis E. Clark, and Douglas A. Booth, Defendants,
of whom Francis E. Clark and Douglas A. Booth are, Appellants.

MOTION TO DISMISS APPEAL

Now comes the Respondent, First Southern National Bank, successor in interest to Community FirstBank, (hereinafter, "FSNB"), by and through counsel and pursuant to Rules 201 and 240 of the South Carolina Appellate Court Rules, and hereby moves this Court to dismiss the appeals of Appellants Francis E. Clark ("Clark") and Douglas A. Booth ("Booth"). The basis for this Motion is that the grant of partial summary judgment in favor of FSNB is not immediately appealable. In support of this Motion, FSNB presents the following.

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STATEMENT OF THE CASE

On February 26, 2007, Community FirstBank (“CFB”) entered into an agreement with Wacca Wache Marina, LLC (“WWM”), whereby CFB would loan WWM \$14,725,000.00 for the purchase of properties located in Murrells Inlet, South Carolina, and collectively known as, Wacca Wache Marina (“Marina”). At the closing on February 26, 2007, and pursuant to signed resolutions adopted by the members, Clark duly executed the following on behalf of WWM: Loan Agreement; Promissory Note (“Note”); Commercial Mortgage of Real Property and Security Agreement; Assignment of Leases Rents and Profits; and Environmental Indemnity Agreement. At the closing, Clark and Booth also duly executed identical, unlimited personal Unconditional Guaranties (“Guaranties”) and signed the Loan Agreement, Assignment of Lease Rents and Profits, and Environmental Indemnity Agreement *as guarantors*. WWM accepted the loan proceeds and purchased the Marina. On February 25, 2008, CFB and WWM entered into a Loan Modification, thereby extending the first principal payment deadline from December 31, 2007 to March 31, 2008. WWM thereafter defaulted on the Note, as modified by the Loan Modification. See Ex. A., Clark Dep. pp. 159–60; and Ex. B., Booth Dep. pp. 97, 104.

On June 30, 2008, CFB filed the Complaint against Clark and Booth seeking to enforce the Guaranties and recover the full deficiency owed under the Note. See Ex. C. On November 1, 2010, CFB filed a Motion for Summary Judgment against Clark and Booth. On January 13, 2012, the Honorable Judge R. Markley Dennis heard the Motion for Summary Judgment and granted partial summary judgment as to liability against Clark and Booth. See Ex. D. The Court specifically denied summary judgment on the

issue of damages and ruled that damages would be determined at a trial on the merits subject to the defenses raised by Clark and Booth. See id. Clark and Booth have each filed Notices of Appeal of the grant of partial summary judgment set forth in the Order of the Court dated January 23, 2012 and entered February 6, 2012.

ARGUMENT

Clark and Booth's appeal from the order granting partial summary judgment is not immediately appealable. "An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed." Hagood, 362 S.C. at 195, 607 S.E.2d at 709. "The right of appeal arises from and is controlled by statutory law." Charlotte Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env'tl. Control, 387 S.C. 265, 265, 692 S.E.2d 894, 894 (2010). "The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330." Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006). In order to be immediately appealable, an order must "involve the merits" or "affect a substantial right." Mid-State Distributions, Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). The pertinent language of § 14-3-330 states:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

S.C. Code Ann. § 14-3-330 (2011).

“The provisions of Section 14-3-330... have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed.” Hagood v. Sommerville, 362 S.C.191, 196, 607 S.E.2d 707, 709 (2005). In the present case, the order is not immediately appealable under any subsection of § 14-3-330.

The summary judgment order against Clark and Booth does not “involve the merits” because the court left a further act to be completed: the determination of damages. “The phrase ‘involving the merits’ is narrowly construed in modern precedent. An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties’ rights.” Capital U-Drive-It, 369 S.C. at 7, 630 S.E.2d at 467–68. Because the court has left open the determination of damages—which is a question of fact—Booth and Clark have not “arrived at the end of the road” in the determination of their rights. Mid-State, 310 S.C. at 334, 426 S.E.2d at 780. The outstanding issue of damages renders the order granting partial summary judgment interlocutory and not immediately appealable. Id. at 335, 426 S.E.2d at 780.

Additionally, the partial summary judgment order fails to satisfy the requirements necessary for it to “affect a substantial right” under section 14-3-330(2). See Hagood, 362 S.C. at 195, 607 S.E.2d at 709. An order affects a substantial right “when such order

would discontinue an action, prevent an appeal, grant or refuse a new trial or strike out an answer or defense.” Mid-State, 310 S.C. at 334, 426 S.E.2d at 780 n.4. The language under subsection (2) of §14-3-330, “affecting a substantial right,” is also narrowly construed. Hagood, 362 S.C. at 195, 607 S.E.2d at 709. Immediate appeals under subsection (2) should be allowed only in situations where the substantial right could not have been vindicated after the case. Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000). There is no dispute that Clark and Booth have the right to appeal the trial court’s ruling on liability after a trial on the remaining issues. Applying a strict construction of the statute, the trial court’s grant of partial summary judgment does not satisfy the elements in subsection (2); therefore, the order is not immediately appealable.

Furthermore, the immediate appeal of the partial summary judgment order is not supported by South Carolina case law. It is the general rule in South Carolina that parties may immediately appeal an order granting summary judgment on liability. See Nauful v. Milligan, 258 S.C. 139, 142–43, 87 S.E.2d 511, 512–13 (1972). However, “[w]hen multiple defendants are joined in the same action, an order dismissing some but not all of them is ordinarily not final or appealable.” State ex rel. McLeod v. C&L Corp., Inc., 280 S.C. 519, 529, 313 S.E.2d 334, 340 (Ct. App. 1984). Instead, such an order may be appealed only upon final judgment. See id. at 530, 313 S.E.2d at 341. “A judgment which determines the applicable law, but leaves open questions of fact, is not a final judgment.” Charlotte Mecklenburg, 387 S.C. at 267, 692 S.E.2d at 895; see also Thorton v. South Carolina Electric & Gas, 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011)(finding that a grant of partial summary judgment in favor of a defendant was not immediately

appealable). The calculation of damages is a question of fact. See Lucht v. Youngblood, 266 S.C. 127, 138, 221 S.E.2d 854, 860 (1976) (“It is in the province of the jury to determine amounts to be allowed and a verdict should not be disturbed unless it is so flagrantly excessive as to raise a presumption that it was the result of passion and prejudice, and not of sober, reflective judgment.”); Auto-Owners Ins. Co. v. Rhodes, 385 S.C. 83, 109 n.8, 682 S.E.2d 857, 871 (Ct. App. 2009) (applying the standard of review applicable to findings of fact to the question of damages). “A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.” Id.

In dismissing the appeal of a trial court order, which disposed of less than all of the defendants, McLeod relied on similar holdings from other jurisdictions, including a Fourth Circuit appeal from the District of South Carolina, Burleson v. Canada. See McLeod, 280 S.C. at 529–30, 313 S.E.2d at 340–41 (citing Burleson v. Canada, 285 F.2d 264 (4th Cir. 1961); Road Bldg. Co. v. Louisville Gas & Elec. Co., 299 S.W.2d 122 (Ky. 1957); Pan Am. Petroleum Corp. v. Pac. Coal & Oil Co., 324 S.W.2d 200 (Tex. 1959)). In Burleson, an injured motorist sued three individuals for liability related to an automobile accident. The court granted summary judgment in favor of two of the three individual defendants. See Burleson, 285 F.2d at 265. The plaintiff appealed the grant of partial summary judgment, and the court dismissed the appeal holding that “the appeal from the order granting the motion of the [defendants] for summary judgment was premature, since it was a judgment in favor of only two of the three defendants jointly charged in a single suit.” Id. Because summary judgment in favor of the two defendants

lacked finality, the court dismissed the appeal and remanded the whole case to the trial court. Id. at 266.

In the present case, the trial court has granted partial summary judgment on liability against only two of the three defendants. See Ex. B, ¶ II.g. Because there are multiple defendants in the action and the partial summary judgment was to liability only, the Order is not a final judgment. See McLeod, 280 S.C. at 529, 313 S.E.2d at 340. The determination of damages still remains to be decided; there is more left to be done than the enforcement by execution of the trial court's Order. See Charlotte Mecklenburg, 387 S.C. at 267, 692 S.E.2d at 895. Applying the rule from McLeod and Burleson, appeal from the order granting partial summary judgment is premature and should be dismissed.

Finally, public policy dictates that piecemeal appeals should be avoided as this practice does not promote an efficient use of the resources of the court or the litigants. “[T]he law frowns upon the practice of bringing cases in fragments to the appellate Courts.” Good v. Hartford Accident & Indem. Co., 201 S.C. 32, 41, 21 S.E.2d 209, 213 (1942). “The rule in restriction of piecemeal appellate procedure, dating back to the common law, is based upon sound reason and practical utility. If it were otherwise, endless delays would be encountered—delays which are unnecessary . . . which can be decided upon an appeal from such final judgment as may later be entered by the trial Court.” Id., see also Hagood, 362 S.C. at 196, 607 S.E.2d at 709. Such is the case in the present matter. Clark and Booth's appeal of partial summary judgment will cause considerable delays in resolving the conflict with FSNB, including the claims FSNB has asserted against the third defendant, James Rocco. In effect, the appeal will hold the case in abeyance until this discrete issue can be decided, an issue that could be handled

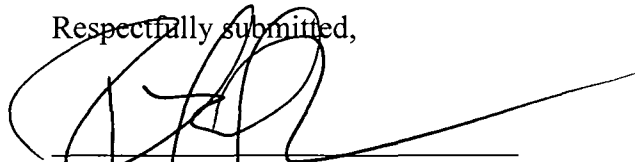
properly at the conclusion of the case. Judicial economy dictates that this appeal may be dismissed to allow for the final adjudication of the remaining claims, at which time Clark and Booth's appeal can properly be considered.

CONCLUSION

Based on the foregoing arguments, Respondent respectfully requests the Court dismiss Appellants' Notices of Appeal.

April ¹⁴~~26~~, 2012

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLETON COUNTY
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The Honorable R. Markley Dennis, Jr.,
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First Southern National Bank, successor in interest to
Community FirstBank, Respondent,

v.

James R. Rocco, Francis E. Clark, and Douglas A. Booth, Defendants,
of whom Francis E. Clark and Douglas A. Booth are, Appellants.

PROOF OF SERVICE

I certify that I have served Respondent's Motion to Dismiss Appeal, by depositing
a copy of same in the United States Mail, postage prepaid, addressed to:

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April 26th, 2012



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EXHIBIT A

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1 that. I didn't, I didn't understand that. I
2 thought that was a modification giving us time to
3 try to work the thing out and I think -- I
4 understood our curtailment, the first one to be in
5 December of the same year, '07, and this was signed
6 in '08 you said.

7 Q. Right. After the first curtailment was
8 missed, then this note modification went into place
9 rescheduling --

10 A. I didn't understand that.

11 Q. Okay. Did you have an attorney
12 involved?

13 A. No.

14 Q. Who drafted this document, are you
15 aware?

16 A. I -- I'm not aware.

17 Q. But you did read it and sign it, you
18 don't doubt that, on February 25th, 2008?

19 A. I don't doubt that I signed it.

20 Q. You're not sure if you read it or not?

21 A. No.

22 Q. To this date Wacca Wache Marina, LLC
23 has never made a curtailment or --

24 A. Correct.

25 Q. -- a capital paydown?



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1 A. Correct. Other than through the sales
2 of the slips.

3 Q. What do you mean by that?

4 A. I think we gave them 93 percent of the
5 proceeds from each sale.

6 Q. And that was pursuant to the assignment
7 of leases and proceeds that you signed along
8 with --

9 A. Yeah, we were on a lease fee.

10 Q. And that was just passed on to the
11 bank?

12 A. Correct.

13 Q. Do you recall the negotiations that
14 went into this modification of the note?

15 A. There wasn't any.

16 Q. And how did that come to pass, do you
17 recall?

18 A. I went to have a meeting with them and
19 she put it in front of me and said it was just -- I
20 understood it to be an extension, I just signed it.

21 Q. Now, after March 31st, 2008, after that
22 extended deadline for the first curtailment came
23 and went without the payment being made, you guys
24 entered into some communications or negotiations
25 with Community FirstBank about what was going to



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EXHIBIT B

1 section.

2 A. I think, it would go faster. The date that
3 you mentioned was December 31, '07?

4 Q. And just my question to you was that was the
5 date when the first curtailment or capital paydowns,
6 principal paydown, was scheduled; correct?

7 A. Yes. For the promissory note, that's
8 correct.

9 Q. And the LLC was unable to or did not make
10 that payment; correct?

11 A. Was unable to. That's correct.

12 Q. And following the failure to make that
13 payment, was there some discussions with the bank on how
14 to proceed under the terms of the loan?

15 A. Yes.

16 Q. And, in fact, on February 25, 2008, the bank
17 entered into a modification of the loan with the LLC;
18 correct?

19 A. I'm not familiar with the modification. I
20 don't recall it.

21 Q. Let's look at Exhibit Number 26. Do you
22 have that?

23 A. Yes, I do.

24 Q. Do you see it's entitled, "Note Modification
25 Agreement"?

1 to Wacca Wache Marina, LLC?

2 A. I think, it would be a benefit for both
3 parties to try and make the deal work. So, yes, both
4 parties, both parties.

5 Q. And in that you would agree it would be a
6 benefit for the LLC?

7 A. Yes. Postponing the payment, pushing it out
8 would be a benefit for the LLC.

9 Q. December 31, 2008, came -- excuse me --
10 March 31, 2008, came, which was, again, the rescheduled
11 date for the first curtailment, and Wacca Wache Marina,
12 LLC, was not able to make that payment; correct?

13 A. That's correct.

14 Q. And did not do so; correct?

15 A. That's correct.

16 Q. And at that point in time, you entered into
17 some discussions with the bank regarding how the LLC was
18 going to proceed under the terms of the loan; correct?

19 A. In broad strokes of time frame, I believe
20 so, yes.

21 Q. Were you a part of any meetings with the
22 bank regarding how to go forward --

23 A. Yes.

24 Q. -- after that curtailment was missed?

25 A. Yes.

EXHIBIT C

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	COURT FILE NO. 08-CP-10-
)	
COMMUNITY FIRSTBANK,)	
)	
Plaintiff,)	
)	
vs.)	
)	
JAMES R. ROCCO, FRANCIS E.)	COMPLAINT
CLARK and DOUGLAS A. BOOTH,)	(COLLECTION/NON-JURY)
)	
Defendants.)	
)	
)	
)	
)	
)	
)	

The Plaintiff above named, Community FirstBank (“Plaintiff”) complaining of the Defendants herein, alleges and says that:

1. Plaintiff is now and was at the times hereinafter mentioned a corporation organized and existing under the laws of the United States with its principal place of business at Charleston, South Carolina, and this Court has jurisdiction of the parties and the subject matter of this action.

2. Upon information and belief, the Defendants are residents of Charleston County, South Carolina.

3. On or about February 26, 2007, Wacca Wache Marina, LLC (“Borrower”) executed and delivered to Plaintiff a negotiable Promissory Note in the original principal amount of Fourteen Million Seven Hundred Twenty Five Thousand and no/100 (\$14,725,000.00) Dollars, with interest thereon, as more fully shown in the original document, a copy of which

Note is attached hereto as Plaintiff's Exhibit "A" and incorporated herein by reference (the "Note").

4. On the same date, in order to further secure payment of the Note and as additional consideration for the loan represented by the Note, for value, the Defendants, James R. Rocco, Francis E. Clark and Douglas A. Booth, individually and separately executed and delivered to Plaintiff Unconditional Guaranty agreements of the amount due under said Note, as may be more fully seen by reference to the Unconditional Guaranty agreements attached hereto as Plaintiff's Exhibit "B", "C" and "D", respectively, and incorporated herein by reference (collectively the "Guaranty Agreements").

5. The Guaranty Agreements provide, among other things, that

(a) Defendants guarantee to Plaintiff the due and punctual payment of all principal, interest, and any other amounts due, whether by acceleration or otherwise, under the Note and all lien documents securing the Note, and including all renewals, extensions, and modifications thereof, plus all interest, costs, and reasonable attorneys' fees of Plaintiff;

(b) the Guaranty Agreements are unconditional and continuing guarantys of payment and not of collection;

(c) Defendants expressly waive any rights to require Plaintiff to bring an action against Borrower or any other person or to require Plaintiff to resort to any security, deposits, or accounts to satisfy the underlying obligation; and

(d) Defendants acknowledge their obligations are primary, not secondary.

6. The Guaranty Agreements further provide that an event of default is the failure of Defendants to pay their obligations immediately upon demand after a default by Borrower in its

payment obligations.

7. On or about February 25, 2008, Borrower executed and delivered that certain Note Modification Agreement to the Plaintiff, a copy of which is attached hereto as Plaintiff's Exhibit "E" and incorporated herein by reference (the "Note Modification Agreement").

8. The conditions of the Note have been violated in that the Borrower failed to make the principal reduction payment in accordance with the terms of the Note Modification Agreement, and Plaintiff, as holder of the Note and the Guaranty Agreements, has elected to declare a default, to accelerate the terms of the Note, and to declare the entire amount payable according to the terms of the Note and Guaranty Agreements now due and owing, and has made due demand upon Defendants and Borrower for such entire amount, which demand has been refused.

9. There is now due on the Note and the Guaranty Agreements the principal sum of Thirteen Million Six Hundred Fifty Nine Thousand Eighty and 17/100 (\$13,659,080.17) Dollars, with interest thereon at the rate provided in the Note, until paid, plus late charges, plus any advances with interest, plus attorneys' fees and costs.

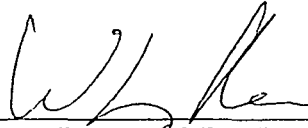
10. The Note and Guaranty Agreements provide for recovery by Plaintiff of a reasonable sum as attorneys' fees from Borrower and the Guaranty Agreements have been placed in the hands of Moore & Van Allen PLLC, Attorneys for Plaintiff, for collection.

WHEREFORE, Plaintiff prays that:

(a) It be granted an immediate joint and several money judgment against the Defendants pursuant to their Guaranty Agreements, in the principal sum of Thirteen Million Six Hundred Fifty Nine Thousand Eighty and 17/100 (\$13,659,080.17) Dollars, with interest thereon at the rate provided in the Note, until paid, plus late charges, plus any advances with interest,

plus attorneys' fees and costs.

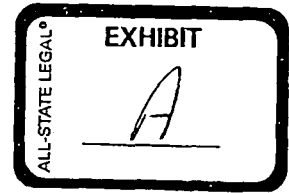
(b) For such other and further relief as may seem just and proper to the Court.



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CHARLESTON, SC
June 30, 2008

PROMISSORY NOTE



\$14,725,000.00

Charleston, South Carolina

February 26, 2007

FOR VALUE RECEIVED, WACCA WACHE MARINA, LLC, a South Carolina limited liability company (the "Borrower"), promises to pay to the order of COMMUNITY FIRSTBANK (the "Lender"), at Charleston, South Carolina, or at such other place or to such other party or parties as Lender may from time to time designate the principal sum of Fourteen Million Seven Hundred Twenty Five Thousand and 00/100 (\$14,725,000.00) Dollars, with interest thereon computed from the date hereof at the rate equal to the Prime Rate (as hereinafter defined) of Lender. The interest rate hereunder shall adjust accordingly on each date the Prime Rate changes. The term "Prime Rate" shall mean the rate of interest quoted by Lender, or any successor thereto, as the Prime Rate (which rate may not be the rate charged by Lender to its preferred customers), as the same may be changed from time to time by it. If for any reason Lender shall at any time no longer quote a Prime Rate in the manner set forth above, Lender shall, in the exercise of its reasonable judgment, substitute another means of determining the annual lending rate of interest and the rate of interest as thus determined shall thereafter be the Prime Rate as that term is used herein. Interest shall be computed on the actual number of days elapsed divided by a 360-day year.

Commencing on April 1, 2007 and continuing on the 1st day of each month thereafter, Borrower shall make monthly payments of accrued interest only. Borrower shall also make annual principal payments to reduce the principal balance outstanding to \$9,725,000.00 as of December 31, 2007 and to \$4,725,000.00 as of December 31, 2008. The entire outstanding balance of this Note and any outstanding and accrued interest shall be due and payable in full on February 28, 2009 (the "Maturity Date").

Except as otherwise specified herein, each payment or prepayment, if any, made under this Note shall be applied to pay late charges, accrued and unpaid interest, principal, escrows (if any), and any other fees, costs and expenses which Borrower is obligated to pay under this Note, in such order as Lender may elect from time to time in its sole discretion.

All installments of principal and all interest are payable in lawful money of the United States of America, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment; and in the event of (a) failure to pay this Note in full on the Maturity Date, or (b) default in the payment of any other installment of interest or principal or any other sum payable pursuant to the terms of this Note or any lien document securing this Note, not cured within ten (10) days after written notice from Lender, or (c) an "Event of Default" as such term is defined in the Loan Agreement between Borrower and Lender or in any other document evidencing or securing the Note, not cured within the cure period (if any) provided therein, then or at any time thereafter, at the option of Lender, the whole of the principal sum then remaining unpaid hereunder together with all interest accrued thereon, shall

immediately become due and payable without further notice, and the lien given to secure the payment of this Note may be foreclosed. From and after the maturity of this Note either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at a rate of four (4%) per cent per annum above the rate otherwise in effect hereunder (the "Default Rate"), or the highest applicable lawful rate, whichever is the lesser; provided that there shall be no automatic reduction to the highest lawful rate as to Borrower or any endorser or guarantor barred by law from availing itself in any action or proceeding of the defense of usury, or Borrower or any endorser or guarantor barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money. Failure to exercise such option or any other rights Lender may in the event of any such default be entitled to, shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default, whether of the same or different nature.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, Borrower promises to pay all expenses of collection and reasonable attorney's fees incurred by Lender.

In the event the interest provisions hereof or any exactions provided for herein or in the lien documents or any other instruments securing this Note shall result, because of the monthly reduction of principal or any other reason related or unrelated to the interest provisions, at any time during the life of the loan, in an effective rate of interest which, for any period of time, transcends the limit of the usury or any other law applicable to the loan evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied to principal immediately upon receipt of such monies by Lender with the same force and effect as though the payor had specifically designated such and agreed to accept such extra payment(s) as a premium free payment. Notwithstanding the foregoing, however, Lender may at any time and from time to time elect, by notice in writing to the owners of the property affected by the lien document securing this Note, to reduce or limit the collection of any interest to such sums, which, when added to the said first-stated interest, shall not result in any payments toward principal in accordance with the requirement of the preceding sentence. In no event shall any agreed to or actual exaction as consideration for this loan transcend the limits imposed or provided by the law applicable to this transaction or Borrower in the jurisdiction in which the land is located for the use or detention of money or for forbearance in seeking its collection.

This Note is secured by that certain Commercial Mortgage of Real Property and Security Agreement of even date herewith (the "Mortgage") and by other Loan Documents as described in the Loan Agreement, to which reference is made from the terms thereof, and the same are made a part of this Note.

Lender may collect a late charge of five (5%) per cent of any installment of principal or interest which is not paid within ten (10) days of the due date thereof to cover the extra time and expense involved in handling delinquent payments. Such late charge shall apply to late

payments prior to maturity or acceleration. Upon maturity or acceleration, no further late charges shall be assessed, but Borrower shall pay the Default Rate of interest on all amounts due from the date of maturity or acceleration until the Note is paid in full. The collection of the late charge shall not be deemed a waiver by Lender of interest accruing after the due date of any installment or of any of Lender's other rights under this Note.

Borrower agrees that the late charge provided above is fair and reasonable compensation to Lender for the additional administrative time and effort incurred in collecting and processing delinquent payments. Borrower further agrees that the Default Rate is a fair and reasonable rate of interest to be charged after maturity or acceleration of this Note in light of the increased risks to Lender inherent in a past due loan and the administrative time and effort incurred in collecting a past due loan.

Borrower and all endorsers, guarantors and all persons liable or to become liable on this Note waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and consent to any and all renewals and extensions of the time of payment hereof, and agree, further, that at any time and from time to time without notice, the terms of payment herein may be modified or the security described in the lien document securing the Note released in whole or in part, or increased, changed or exchanged by agreement between Lender and any owner of premises affected by said lien document securing this Note without in anywise affecting the liability of any party to this instrument or any person liable with respect to any indebtedness evidenced hereby.

Lender is not required to rely on the collateral for the payment of the Note in the event of default by the maker, but may proceed directly against the maker, endorsers, or guarantors, if any, in such manner as it deems desirable. None of the rights and remedies of Lender hereunder are to be waived or affected by failure or delay to exercise them. All remedies conferred on Lender by this Note or any other instrument or agreement shall be cumulative, and none is exclusive. Such remedies may be exercised concurrently or consecutively at Lender's option.

This Note may be prepaid in whole or in part at any time without penalty. Any partial prepayment shall be made only upon thirty (30) days prior written notice to Lender, shall be made on a date a payment is otherwise due, and shall be applied to payments in the inverse order of maturity. Any such partial prepayment shall not result in a decrease in the amount of payments that would otherwise be due over the term of this Note, but will instead be applied to reduce the final payment due on maturity.

This Note shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws and decisions of the State of South Carolina.

Wherever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note or portion thereof shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

This Note may be assigned by Lender with or without recourse.

Borrower submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Borrower agrees that any action concerning this Note or any instrument securing this Note, whether initiated by Lender, Borrower or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Borrower waives all objections to venue. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Borrower further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested.

WAIVER OF JURY TRIAL. BY THE EXECUTION HEREOF, BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY-HEREBY AGREES THAT:

(A) NEITHER BORROWER NOR LENDER, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF BORROWER OR LENDER, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS NOTE, THE MORTGAGE, THE LOAN AGREEMENT (IF ANY) OR ANY OF THE LOAN DOCUMENTS EVIDENCING, SECURING, OR RELATING TO THE LOAN EVIDENCED HEREBY, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES HERETO;

(B) NEITHER BORROWER NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

(C) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(D) NEITHER BORROWER NOR LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

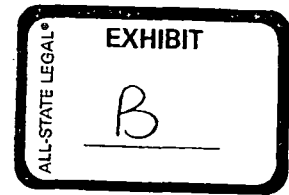
(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN EVIDENCED BY THIS NOTE.

BORROWER:

WACCA WACHE MARINA, LLC

By: Francis E. Clark
Name: FRANCIS E. CLARK
Title: member

UNCONDITIONAL GUARANTY



February 26, 2007

WHEREAS, WACCA WACHE MARINA, LLC, a South Carolina limited liability company (the "Borrower"), has borrowed or shall borrow the sum of FOURTEEN MILLION SEVEN HUNDRED TWENTY FIVE THOUSAND (\$14,725,000.00) DOLLARS from COMMUNITY FIRSTBANK (the "Lender") pursuant to a Promissory Note from Borrower to Lender dated the date hereof (the "Note"); and

WHEREAS, Lender is unwilling to make the loan to Borrower evidenced by the Note unless it receives an unconditional and continuing guaranty from JAMES R. ROCCO, (hereinafter termed "Guarantor"), covering all "Obligations of Borrower" as hereinafter defined;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, and in order to induce Lender to lend money to Borrower as evidenced by the Note, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of all principal, interest and any other amounts due or to become due, whether by acceleration or otherwise, under the Note and all lien documents securing the Note, and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of Borrower to Lender being hereinafter collectively termed "Obligations of Borrower").

Further, whether or not suit is brought by Lender to acquire possession of collateral or to enforce collection of any unpaid balance hereunder, Guarantor expressly hereby agrees to pay all legal expenses and the reasonable attorneys' fees (including those relative to appellate proceedings, if any) incurred by Lender with respect to this Guaranty.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees as follows:

1. This Guaranty is and shall remain an unconditional and continuing guaranty of payment and not of collection. Guarantor hereby expressly waives any right to require Lender to bring any action against Borrower or any other person or to require that resort be had to any security or to any balance of any deposit or other account or debt or credits on the books of Lender in favor of Borrower or any other person. Guarantor acknowledges that Guarantor's liabilities and obligations hereunder are primary rather than secondary. Without limiting the generality of the foregoing, Guarantor expressly waives any rights Guarantor otherwise might have under provisions of South Carolina or other applicable law to require Lender to attempt to recover against Borrower and/or to realize upon any securities or collateral security which Lender holds for the obligation evidenced or secured hereby.

2. TIME IS OF THE ESSENCE HEREOF.

3. This Guaranty Agreement constitutes the entire agreement between the parties, and no waivers or modifications shall be valid unless they are reduced to writing, duly executed by the party to be charged thereby, and expressly approved in writing by an officer of Lender actually involved in the transactions being guaranteed hereby.

4. If any process is issued or ordered to be served upon Lender, Borrower or Guarantor, seeking to seize Borrower's and/or Guarantor's rights and/or interests in any bank account maintained with Lender, the balance in any such account shall immediately be deemed to have been and shall be set-off against any and all Obligations of Borrower and/or all obligations and liabilities of Guarantor hereunder, as of the time of the issuance of any such writ or process, whether or not Borrower, Guarantor and/or Lender shall then have been served therewith.

5. All moneys available to and/or received by Lender for application toward payment of (or reduction of) the Obligations of Borrower may be applied by Lender to such Obligations of Borrower in such manner, and apportioned in such amounts and at such times, as Lender, in its sole discretion, may deem suitable or desirable.

6. As security for any and all liabilities of Guarantor hereunder, now existing or hereafter arising, Guarantor hereby grants Lender the right to retain a security interest in any and all moneys or other property (i.e., goods and merchandise, as well as all documents relative thereto; also, funds, securities, choses in action and any and all other forms of property, whether real, personal or mixed and any right, title or interest of Guarantor therein or thereto) and/or the proceeds thereof, which have been or may hereafter be deposited or left with Lender (or with any agent or other third party acting on Lender's behalf) by or for the account or credit of Guarantor, including without limitation any property in which Guarantor may have any interest. Further, where any money is due Lender hereunder, Lender is herewith authorized to exercise its right of set-off or "bank lien" as to any moneys deposited in demand, checking, time, savings, or other accounts of any nature maintained in and with it by any of the undersigned, without advance notice. Said right of set-off shall also be applicable and exercised by Lender, in its sole discretion, where Lender is indebted to any Guarantor by reason of any certificate of deposit, bond, note or otherwise.

7. Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect (by filing, recording or otherwise) any security interest it may have in any property securing this Unconditional Guaranty Agreement and/or the Obligations of Borrower secured hereby and hereunder.

8. Guarantor further hereby consents and agrees that Lender may at any time, or from time to time, in its sole discretion: (i) extend or change the time of payment, and/or the manner, place or terms of payment of any or all of the Obligations of Borrower; (ii) exchange, release and/or surrender all or any of any collateral security, or any part thereof, by whomsoever deposited, which is or may hereafter be held by it in connection with all or any of the Obligations of Borrower and/or any liabilities or obligations of Guarantor hereunder; (iii) release any other guarantor, endorser or co-obligor of the Obligations of Borrower with or without consideration and without notice to and further consent from any Guarantor and such release shall not in any way affect the liability of the undersigned; (iv) sell or otherwise dispose of and/or purchase all or

any of any such collateral at public or private sale, and after deducting all costs and expenses of every kind for collection, preparation for sale, sale or delivery, the net proceeds of any such sale or other disposition may be applied by Lender upon all or any of the Obligations of Borrower; (v) settle or compromise with Borrower, any insurance carrier and/or any other person liable thereon, any and all of the Obligations of Borrower (including, but not limited to any insurance applicable to the Obligations of Borrower), and/or subordinate the payment of all or any part of same, to the payment of any other debts or claims, which may at any time be due or owing to Lender and/or any other person; or (vi) alter, extend, change, modify, release, waive or cancel any covenant, agreement, condition, obligation or provision contained in any or all loan documents; all in such manner and upon such terms as Lender may deem proper and/or desirable, and without notice to or further assent from Guarantor, it being agreed that Guarantor shall be and remain bound upon this Unconditional Guaranty Agreement, irrespective of the existence, value or condition of any collateral, and notwithstanding any such change, exchange, settlement, compromise, surrender, release, foreclosure, sale or other disposition, application, renewal or extension and notwithstanding also that the Obligations of Borrower may at any time exceed the aggregate principal sum of the Note. Further, this Guaranty shall not be construed to impose any obligation on Lender to extend or continue to extend credit or otherwise to deal with Borrower at any time.

9. In consideration of Lender's extension of credit to Borrower, Guarantor hereby agrees:

(a) To subordinate, and by this Agreement does subordinate, all debts now or hereafter owed by Borrower to Guarantor to any and all debts of Borrower to Lender now or hereafter existing while this Agreement is in effect.

(b) Guarantor further agrees that it will not assert any right to which it may be or become entitled, whether by subrogation, contribution or otherwise against Borrower or any of the other guarantors or any of their respective properties, by reason of the performance of the undersigned of his obligations under this Guaranty, except after payment in full of all amounts (including costs and expenses) which may become payable in respect of or under the Obligations of Borrower.

(c) Guarantor hereby indemnifies and holds Lender harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including cleanup costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses), of every kind and nature, suffered by or asserted against Lender under any law, regulation or ordinance, local, state or federal concerning any hazardous materials, substances, wastes or other environmentally regulated substances now or hereafter located on the property of Borrower or Guarantor.

10. This Unconditional Guaranty Agreement shall be binding upon Guarantor, and the heirs, executors, administrators, successors and assigns of Guarantor; and it shall inure to the benefit of, and be enforceable by, Lender and its successors, transferees and assigns. It further shall be deemed to have been made under and shall be governed by the Laws of the State of South Carolina in all respects, including matters of construction, validity and performance.

11. No waiver by Lender of any default by Guarantor or Borrower shall operate as a waiver of any other default or of the same default on a future occasion. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder. The term "Guarantor," as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them. The liability of Guarantor hereunder shall also be joint and several with that of any person or entity executing a separate guaranty in favor of Lender. If any Guarantor shall be a partnership, the obligations, liabilities and agreements on the part of such Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals composing the partnership. Further, the term "Guarantor" shall include in such event any altered or successor partnerships, it being also understood that the predecessor partnership and its partners shall not thereby be released from any obligations or liabilities hereunder. Lender, or any other holder hereof, may correct patent errors in this Agreement.

12. Guarantor hereby waives: (i) notice of acceptance of this Guaranty; (ii) notice of extensions, continuations or modifications of the Note; (iii) notice of entering into and engaging in business transactions and/or contractual relationships and any other dealings between Lender and Borrower; (iv) presentment and/or demand for payment of any of the Obligations of Borrower and/or for payment under this Guaranty; (v) protest or notice of dishonor or default to Guarantor or to any other person with respect to any of the Obligations of Borrower; (vi) the benefit of any homestead or other exemptions; and (vii) to the extent such waiver may be enforceable at the time of foreclosure, any right to have any mortgaged property securing the Obligations of Borrower appraised after foreclosure for the purpose of reducing a deficiency judgment against Borrower, Guarantor or any other guarantor or other party.

13. Anything contained herein to the contrary notwithstanding, if for any reason the effective rate of interest on any of the Obligations of Borrower should exceed the maximum lawful rate, the effective rate of such obligation shall be deemed reduced to and shall be such maximum lawful rate, and any sums of interest which have been collected in excess of such maximum lawful rate shall be applied as a credit against the unpaid principal balance due.

14. EVENTS OF DEFAULT. Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances or conditions, namely:

(a) Failure of Guarantor to pay its obligations hereunder immediately upon demand after a default by Borrower in the payment of the Obligations of Borrower; or

(b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with this Guaranty Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or furnished; or

(c) Death of Guarantor, material adverse change in the financial position of Guarantor, insolvency of Guarantor, business failure of Guarantor, or appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement

of any proceeding under any State or Federal Bankruptcy or Insolvency Laws by or against Guarantor.

15. REMEDIES UPON DEFAULT. Upon the occurrence of any of the foregoing events, circumstances, or conditions of default, all of the obligations evidenced herein or guaranteed hereby shall immediately be due and payable without notice. Further, Lender shall then have all of the rights and remedies granted hereunder, and all of the rights and remedies of a secured party and/or holder-in-due-course under the South Carolina Uniform Commercial Code and/or under other Laws of South Carolina.

16. Any provision hereof to the contrary notwithstanding, to the extent Guarantor is determined to be an "insider" as such term is used in the United States Bankruptcy Code or cases thereunder, Guarantor waives any right (whether established by contract or statute or otherwise available at law or in equity) to reimbursement, indemnity, subrogation, contribution or other such claim against Lender, Borrower or any other guarantor or any other person primarily or secondarily liable for any Obligations of Borrower with respect to any disbursement or payment made by Guarantor under or in connection with this Guaranty or otherwise.

17. In the event any payment made by Guarantor to Lender is determined to be a preferential transfer under any bankruptcy or similar law and Lender is required to return such payment to a trustee in bankruptcy, to a receiver, to Guarantor, or to another person or entity, Guarantor's obligations under this Guaranty shall not be discharged with respect to such preferential payment notwithstanding any satisfaction of the Note guaranteed hereby or the return of this Guaranty. Furthermore, Guarantor shall be jointly and severally liable to Lender for the amount of any such preferential payment and any interest expenses or other expenses, including but not limited to attorneys' fees, incurred by Lender related in any way to such preferential payment, and Guarantor agrees to reinstate any collateral given to Lender as security for the obligations under this Guaranty notwithstanding the fact that such collateral may have been released or returned by Lender.

18. Guarantor acknowledges that Guarantor has previously submitted financial statements to Lender for the purpose of inducing Lender to extend credit to Borrower. Guarantor agrees to update such financial statements from time to time as requested by Lender. Guarantor further agrees to immediately notify Lender in writing of any material adverse change in the financial position of Guarantor. Guarantor covenants and warrants that such financial statements, as updated or supplemented from time to time by Guarantor, shall remain a true and accurate statement of Guarantor's financial position for so long as the Obligations of Borrower remain outstanding, and Lender shall be entitled to continue to rely on the truth and accuracy of such statements. Guarantor agrees not to transfer assets for less than fair value or take any other action which could reasonably be expected to reduce the net worth of Guarantor or diminish Guarantor's ability to perform Guarantor's obligations hereunder.

19. Guarantor submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Guarantor further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested,

to Guarantor at Guarantor's address set forth below or any new address of which Lender has been notified by Guarantor in writing.

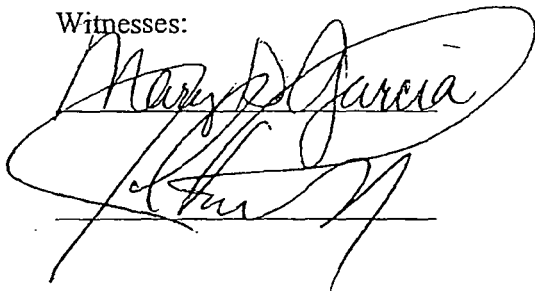
Lender shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (i) all rights to foreclose against any real or personal property or other security by exercising a power of sale granted under loan documents or under applicable law or by judicial foreclosure and sale, including a proceeding to confirm the sale; (ii) all rights of self-help including peaceful occupation of real property and collection of rents, set-off, and peaceful possession of personal property; (iii) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of receiver and filing an involuntary bankruptcy proceeding; and (iv) when applicable, a judgment by confession of judgment.

Guarantor and Lender shall not have a remedy of punitive or exemplary damages against the other in any dispute and hereby waive any right or claim to punitive or exemplary damages they have now or which may arise in the future in connection with any dispute.

20. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

WITNESS the Hand and Seal of the undersigned, this Unconditional Guaranty being executed and delivered on the date first above written. Guarantor has adopted as his seal the word "SEAL" appearing beside his signature.

Witnesses:



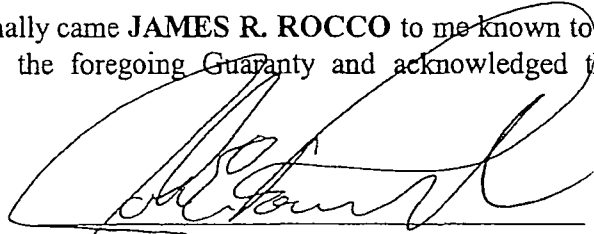
Two handwritten signatures are present under the 'Witnesses:' heading. The first signature is 'Mary Garcia' and the second is a cursive signature that appears to be 'John M.'.

James R. Rocco by (SEAL)
JAMES R. ROCCO
Francis S. Clark His Attorney in fact
Address: 1734 Lon Av.
Sullivan's Island 29482

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

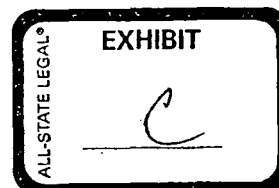
ACKNOWLEDGEMENT

On February __, 2007, before me personally came **JAMES R. ROCCO** to me known to be the person described in and who executed the foregoing Guaranty and acknowledged that he executed the same.



Notary Public for South Carolina (SEAL)
My Commission Expires: 9-29-07

UNCONDITIONAL GUARANTY



February 26, 2007

WHEREAS, WACCA WACHE MARINA, LLC, a South Carolina limited liability company (the "Borrower"), has borrowed or shall borrow the sum of FOURTEEN MILLION SEVEN HUNDRED TWENTY FIVE THOUSAND (\$14,725,000.00) DOLLARS from COMMUNITY FIRSTBANK (the "Lender") pursuant to a Promissory Note from Borrower to Lender dated the date hereof (the "Note"); and

WHEREAS, Lender is unwilling to make the loan to Borrower evidenced by the Note unless it receives an unconditional and continuing guaranty from **FRANCIS E. CLARK**, (hereinafter termed "Guarantor"), covering all "Obligations of Borrower" as hereinafter defined;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, and in order to induce Lender to lend money to Borrower as evidenced by the Note, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of all principal, interest and any other amounts due or to become due, whether by acceleration or otherwise, under the Note and all lien documents securing the Note, and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of Borrower to Lender being hereinafter collectively termed "Obligations of Borrower").

Further, whether or not suit is brought by Lender to acquire possession of collateral or to enforce collection of any unpaid balance hereunder, Guarantor expressly hereby agrees to pay all legal expenses and the reasonable attorneys' fees (including those relative to appellate proceedings, if any) incurred by Lender with respect to this Guaranty.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees as follows:

1. This Guaranty is and shall remain an unconditional and continuing guaranty of payment and not of collection. Guarantor hereby expressly waives any right to require Lender to bring any action against Borrower or any other person or to require that resort be had to any security or to any balance of any deposit or other account or debt or credits on the books of Lender in favor of Borrower or any other person. Guarantor acknowledges that Guarantor's liabilities and obligations hereunder are primary rather than secondary. Without limiting the generality of the foregoing, Guarantor expressly waives any rights Guarantor otherwise might have under provisions of South Carolina or other applicable law to require Lender to attempt to recover against Borrower and/or to realize upon any securities or collateral security which Lender holds for the obligation evidenced or secured hereby.

2. TIME IS OF THE ESSENCE HEREOF.

3. This Guaranty Agreement constitutes the entire agreement between the parties, and no waivers or modifications shall be valid unless they are reduced to writing, duly executed by the party to be charged thereby, and expressly approved in writing by an officer of Lender actually involved in the transactions being guaranteed hereby.

4. If any process is issued or ordered to be served upon Lender, Borrower or Guarantor, seeking to seize Borrower's and/or Guarantor's rights and/or interests in any bank account maintained with Lender, the balance in any such account shall immediately be deemed to have been and shall be set-off against any and all Obligations of Borrower and/or all obligations and liabilities of Guarantor hereunder, as of the time of the issuance of any such writ or process, whether or not Borrower, Guarantor and/or Lender shall then have been served therewith.

5. All moneys available to and/or received by Lender for application toward payment of (or reduction of) the Obligations of Borrower may be applied by Lender to such Obligations of Borrower in such manner, and apportioned in such amounts and at such times, as Lender, in its sole discretion, may deem suitable or desirable.

6. As security for any and all liabilities of Guarantor hereunder, now existing or hereafter arising, Guarantor hereby grants Lender the right to retain a security interest in any and all moneys or other property (i.e., goods and merchandise, as well as all documents relative thereto; also, funds, securities, choses in action and any and all other forms of property, whether real, personal or mixed and any right, title or interest of Guarantor therein or thereto) and/or the proceeds thereof, which have been or may hereafter be deposited or left with Lender (or with any agent or other third party acting on Lender's behalf) by or for the account or credit of Guarantor, including without limitation any property in which Guarantor may have any interest. Further, where any money is due Lender hereunder, Lender is herewith authorized to exercise its right of set-off or "bank lien" as to any moneys deposited in demand, checking, time, savings, or other accounts of any nature maintained in and with it by any of the undersigned, without advance notice. Said right of set-off shall also be applicable and exercised by Lender, in its sole discretion, where Lender is indebted to any Guarantor by reason of any certificate of deposit, bond, note or otherwise.

7. Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect (by filing, recording or otherwise) any security interest it may have in any property securing this Unconditional Guaranty Agreement and/or the Obligations of Borrower secured hereby and hereunder.

8. Guarantor further hereby consents and agrees that Lender may at any time, or from time to time, in its sole discretion: (i) extend or change the time of payment, and/or the manner, place or terms of payment of any or all of the Obligations of Borrower; (ii) exchange, release and/or surrender all or any of any collateral security, or any part thereof, by whomsoever deposited, which is or may hereafter be held by it in connection with all or any of the Obligations of Borrower and/or any liabilities or obligations of Guarantor hereunder; (iii) release any other guarantor, endorser or co-obligor of the Obligations of Borrower with or without consideration and without notice to and further consent from any Guarantor and such release shall not in any way affect the liability of the undersigned; (iv) sell or otherwise dispose of and/or purchase all or

any of any such collateral at public or private sale, and after deducting all costs and expenses of every kind for collection, preparation for sale, sale or delivery, the net proceeds of any such sale or other disposition may be applied by Lender upon all or any of the Obligations of Borrower; (v) settle or compromise with Borrower, any insurance carrier and/or any other person liable thereon, any and all of the Obligations of Borrower (including, but not limited to any insurance applicable to the Obligations of Borrower), and/or subordinate the payment of all or any part of same, to the payment of any other debts or claims, which may at any time be due or owing to Lender and/or any other person; or (vi) alter, extend, change, modify, release, waive or cancel any covenant, agreement, condition, obligation or provision contained in any or all loan documents; all in such manner and upon such terms as Lender may deem proper and/or desirable, and without notice to or further assent from Guarantor, it being agreed that Guarantor shall be and remain bound upon this Unconditional Guaranty Agreement, irrespective of the existence, value or condition of any collateral, and notwithstanding any such change, exchange, settlement, compromise, surrender, release, foreclosure, sale or other disposition, application, renewal or extension and notwithstanding also that the Obligations of Borrower may at any time exceed the aggregate principal sum of the Note. Further, this Guaranty shall not be construed to impose any obligation on Lender to extend or continue to extend credit or otherwise to deal with Borrower at any time.

9. In consideration of Lender's extension of credit to Borrower, Guarantor hereby agrees:

(a) To subordinate, and by this Agreement does subordinate, all debts now or hereafter owed by Borrower to Guarantor to any and all debts of Borrower to Lender now or hereafter existing while this Agreement is in effect.

(b) Guarantor further agrees that it will not assert any right to which it may be or become entitled, whether by subrogation, contribution or otherwise against Borrower or any of the other guarantors or any of their respective properties, by reason of the performance of the undersigned of his obligations under this Guaranty, except after payment in full of all amounts (including costs and expenses) which may become payable in respect of or under the Obligations of Borrower.

(c) Guarantor hereby indemnifies and holds Lender harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including cleanup costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses), of every kind and nature, suffered by or asserted against Lender under any law, regulation or ordinance, local, state or federal concerning any hazardous materials, substances, wastes or other environmentally regulated substances now or hereafter located on the property of Borrower or Guarantor.

10. This Unconditional Guaranty Agreement shall be binding upon Guarantor, and the heirs, executors, administrators, successors and assigns of Guarantor; and it shall inure to the benefit of, and be enforceable by, Lender and its successors, transferees and assigns. It further shall be deemed to have been made under and shall be governed by the Laws of the State of South Carolina in all respects, including matters of construction, validity and performance.

11. No waiver by Lender of any default by Guarantor or Borrower shall operate as a waiver of any other default or of the same default on a future occasion. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder. The term "Guarantor," as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them. The liability of Guarantor hereunder shall also be joint and several with that of any person or entity executing a separate guaranty in favor of Lender. If any Guarantor shall be a partnership, the obligations, liabilities and agreements on the part of such Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals composing the partnership. Further, the term "Guarantor" shall include in such event any altered or successor partnerships, it being also understood that the predecessor partnership and its partners shall not thereby be released from any obligations or liabilities hereunder. Lender, or any other holder hereof, may correct patent errors in this Agreement.

12. Guarantor hereby waives: (i) notice of acceptance of this Guaranty; (ii) notice of extensions, continuations or modifications of the Note; (iii) notice of entering into and engaging in business transactions and/or contractual relationships and any other dealings between Lender and Borrower; (iv) presentment and/or demand for payment of any of the Obligations of Borrower and/or for payment under this Guaranty; (v) protest or notice of dishonor or default to Guarantor or to any other person with respect to any of the Obligations of Borrower; (vi) the benefit of any homestead or other exemptions; and (vii) to the extent such waiver may be enforceable at the time of foreclosure, any right to have any mortgaged property securing the Obligations of Borrower appraised after foreclosure for the purpose of reducing a deficiency judgment against Borrower, Guarantor or any other guarantor or other party.

13. Anything contained herein to the contrary notwithstanding, if for any reason the effective rate of interest on any of the Obligations of Borrower should exceed the maximum lawful rate, the effective rate of such obligation shall be deemed reduced to and shall be such maximum lawful rate, and any sums of interest which have been collected in excess of such maximum lawful rate shall be applied as a credit against the unpaid principal balance due.

14. EVENTS OF DEFAULT. Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances or conditions, namely:

(a) Failure of Guarantor to pay its obligations hereunder immediately upon demand after a default by Borrower in the payment of the Obligations of Borrower; or

(b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with this Guaranty Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or furnished; or

(c) Death of Guarantor, material adverse change in the financial position of Guarantor, insolvency of Guarantor, business failure of Guarantor, or appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement

of any proceeding under any State or Federal Bankruptcy or Insolvency Laws by or against Guarantor.

15. REMEDIES UPON DEFAULT. Upon the occurrence of any of the foregoing events, circumstances, or conditions of default, all of the obligations evidenced herein or guaranteed hereby shall immediately be due and payable without notice. Further, Lender shall then have all of the rights and remedies granted hereunder, and all of the rights and remedies of a secured party and/or holder-in-due-course under the South Carolina Uniform Commercial Code and/or under other Laws of South Carolina.

16. Any provision hereof to the contrary notwithstanding, to the extent Guarantor is determined to be an "insider" as such term is used in the United States Bankruptcy Code or cases thereunder, Guarantor waives any right (whether established by contract or statute or otherwise available at law or in equity) to reimbursement, indemnity, subrogation, contribution or other such claim against Lender, Borrower or any other guarantor or any other person primarily or secondarily liable for any Obligations of Borrower with respect to any disbursement or payment made by Guarantor under or in connection with this Guaranty or otherwise.

17. In the event any payment made by Guarantor to Lender is determined to be a preferential transfer under any bankruptcy or similar law and Lender is required to return such payment to a trustee in bankruptcy, to a receiver, to Guarantor, or to another person or entity, Guarantor's obligations under this Guaranty shall not be discharged with respect to such preferential payment notwithstanding any satisfaction of the Note guaranteed hereby or the return of this Guaranty. Furthermore, Guarantor shall be jointly and severally liable to Lender for the amount of any such preferential payment and any interest expenses or other expenses, including but not limited to attorneys' fees, incurred by Lender related in any way to such preferential payment, and Guarantor agrees to reinstate any collateral given to Lender as security for the obligations under this Guaranty notwithstanding the fact that such collateral may have been released or returned by Lender.

18. Guarantor acknowledges that Guarantor has previously submitted financial statements to Lender for the purpose of inducing Lender to extend credit to Borrower. Guarantor agrees to update such financial statements from time to time as requested by Lender. Guarantor further agrees to immediately notify Lender in writing of any material adverse change in the financial position of Guarantor. Guarantor covenants and warrants that such financial statements, as updated or supplemented from time to time by Guarantor, shall remain a true and accurate statement of Guarantor's financial position for so long as the Obligations of Borrower remain outstanding, and Lender shall be entitled to continue to rely on the truth and accuracy of such statements. Guarantor agrees not to transfer assets for less than fair value or take any other action which could reasonably be expected to reduce the net worth of Guarantor or diminish Guarantor's ability to perform Guarantor's obligations hereunder.

19. Guarantor submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Guarantor further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested,

to Guarantor at Guarantor's address set forth below or any new address of which Lender has been notified by Guarantor in writing.

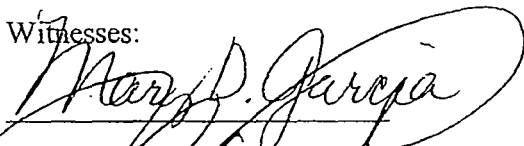
Lender shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (i) all rights to foreclose against any real or personal property or other security by exercising a power of sale granted under loan documents or under applicable law or by judicial foreclosure and sale, including a proceeding to confirm the sale; (ii) all rights of self-help including peaceful occupation of real property and collection of rents, set-off, and peaceful possession of personal property; (iii) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of receiver and filing an involuntary bankruptcy proceeding; and (iv) when applicable, a judgment by confession of judgment.

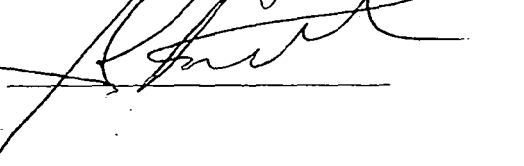
Guarantor and Lender shall not have a remedy of punitive or exemplary damages against the other in any dispute and hereby waive any right or claim to punitive or exemplary damages they have now or which may arise in the future in connection with any dispute.

20. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

WITNESS the Hand and Seal of the undersigned, this Unconditional Guaranty being executed and delivered on the date first above written. Guarantor has adopted as his seal the word "SEAL" appearing beside his signature.

Witnesses:







FRANCIS E. CLARK (SEAL)

Address:

1630 Headquart

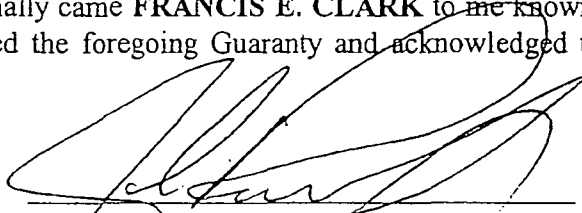
Plantation Dr

29455

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

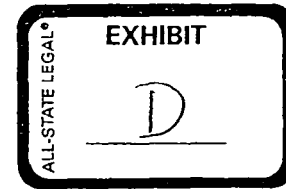
ACKNOWLEDGEMENT

On February 26, 2007, before me personally came **FRANCIS E. CLARK** to me known to be the person described in and who executed the foregoing Guaranty and acknowledged that he executed the same.



Notary Public for South Carolina (SEAL)
My Commission Expires: 9-29-07

UNCONDITIONAL GUARANTY



February 26, 2007

WHEREAS, WACCA WACHE MARINA, LLC, a South Carolina limited liability company (the "Borrower"), has borrowed or shall borrow the sum of FOURTEEN MILLION SEVEN HUNDRED TWENTY FIVE THOUSAND (\$14,725,000.00) DOLLARS from COMMUNITY FIRSTBANK (the "Lender") pursuant to a Promissory Note from Borrower to Lender dated the date hereof (the "Note"); and

WHEREAS, Lender is unwilling to make the loan to Borrower evidenced by the Note unless it receives an unconditional and continuing guaranty from **DOUGLAS A. BOOTH**, (hereinafter termed "Guarantor"), covering all "Obligations of Borrower" as hereinafter defined;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, and in order to induce Lender to lend money to Borrower as evidenced by the Note, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of all principal, interest and any other amounts due or to become due, whether by acceleration or otherwise, under the Note and all lien documents securing the Note, and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of Borrower to Lender being hereinafter collectively termed "Obligations of Borrower").

Further, whether or not suit is brought by Lender to acquire possession of collateral or to enforce collection of any unpaid balance hereunder, Guarantor expressly hereby agrees to pay all legal expenses and the reasonable attorneys' fees (including those relative to appellate proceedings, if any) incurred by Lender with respect to this Guaranty.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees as follows:

1. This Guaranty is and shall remain an unconditional and continuing guaranty of payment and not of collection. Guarantor hereby expressly waives any right to require Lender to bring any action against Borrower or any other person or to require that resort be had to any security or to any balance of any deposit or other account or debt or credits on the books of Lender in favor of Borrower or any other person. Guarantor acknowledges that Guarantor's liabilities and obligations hereunder are primary rather than secondary. Without limiting the generality of the foregoing, Guarantor expressly waives any rights Guarantor otherwise might have under provisions of South Carolina or other applicable law to require Lender to attempt to recover against Borrower and/or to realize upon any securities or collateral security which Lender holds for the obligation evidenced or secured hereby.

2. TIME IS OF THE ESSENCE HEREOF.

3. This Guaranty Agreement constitutes the entire agreement between the parties, and no waivers or modifications shall be valid unless they are reduced to writing, duly executed by the party to be charged thereby, and expressly approved in writing by an officer of Lender actually involved in the transactions being guaranteed hereby.

4. If any process is issued or ordered to be served upon Lender, Borrower or Guarantor, seeking to seize Borrower's and/or Guarantor's rights and/or interests in any bank account maintained with Lender, the balance in any such account shall immediately be deemed to have been and shall be set-off against any and all Obligations of Borrower and/or all obligations and liabilities of Guarantor hereunder, as of the time of the issuance of any such writ or process, whether or not Borrower, Guarantor and/or Lender shall then have been served therewith.

5. All moneys available to and/or received by Lender for application toward payment of (or reduction of) the Obligations of Borrower may be applied by Lender to such Obligations of Borrower in such manner, and apportioned in such amounts and at such times, as Lender, in its sole discretion, may deem suitable or desirable.

6. As security for any and all liabilities of Guarantor hereunder, now existing or hereafter arising, Guarantor hereby grants Lender the right to retain a security interest in any and all moneys or other property (i.e., goods and merchandise, as well as all documents relative thereto; also, funds, securities, choses in action and any and all other forms of property, whether real, personal or mixed and any right, title or interest of Guarantor therein or thereto) and/or the proceeds thereof, which have been or may hereafter be deposited or left with Lender (or with any agent or other third party acting on Lender's behalf) by or for the account or credit of Guarantor, including without limitation any property in which Guarantor may have any interest. Further, where any money is due Lender hereunder, Lender is herewith authorized to exercise its right of set-off or "bank lien" as to any moneys deposited in demand, checking, time, savings, or other accounts of any nature maintained in and with it by any of the undersigned, without advance notice. Said right of set-off shall also be applicable and exercised by Lender, in its sole discretion, where Lender is indebted to any Guarantor by reason of any certificate of deposit, bond, note or otherwise.

7. Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect (by filing, recording or otherwise) any security interest it may have in any property securing this Unconditional Guaranty Agreement and/or the Obligations of Borrower secured hereby and hereunder.

8. Guarantor further hereby consents and agrees that Lender may at any time, or from time to time, in its sole discretion: (i) extend or change the time of payment, and/or the manner, place or terms of payment of any or all of the Obligations of Borrower; (ii) exchange, release and/or surrender all or any of any collateral security, or any part thereof, by whomsoever deposited, which is or may hereafter be held by it in connection with all or any of the Obligations of Borrower and/or any liabilities or obligations of Guarantor hereunder; (iii) release any other guarantor, endorser or co-obligor of the Obligations of Borrower with or without consideration and without notice to and further consent from any Guarantor and such release shall not in any way affect the liability of the undersigned; (iv) sell or otherwise dispose of and/or purchase all or

any of any such collateral at public or private sale, and after deducting all costs and expenses of every kind for collection, preparation for sale, sale or delivery, the net proceeds of any such sale or other disposition may be applied by Lender upon all or any of the Obligations of Borrower; (v) settle or compromise with Borrower, any insurance carrier and/or any other person liable thereon, any and all of the Obligations of Borrower (including, but not limited to any insurance applicable to the Obligations of Borrower), and/or subordinate the payment of all or any part of same, to the payment of any other debts or claims, which may at any time be due or owing to Lender and/or any other person; or (vi) alter, extend, change, modify, release, waive or cancel any covenant, agreement, condition, obligation or provision contained in any or all loan documents; all in such manner and upon such terms as Lender may deem proper and/or desirable, and without notice to or further assent from Guarantor, it being agreed that Guarantor shall be and remain bound upon this Unconditional Guaranty Agreement, irrespective of the existence, value or condition of any collateral, and notwithstanding any such change, exchange, settlement, compromise, surrender, release, foreclosure, sale or other disposition, application, renewal or extension and notwithstanding also that the Obligations of Borrower may at any time exceed the aggregate principal sum of the Note. Further, this Guaranty shall not be construed to impose any obligation on Lender to extend or continue to extend credit or otherwise to deal with Borrower at any time.

9. In consideration of Lender's extension of credit to Borrower, Guarantor hereby agrees:

(a) To subordinate, and by this Agreement does subordinate, all debts now or hereafter owed by Borrower to Guarantor to any and all debts of Borrower to Lender now or hereafter existing while this Agreement is in effect.

(b) Guarantor further agrees that it will not assert any right to which it may be or become entitled, whether by subrogation, contribution or otherwise against Borrower or any of the other guarantors or any of their respective properties, by reason of the performance of the undersigned of his obligations under this Guaranty, except after payment in full of all amounts (including costs and expenses) which may become payable in respect of or under the Obligations of Borrower.

(c) Guarantor hereby indemnifies and holds Lender harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including cleanup costs), judgments and expenses (including attorneys'; consultants' or experts' fees and expenses), of every kind and nature, suffered by or asserted against Lender under any law, regulation or ordinance, local, state or federal concerning any hazardous materials, substances, wastes or other environmentally regulated substances now or hereafter located on the property of Borrower or Guarantor.

10. This Unconditional Guaranty Agreement shall be binding upon Guarantor, and the heirs, executors, administrators, successors and assigns of Guarantor; and it shall inure to the benefit of, and be enforceable by, Lender and its successors, transferees and assigns. It further shall be deemed to have been made under and shall be governed by the Laws of the State of South Carolina in all respects, including matters of construction, validity and performance.

11. No waiver by Lender of any default by Guarantor or Borrower shall operate as a waiver of any other default or of the same default on a future occasion. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder. The term "Guarantor," as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them. The liability of Guarantor hereunder shall also be joint and several with that of any person or entity executing a separate guaranty in favor of Lender. If any Guarantor shall be a partnership, the obligations, liabilities and agreements on the part of such Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals composing the partnership. Further, the term "Guarantor" shall include in such event any altered or successor partnerships, it being also understood that the predecessor partnership and its partners shall not thereby be released from any obligations or liabilities hereunder. Lender, or any other holder hereof, may correct patent errors in this Agreement.

12. Guarantor hereby waives: (i) notice of acceptance of this Guaranty; (ii) notice of extensions, continuations or modifications of the Note; (iii) notice of entering into and engaging in business transactions and/or contractual relationships and any other dealings between Lender and Borrower; (iv) presentment and/or demand for payment of any of the Obligations of Borrower and/or for payment under this Guaranty; (v) protest or notice of dishonor or default to Guarantor or to any other person with respect to any of the Obligations of Borrower; (vi) the benefit of any homestead or other exemptions; and (vii) to the extent such waiver may be enforceable at the time of foreclosure, any right to have any mortgaged property securing the Obligations of Borrower appraised after foreclosure for the purpose of reducing a deficiency judgment against Borrower, Guarantor or any other guarantor or other party.

13. Anything contained herein to the contrary notwithstanding, if for any reason the effective rate of interest on any of the Obligations of Borrower should exceed the maximum lawful rate, the effective rate of such obligation shall be deemed reduced to and shall be such maximum lawful rate, and any sums of interest which have been collected in excess of such maximum lawful rate shall be applied as a credit against the unpaid principal balance due.

14. **EVENTS OF DEFAULT.** Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances or conditions, namely:

(a) Failure of Guarantor to pay its obligations hereunder immediately upon demand after a default by Borrower in the payment of the Obligations of Borrower; or

(b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with this Guaranty Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or furnished; or

(c) Death of Guarantor, material adverse change in the financial position of Guarantor, insolvency of Guarantor, business failure of Guarantor, or appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement

of any proceeding under any State or Federal Bankruptcy or Insolvency Laws by or against Guarantor.

15. REMEDIES UPON DEFAULT. Upon the occurrence of any of the foregoing events, circumstances, or conditions of default, all of the obligations evidenced herein or guaranteed hereby shall immediately be due and payable without notice. Further, Lender shall then have all of the rights and remedies granted hereunder, and all of the rights and remedies of a secured party and/or holder-in-due-course under the South Carolina Uniform Commercial Code and/or under other Laws of South Carolina.

16. Any provision hereof to the contrary notwithstanding, to the extent Guarantor is determined to be an "insider" as such term is used in the United States Bankruptcy Code or cases thereunder, Guarantor waives any right (whether established by contract or statute or otherwise available at law or in equity) to reimbursement, indemnity, subrogation, contribution or other such claim against Lender, Borrower or any other guarantor or any other person primarily or secondarily liable for any Obligations of Borrower with respect to any disbursement or payment made by Guarantor under or in connection with this Guaranty or otherwise.

17. In the event any payment made by Guarantor to Lender is determined to be a preferential transfer under any bankruptcy or similar law and Lender is required to return such payment to a trustee in bankruptcy, to a receiver, to Guarantor, or to another person or entity, Guarantor's obligations under this Guaranty shall not be discharged with respect to such preferential payment notwithstanding any satisfaction of the Note guaranteed hereby or the return of this Guaranty. Furthermore, Guarantor shall be jointly and severally liable to Lender for the amount of any such preferential payment and any interest expenses or other expenses, including but not limited to attorneys' fees, incurred by Lender related in any way to such preferential payment, and Guarantor agrees to reinstate any collateral given to Lender as security for the obligations under this Guaranty notwithstanding the fact that such collateral may have been released or returned by Lender.

18. Guarantor acknowledges that Guarantor has previously submitted financial statements to Lender for the purpose of inducing Lender to extend credit to Borrower. Guarantor agrees to update such financial statements from time to time as requested by Lender. Guarantor further agrees to immediately notify Lender in writing of any material adverse change in the financial position of Guarantor. Guarantor covenants and warrants that such financial statements, as updated or supplemented from time to time by Guarantor, shall remain a true and accurate statement of Guarantor's financial position for so long as the Obligations of Borrower remain outstanding, and Lender shall be entitled to continue to rely on the truth and accuracy of such statements. Guarantor agrees not to transfer assets for less than fair value or take any other action which could reasonably be expected to reduce the net worth of Guarantor or diminish Guarantor's ability to perform Guarantor's obligations hereunder.

19. Guarantor submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Guarantor further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested,

to Guarantor at Guarantor's address set forth below or any new address of which Lender has been notified by Guarantor in writing.

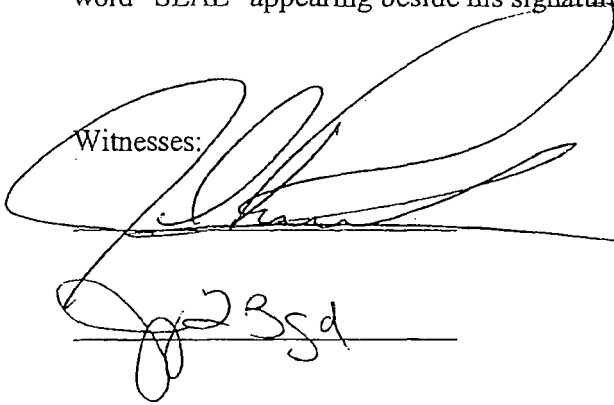
Lender shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (i) all rights to foreclose against any real or personal property or other security by exercising a power of sale granted under loan documents or under applicable law or by judicial foreclosure and sale, including a proceeding to confirm the sale; (ii) all rights of self-help including peaceful occupation of real property and collection of rents, set-off, and peaceful possession of personal property; (iii) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of receiver and filing an involuntary bankruptcy proceeding; and (iv) when applicable, a judgment by confession of judgment.

Guarantor and Lender shall not have a remedy of punitive or exemplary damages against the other in any dispute and hereby waive any right or claim to punitive or exemplary damages they have now or which may arise in the future in connection with any dispute.

20. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

WITNESS the Hand and Seal of the undersigned, this Unconditional Guaranty being executed and delivered on the date first above written. Guarantor has adopted as his seal the word "SEAL" appearing beside his signature.

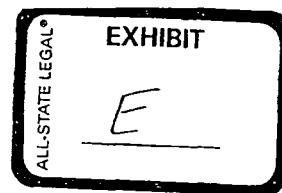
Witnesses:



Two handwritten signatures are present. The first is a large, stylized signature that spans across the 'Witnesses:' label and extends towards the signature of Douglas A. Booth. The second is a smaller signature, possibly 'J. B. S. d.', located below the first signature.

Douglas A. Booth (SEAL)
DOUGLAS A. BOOTH

Address: 46 Wappoo Creek Pkue
Charleston SC
29412



NOTE MODIFICATION AGREEMENT

THIS NOTE MODIFICATION AGREEMENT (this "Agreement") made as of the 25th day of February, 2008, by and between COMMUNITY FIRSTBANK ("Bank") and WACCA WACHE MARINA, LLC ("Borrower").

WITNESSETH:

WHEREAS, Bank has made a loan (the "Loan") to Borrower, said Loan being evidenced by that certain Promissory Note dated February 26, 2007, in the principal amount of Fourteen Million Seven Hundred Twenty Five Thousand and 00/100 (\$14,725,000.00) Dollars from Borrower to Bank (the "Note"), (the Note, and all other loan documents evidencing or securing the Note being referred to collectively as the "Loan Documents"); and

WHEREAS, the Borrower has requested, and Bank has agreed, that the Note be modified as set forth hereinbelow.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) paid by Borrower to Bank, the receipt and sufficiency of which is hereby acknowledged, and the further consideration of the agreements contained herein, the parties agree as follows:

1. Borrower acknowledges and represents that as of the date hereof, the Note and other Loan Documents, as amended hereby, are in full force and effect and are binding upon it, its successors, assigns, administrators and heirs without any defense, counterclaim, right or claim of set-off or of other sum due; that, after giving effect to this Agreement, no default or event that with the passage of time or giving of notice would constitute a default under the Loan Documents has occurred; that all representations and warranties contained in the Loan Documents are true and correct as of this date; there have been no changes in the ownership of any collateral pledged to secure the Loan since the dates of the instruments originally pledging such collateral; and that Borrower has taken all necessary action (corporate or otherwise) to authorize the execution and delivery of this Agreement. This Agreement constitutes only a modification of an existing obligation owing by Borrower to Bank, and is not a novation. The principal balance outstanding on the Note as of February 1, 2008 is \$13,659,080.17.

2. Borrower and Lender hereby amend the Note as follows:

(a) Commencing on March 1, 2008 and continuing on the 1st day of each month thereafter, Borrower shall make monthly payments of accrued interest only. Borrower shall also make annual principal payments to reduce the principal balance outstanding to \$9,725,000.00 as of March 31, 2008 and to \$4,725,000.00 as of December 31, 2008. The entire outstanding balance of this Note and any outstanding and accrued interest shall be due and payable in full on February 28, 2009 (the "Maturity Date").

3. Borrower acknowledges and confirms the extent, validity and priority of the Bank's security interests and liens in the collateral pledged pursuant to the Loan Documents, and agrees that such security interests and liens shall secure the Note, including any modification of the Note, and all future modifications, extensions, renewals and/or replacements of the Loan Documents.

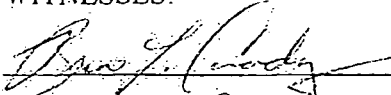
4. This Agreement shall be construed in accordance with and governed by the laws of the applicable state as originally provided in the Loan Documents, without reference to that state's conflicts of laws principles. This Agreement and the other Loan Documents constitute the sole agreement of the parties with respect to the subject matter thereof and supersede all oral negotiations and prior writings with respect to the subject matter thereof. No amendment of this Agreement, and no waiver of any one or more of the provisions hereof shall be effective unless set forth in writing and signed by the parties hereto. The illegality, unenforceability or inconsistency of any provision of this Agreement shall not in any way affect or impair the legality, enforceability or consistency of the remaining provisions of this Agreement or the other Loan Documents. This Agreement and the other Loan Documents are intended to be consistent. However, in the event of any inconsistencies among this Agreement and any of the Loan Documents, the terms of this Agreement, and then the Note, shall control. This Agreement may be executed in any number of counterparts and by the different parties on separate counterparts. Each such counterpart shall be deemed an original, but all such counterparts shall together constitute one and the same agreement.

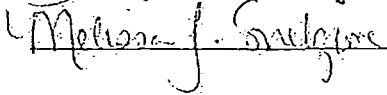
5. Borrower agrees to pay all expenses, including without limitation Bank's attorney fees in connection with this Agreement.

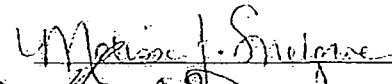
6. Except as specifically modified by this Agreement, the terms and conditions of the Note, and the Loan Documents are hereby ratified and confirmed by Borrower and such terms and conditions contained therein shall continue with the same force and effect and such are incorporated herein by reference.

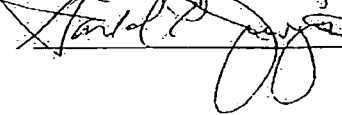
IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first above written.

WITNESSES:










WACCA WACHE MARINA, LLC

By: 

Name: _____
Title: man member

COMMUNITY FIRSTBANK


By: 

Name: Mary D. Garcia
Its: Senior Vice President

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF CHARLESTON) COURT FILE NO. 08-CP-10-
)
 COMMUNITY FIRSTBANK,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES R. ROCCO, FRANCIS E.) VERIFICATION
 CLARK and DOUGLAS A. BOOTH,)
)
 Defendants.)
)
)
)
)
)
)
)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

PERSONALLY APPEARED BEFORE me, Robert H. Warrick, who, being duly sworn, deposes and says that he is a Senior Vice President of Plaintiff, Community FirstBank, and that he is familiar with the transactions and facts stated in the above Complaint; that he has read the said Complaint; that the facts therein stated are true, except those matters stated on information and belief, and as to those, he believes them to be true; that Plaintiff is a banking corporation and it is necessary for deponent to make this verification on its behalf.

COMMUNITY FIRSTBANK
 By: 
 Its: SVP

SWORN to before me this
27th day of June, 2008.

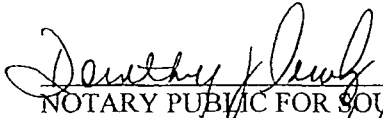
 (LS)
 NOTARY PUBLIC FOR SOUTH CAROLINA
 My Commission Expires: 6/3/15

EXHIBIT D

RECEIVED
2-2-12

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
COMMUNITY FIRSTBANK,)
)
Plaintiff,)
)
vs.)
)
JAMES R. ROCCO, FRANCIS E.)
CLARK and DOUGLAS A. BOOTH,)
)
Defendants,)
)
and)
)
DOUGLAS A. BOOTH and FRANCIS)
CLARK)
)
Third-Party Plaintiffs,)
)
v.)
)
WACCA WACHE MARINA, LLC,)
)
Third-Party Defendant.)
)

IN THE COURT OF COMMON PLEAS
COURT FILE NO. 08-CP-10-3699

ORDER

FILED
2012 FEB -6 PM 12:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Now comes the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and hereby rules on the motions for summary judgment filed by the Parties.

1. On November 1, 2010, the Parties filed the following motions: James R. Rocco's Motion for Summary Judgment Against Plaintiff; Plaintiff's Motion for Summary Judgment Against Douglas A. Booth and Francis Clark; Booth's Motion for Summary Judgment Against Plaintiff; and Clark's Motion for Summary Judgment Against Plaintiff.

2. On January 13, 2012, the Parties convened for a hearing on the motions. The Parties, respectively, filed memoranda of law in support of and in opposition to the motions with attached exhibits prior to the hearing.

rmof/1

3. All of the Parties were present and represented by counsel at the hearing.
4. Counsel for the Parties presented oral arguments at the hearing.
5. Based on the aforementioned, the Court rules as follows:

I. James R. Rocco's Motion for Summary Judgment Against Plaintiff.

Viewing the evidence in the light most favorable to the Plaintiff, the Court finds that the Limited Power of Attorney, as drafted, is ambiguous and that examination of the parol evidence is necessary to determine the intentions of Rocco and Booth with respect to the Limited Power of Attorney. As such, the Court finds that there are genuine questions of material fact regarding the Limited Power of Attorney and hereby denies Rocco's Motion.

II. Plaintiff's Motion for Summary Judgment Against Douglas A. Booth and Francis Clark.

The Court makes the following findings:

a. On February 26, 2007, Community FirstBank ("CFB") entered into an agreement with Wacca Wache Marina, LLC ("WWM"), whereby CFB would loan WWM \$14,725,000.00 for the purchase of properties located in Murrells Inlet, South Carolina, and collectively known as, Wacca Wache Marina ("Marina").

b. At the closing on February 26, 2007, and pursuant to signed resolutions adopted by the members, Clark duly executed the following on behalf of WWM: Loan Agreement; Promissory Note ("Note"); Commercial Mortgage of Real Property and Security Agreement; Assignment of Leases Rents and Profits; and Environmental Indemnity Agreement.

c. At the closing, Clark and Booth also duly executed identical, unlimited personal Unconditional Guaranties ("Guaranties") and signed the Loan Agreement, Assignment of Lease Rents and Profits, and Environmental Indemnity Agreement *as guarantors*.

d. WWM accepted the loan proceeds and purchased the Marina.

e. On February 25, 2008, CFB and WWM entered into Loan Modification, thereby extending the first principal payment deadline from December 31, 2007, to March 31, 2008.

f. WWM thereafter defaulted on the Note, as modified by the Note Modification.

g. Viewing the evidence in the light most favorable to Booth and Clark, the Court finds that there are no genuine issues of material fact that relate to the liability of Booth and Clark under the Guaranties on account of the default of WWM, and, as such, the Court grants Plaintiff's Motion on the liability of Booth and Clark.

h. The Court rejects Booth and Clark's argument that the Loan Modification entered into between CFB and WWM on February 25, 2008, was a novation or a material alteration of the Note, thus releasing Booth and Clark from liability under the Guaranties.

i. The Court also rejects Booth and Clark's argument that Plaintiff lacks standing to pursue Booth and Clark on behalf of the other loan participants for the entire deficiency under the Note and the Guaranties.

j. The Court further rejects Booth's argument that the complaint filed by the FDIC against Silverton Bank (f/k/a Banker's Bank) in the Northern District of Georgia (*Federal Deposit Insurance Corporation, as Receiver of Silverton Bank, N.A. v. Bryan, et al., No. 11-CV-02790-JEC*) presents a relevant question of fact with respect to the issue of liability or that such filing merits additional discovery in the present action.

k. The Court finds, however, that there are genuine issues of material fact relating to the amount of damages sought by Plaintiff and that such damages are subject to the affirmative defenses raised by Booth and Clark. The Court hereby denies Plaintiff's Motion for Summary Judgment on the amount of damages owed by Booth and Clark and will permit the Parties to present evidence on the issue of damages.

III. Douglas A. Booth and Francis Clark's Motions for Summary Judgment Against Plaintiff.

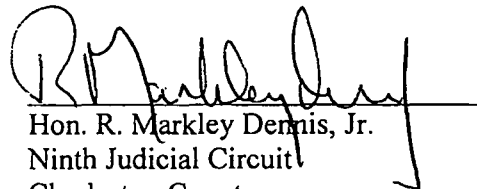
Viewing the evidence in the light most favorable to the Plaintiff, the Court finds that there are no genuine issues of material fact with respect to the liability of Booth and Clark and, hereby, denies Booth and Clark's Motions.

NOW, THEREFORE, the Court finds as follows:

1. Defendant James R. Rocco's Motion for Summary Judgment against Plaintiff is hereby denied;
2. Plaintiff's Motion for Summary Judgment against Defendants Douglas A. Booth and Francis Clark is hereby granted, in part, as to liability and denied, in part as to damages; and
3. Defendants Douglas A. Booth's and Francis Clark's Motions for Summary Judgment Against Plaintiff are hereby denied.

AND IT IS SO ORDERED.

This, the 23rd day of January, 2012.


Hon. R. Markley Dennis, Jr.
Ninth Judicial Circuit
Charleston County
Court of Common Pleas

Moore & Van Allen

April 26, 2012

The Honorable Tonya Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Robert E. Sumner, IV.
Attorney at Law

T 843 579 7018
F 843 579 8743
robertsumner@mvalaw.com

Moore & Van Allen PLLC

Suite 300
40 Calhoun Street
Charleston, SC 29401-3535

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

Re: Community First Bank v. James Rocco, et al.
Case No. 2008-CP-10-3699

Dear Ms. Gee:

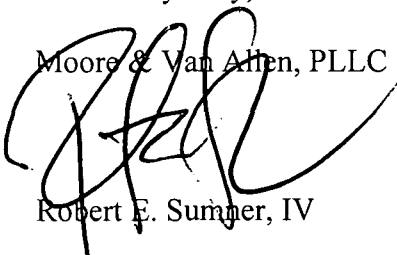
Enclosed for filing please find an original and seven (7) copies of Respondent's Motion to Dismiss Appeal and a Proof of Service in the above referenced case. I have also enclosed a check in the amount of \$25.00 for the requisite filing fee.

Please file the originals and return a date-stamped copy to me in the enclosed self-addressed, stamped envelope.

Thank you for your assistance in this matter. If there are any questions as to any of the above, please call me.

Yours very truly,

Moore & Van Allen, PLLC



Robert E. Sumner, IV

RES/hm

Enclosures: as stated

cc (w/ enc.):

- Kevin A. Dunlap, Esquire
- Kristina A. Young, Esquire
- G. Trenholm Walker, Esquire
- Harold A. Oberman, Esquire
- A. Parker Barnes, Esquire
- Paul E. Tinkler, Esquire
- Suzanne Coe, Esquire
- John E. Romanosky, Jr., Esquire

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APR 30 2012
SC Court of Appeals
Accepted