

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Haigh Porter, Special Referee

Case No. 2011-CP-33-00016

Wells Fargo Bank, N.A. successor-in-interest
to Wachovia Bank, National Association Respondent,

v.

Marion Amphitheatre, LLC, David P. Gannon,
Michael Guarco, Carolina Entertainment Complex, LLC
and 4 Prophets, LLC a/k/a 4 Profits, LLC Defendants,

Of Whom,
David P. Gannon, and Michael Guarco are the Appellants,

And 4 Prophets, LLC a/k/a 4 Profits, LLC is the Respondent.

RECORD ON APPEAL

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Walker H. Willcox #72608
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P.O. Box 1909
Florence, SC 29503-1909
(843) 662-3258 – Tel.
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Attorneys for Appellants

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JUN 06 2013

SC Court of Appeals

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STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF MARION

) CIVIL ACTION NO.: 2011-CP-33-00016

WELLS FARGO BANK, N.A., successor-in-
interest to WACHOVIA BANK, NATIONAL
ASSOCIATION,

Plaintiff,

vs.

ORDER FOR JUDGMENT

MARION AMPHITHEATRE, LLC, DAVID P.
GANNON, MICHAEL GUARCO,
CAROLINA ENTERTAINMENT COMPLEX
LLC AND 4 PROPHETS, LLC a/k/a 4
PROFITS, LLC,

Defendants.

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Sherry R. Rhodes
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

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MARION COUNTY
CLERK OF COURT

#1
152

This is an action wherein the plaintiff seeks to foreclose two real estate mortgages against the defendant Marion Amphitheater, LLC. The two real estate mortgages encumber the same property, being a tract of land in the Marion County hereinafter referred to as the subject property. Defendant 4 Prophets, LLC filed and served a number of Cross complaints against the defendants Michael Guarco and David Gannon. The matter was referred to me as Special Referee by order filed June 2, 2011. All issues related to the foreclosure of the real estate mortgages have been addressed in a separate order.

Affidavits of service reflect that the defendants Michael Guarco and David Gannon were personally served with the Answer, Counterclaim and Cross Complaint on May 19, 2011. An affidavit of default reflecting the failure of these two defendants to file pleadings or otherwise respond to the Cross Complaint was filed on June ---, 2010 and an Order of

Default was entered on July 20, 2010. Pursuant to Rule 55, S.C.R.C.P., the Cross Complainant has filed an affidavit setting forth the amount due.

APPLICABLE LAW

By defaulting, the Cross-Defendants have admitted liability to the Cross Complainant on the Cross Claims. Furthermore, the Cross-Defendants have admitted the truth of the allegations made against them in the Cross Claims. "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." *Roche v. Young Bros., Inc., of Florence* 332 S.C. 75, 504 S.E.2d 311 (1998); citing *Howard v. Holiday Inns Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978); *Schenk v. National Health Care, Inc.*, 322 S.C. 316, 471 S.E.2d 736 (Ct.App.1996); *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 334 S.E.2d 528 (Ct.App.1985).

4/2
NP
Rule 55, S.C.R.C.P.(b)(1) provides "When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain or a sum which can by computation be made certain, the judge, upon motion or application of the party seeking default, and upon affidavit of the amount due, shall enter judgment for that amount and costs against the party against whom judgment by default is sought, if that party has been defaulted for failure to appear...".

FINDINGS OF FACT

Upon reviewing the allegations of the Cross-Claims, the truth thereof being admitted by the Cross-Defendants, the affidavits of personal service, and the affidavit of Mark Bauman, managing member of 4 Prophets, LLC, I find the following facts:

1. The Cross-Defendants Michael Guarco and David P. Gannon were duly and properly served with copies of the Answer, Counter-Claim and Cross-Complaint.
2. The Cross-Defendants failed to answer or otherwise respond to the Cross-Complaint as required by the South Carolina Rules of Civil Procedure and Order of Default was duly entered.
3. By virtue of the terms of an agreement between Michael Guarco and 4 Prophets LLC dated July 17, 2006 and the subsequent acquisition of the subject property, 4 Prophets LLC became the equitable owner of an undivided one half interest in the subject property. The equitable interest of 4 Prophets LLC in the subject property has been acknowledged by Michael Guarco from time to time.
4. The Cross-Defendants mortgaged the subject property to the plaintiff without the knowledge or consent of 4 Prophets LLC. This mortgaging of the property was done in direct contravention of the acknowledged equitable interest of 4 Prophets LLC and in violation of the agreement of July 17, 2006, referred to above.
5. The subject property has a fair market value of \$25 million, as alleged in the Cross-Complaint. This value, admitted to by the Cross-Defendants, is supported by two

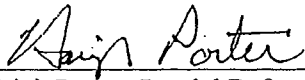
appraisals performed at the request of one or more of the Cross-Defendants, copies of which are attached to the aforementioned affidavit of Mark Bauman.

CONCLUSIONS

Based upon the foregoing findings of fact, I conclude that the Cross-Complainant 4 Prophets LLC is entitled to judgment against the Cross-Defendants Michael Guarco and David P. Gannon in an amount equal to one half of the value of the subject property, being the sum of \$12,500,000.00, plus costs. It is, therefore

#4 ORDERED that the Cross-Complainant 4 Prophets LLC have judgment against the said Michael Guarco and David P. Gannon in the sum of \$12,500,000.00, plus costs as allowed by law.

AND IT IS SO ORDERED.


Haigh Porter, Special Referee

November 7, 2011

Florence, South Carolina

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.: 2011-CP-33-00016

)

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ORDER
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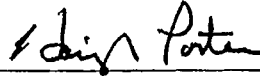
Page 1 of 2

-007-

ORDERED that the Motion to Reconsider is denied.

AND IT IS SO ORDERED.

#2 ✓



Haigh Porter, Special Referee

March 14, 2012

Florence, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF MARION)

CIVIL ACTION NO.: 2011-CP-33-00016

WELLS FARGO BANK, N.A.,)
successor-in-interest to)
WACHOVIA BANK, NATIONAL)
ASSOCIATION,)
Plaintiffs)

vs.)

OBJECTION TO PROPOSED
ORDER FOR JUDGMENT

MARION AMPHITHEATRE, LLC,)
DAVID P. GANNON, MICHAEL)
GUARCO, CAROLINA)
ENTERTAINMENT COMPLEX, LLC)
AND 4 PROPHETS, LLC a/k/a)
4 PROFITS, LLC,)
Defendants)

The defendants/cross complaint defendants, Marion Amphitheatre, LLC, and Michael Guarco object to the Proposed Order for Judgment submitted by the Cross Complaint Plaintiff, 4 Prophets, LLC for the following reasons.

I. LACK OF PERSONAL JURISDICTION FOR MICHAEL GUARCO AND DAVID P. GANNON.

1. The Cross-Complaint Defendants Michael Guarco and David Gannon were not properly served in the underlying foreclosure action. Nor were they properly served and with copies of the Cross Complaint Plaintiff's Answer, Counterclaim and Cross Complaint. The failure to properly serve Michael Guarco and David P. Gannon deprives this Court of jurisdiction over said parties in this matter. Therefore, this Court is without jurisdiction to hear this matter and to issue the proposed Order for Judgment.

8-29-11
009

II. THE COURT LACKS SUBJECT MATTER JURISDICTION BY THE AGREEMENT OF THE PARTIES.

1. This Court does not have subject matter jurisdiction over the present dispute by the express terms of the July 17th letter. (Exhibit A attached).

2. Paragraph 4 of the July 17th letter provides in relevant part that any action, suit or proceeding arising out of or relating to the letter must be brought in the State of Connecticut, a restriction agreed upon by all of the parties to such letter.

3. Due to the agreement of the parties, this Court does not have subject matter jurisdiction over this dispute.

III. THE PARTIES AGREED THAT CONNECTICUT LAW WOULD GOVERN THE JULY 17th LETTER AGREEMENT

1. The July 17th letter provides in paragraph 4 that the letter would be governed and construed in accordance with the laws of the State of Connecticut applicable to agreements made to be wholly performed in such state.

2. This Court has not reviewed whether the July 17th letter constitutes a valid agreement under Connecticut law.

3. Under Connecticut law the July 17th letter does not confer any interest in the Marion Amphitheatre property to 4 Prophets, LLC for one or more of the following reasons:

- a. The July 17th letter does not meet the requirements for a valid conveyance under Connecticut law. See Conn.Gen.Stat. § 47-5(e).
- b. The July 17 letter fails for lack of consideration.
- c. The July 17 letter violates the Statute of Fraud in that it fails to

sufficiently describe their subject property.

IV. A PRIOR PENDING ACTION IN THE CONNECTICUT SUPERIOR COURT PRECLUDES LITIGATION OF THIS DISPUTE.

1. By complaint dated February 20, 2010, Marion Amphitheatre, LLC commenced a declaratory judgment action in the Superior Court for the Judicial District of Hartford (Docket No. HHD-CV10-6008478) (the "Connecticut Action") so that a Connecticut Court would determine whether or not 4 Prophets, LLC has any interest in the Marion Amphitheater Property and whether the July 17th letter was a valid contract.

2. Marion Amphitheatre, LLC has incurred in excess of \$50,000 in costs and attorney's fees to prosecute the Connecticut Action.

3. The Connecticut Action is scheduled for trial on November 2, 2011.

V. THE MEMBERS OF 4 PROPHETS KNEW THAT MARION AMPHITHEATRE, LLC WAS MORTGAGING THE PROPERTY FOR THE ACQUISITION

1. The Marion Amphitheater property was mortgaged by its owner, Marion Amphitheater, LLC with the knowledge and without objection by the managing members of 4 Prophets, LLC.

2. Michael Guarco and David P. Gannon did not, individually, mortgage the Marion Amphitheater property as alleged in the Cross Complaint.

VI. DAVID GANNON IS NOT A PARTY TO THE JULY 17th AGREEMENT.

1. David Gannon was not a party to the July 17th letter and there are no allegations in the Cross-Complaint that he is personally liable to the Cross-Complaint Plaintiffs.

VII. THE FINDING OF FACT THAT 4 PROPHETS IS ENTITLED TO 12.5 MILLION IS FLAWED.

1. The Court's valuation of the sums that may be due 4 Prophets under the July 17th letter is flawed in that it adopts the fair market value determined in an appraisal of the Marion Amphitheatre Property but does not subtract therefrom the acquisition cost, the carrying costs, the remodeling expenses, and the mortgage and interest expenses.

Rule 55 (b)(1) S.C.R.C.P. that permits this court to assess damages is inapplicable in this matter because the sums that may be due 4 Prophets is not (a) a liquidated amount, nor is it (b) a sum certain, nor is it (c) a sum which can be determined by computation since this Court has not determined the proper deductions.

CONCLUSION

1. 4 Prophets is not entitled to judgment because of the improper service of the Cross Defendants.

2. 4 Prophets is not entitled to judgment because this Court has not applied the Law of the State of Connecticut to this matter as required under the July 17th letter.

3. 4 Prophets is not entitled to judgment because the proper venue for any action arising out of the July 17th letter is in the Connecticut State Court system as required under the July 17th letter.

4. 4 Prophets is not entitled to judgment because of the prior pending action in the Superior Court within the State of Connecticut.

5. 4 Prophets is not entitled to judgment against David P. Gannon because David P. Gannon was not a party to the July 17 letter and there is no factual support to

the allegation that David P. Gannon is personally liable to 4 Prophets within the Cross Complaint.

6. 4 Prophets is not entitled to judgment for \$12,500,000 because this court is not authorized to render such a judgment without an evidentiary hearing.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: E. Lloyd Willcox II
E. LLOYD WILLCOX, II
I.D. No. 015093
PO Box 1909
Florence, SC 29503-1909
(843) 662-3258 - Tel
(843) 662-1342 - Fax
ATTORNEY FOR DEFENDANTS MARION
AMPHITHEATER<, LLC AND MICHAEL
GUARCO

August 29, 2011

MICHAEL GUARCO, Sr.

c/o 314 Salmon Street

Granby, Connecticut 06035

4 Prophets, LLC
c/o Mark Bauman
5545 Netherland Avenue, #3-C
Riversdale, NY 10471

July 17, 2006

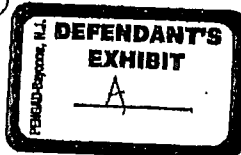
VIA FAX: 860-653-5909

Gentlemen:

I acknowledge the efforts and dedication that 4 Prophets, LLC has provided to me or my assigns, in connection with that certain property known as the "Carolina Amphitheater Property" located in Marion, South Carolina, as more particularly described in Schedule "A" attached hereto. When countersigned by you below, will set forth the terms of the agreement pursuant to which you will be entitled to share in the profits distributions and ownership, with me, in this property. Our understanding is as follows:

1. I will put up the funds to purchase the property in the form of a Bank Draft to the seller. The terms of the purchase will be set forth on the Bank Draft itself.
2. Upon our (Guarco) purchase of the property, 4 Prophets, LLC, a Florida Limited Liability Corporation shall be entitled to gross profit distributions from me or my assigns, to be paid to you anytime a profit distribution is made, in an amount of Fifty (50%) Percent. All of the property, realty and personalty, including all attachments, fixtures thereon and all revenue streams, shall be owned by both of us (Guarco/ Assigns and 4 Prophets, LLC) on a Fifty/Fifty (50%/50%) Percent basis. A separate agreement covering the operation of the Amphitheater facility will be drafted and executed prior to closing. This letter agreement is effective as of the date hereof and shall automatically terminate upon failure to purchase the above mentioned property. Salaries, if any, shall be negotiated within six months after the first event. profits shall be timely and reasonably distributed within 30 days after events or no later than every quarter.
3. This letter agreement is effective as of the date hereof and shall automatically terminate if the property is not purchased.

OK 4/29/06 MAB



2.

3. The parties agree that each shall have a right to a quarterly accounting of financial information relating to the Property. Each party shall have the right to audit the books of the other, using an accounting firm at the sole cost and expense of the party requesting such audit.
4. This letter shall be governed by and construed in accordance with the laws of the State of Connecticut applicable to agreements made and to be performed wholly in such State. Any action, suit or proceeding arising out of or relating to this letter shall be brought in the State of Connecticut Supreme Court located in Hartford County, Connecticut, and all parties consent to the venue and jurisdiction of such court.
5. This letter sets forth the entire agreement and understanding of the parties in respect of the subject matter hereof and supersedes all prior and contemporaneous agreements, arrangements and understandings, expressed or implied, oral or written, relating to the subject matter hereof.
6. This letter may be amended or modified only by a written instrument executed by all of the parties hereto. The failure of a party at any time or times to require performance of any provisions here to shall in no manner affect the party's right at a later time to enforce the same. No waiver by any party of the breach of any term contained in this letter, where by conduct or otherwise, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such breach or of the breach of any other term of this letter.
7. Reference to this letter herein shall include any amendments or renewal hereof.
8. If any provisions of this letter shall be held to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provisions and only to the extent such provision shall be held to be invalid or unenforceable and shall not in any way affect the validity or enforceability of the other provisions hereof, all of which provisions are hereby declared severable, and this letter shall be carried out as if such invalid or unenforceable provision or portion thereof was not embodied herein.

JOY MBS *(MBS)*
OK *11/16*

3.

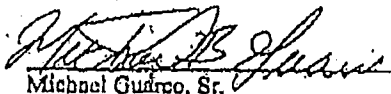
9. This letter may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement. Facsimile transmitted copies and signatures will be accepted by the parties as if they are original and hard copies. Completely executed copies will be supplied to all parties.

10. Words and phrases used herein in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender, unless the context requires otherwise.

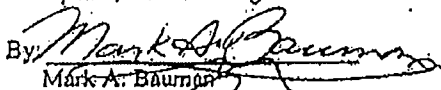
11. Rouson and Dudley, PA shall cause the title policy and insurance to be issued by an appropriate agent or agency. Darryl E. Rouson, Esq. shall act as general counsel for the project and development.

If the foregoing is consistent with our understanding, kindly so indicate by signing where indicated below.

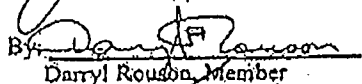
Very Truly Yours,

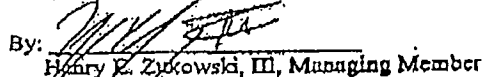

Michael Guarco, Sr.

Accepted and Agreed:
4 Prophets, LLC or Assigns

By: 
Mark A. Bauman

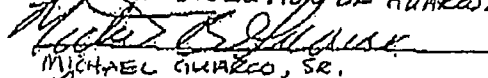
By: 
John B. Gallo, Member

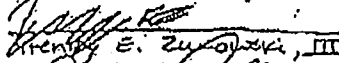
By: 
Darryl E. Rouson, Member

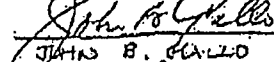
By: 
Henry E. Zukowski, III, Managing Member

PROFITS ARE ONLY THOSE FUNDS AFTER
GUARCO RECOVERS INITIAL INVESTMENTS (EXPENSES,
REMODELING AND REPAIRS, INITIAL COSTS, MORTGAGE
INCLUDING ANY INTEREST BORROWED).

DISTRIBUTIONS PRIOR TO TOTAL RECOMPAYMENT
ARE AT THE DISCRETION OF GUARCO.


MICHAEL GUARCO, SR.


HENRY E. ZUKOWSKI, III


JOHN B. GALLO


DARRYL E. ROUSON

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

COUNTY OF MARION)

CASE NO.: 2011-CP-33-00016

WELLS FARGO BANK, N.A., successor -in-
interest to WACHOVIA BANK, NATIONAL
ASSOCIATION

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

MARION AMPHITHEATRE, LLC, DAVID
P. GANNON, MICHAEL GUARCO,
CAROLINA ENTERTAINMENT
COMPLEX, LLC AND 4 PROPHETS, LLC
a/k/a 4 PROFITS, LLC,

Defendant.)

Plaintiff's Attorney:

John P. Williams, Bar No. _____

Address:

P.O. Box 883, Marlon S.C. 29571

Phone: 843-423-7630 Fax 843-423-9547

E-mail: jpwlawoffice@att.net Other: _____

Defendant's Attorney:

E. Lloyd Willcox, Bar No. 15093

Address:

P.O. Box 1909, Florence S.C. 29503

Phone: 662-3258 Fax 662-1342

E-mail: lloyd@willcoxlaw.com Other: _____

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Amend Order and Judgment

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES/ ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

11.21.11

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

11-21-11
017

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	CASE NUMBER 11-CP-33-00016

WELLS FARGO BANK, N.A., successor-
in-interest to WACHOVIA BANK,
NATIONAL ASSOCIATION,

Plaintiff,

vs.

MARION AMPHITHEATRE, LLC,
DAVID P. GANNON, MICHAEL
GUARCO, CAROLINA
ENTERTAINMENT COMPLEX, LLC,
AND 4 PROPERTIES LLC a/k/a 4
PROFITS, LLC,

Defendant.

MOTION TO AMEND ORDER AND
JUDGMENT

Pursuant to Rule 60 and/or 55(c), SCRCF, the Defendant Michael Guarco moves for relief from the attached Order and Judgment dated November 7, 2011 (*Exhibits 1 and 2*) in this matter on the following grounds:

1. Defendant Guarco was never served with the Cross-Claim pursuant to the rules nor was he advised of the amount of time he would have to answer the Cross-Claim. Co-Defendant 4 Prophets, LLC filed with the court a proof of service wherein this Defendant was served with the Cross-Claim via personal service. *See Ex. 3.*
2. The Proof of Service does not contain evidence of actual service on the targeted Defendant. Specifically, service of Co-Defendant 4 Prophets, LLC's Cross- Claim was attempted on Michael Guarco by service of the Cross-Claim on his son Alan Guarco according to the affidavit of service of Wilson filed June 14, 2011. As can be seen by the affidavit of Alan

Guarco (*Ex. 4*), the Defendant Michael Guarco was not personally served nor were the pleadings left at his dwelling house with some person of suitable age then residing therein. Alan Guarco did not live at 7 Bayberry Drive, East Granby, Ct. 06026. Therefore Defendant Michael Guarco has not been served with the Cross-Claim pursuant to Rule 4, SCRPC.

3. Rule 4, SCRPC governs service of process in South Carolina. Service by personal delivery is at issue in this case therefore Rule 4 (d)(1) governs. That subsection requires service by personal service:

...by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein...

Rule 4(d)(1), SCRPC.

4. The record contains proof no such service. Michael Guarco was not personally served and Alan Guarco, who was served, did not reside at the place of attempted service.

5. The Order for Judgment ignores certain terms of the agreement dated July 17, 2006, most importantly that the Defendant Michael Guarco would be entitled to recoup all initial investment costs prior to any disbursement under the agreement.

6. The court's valuation does not subtract or credit this Defendant with the acquisition cost, carrying costs, remodeling expenses, and mortgage and interest expenses.

7. The court failed to apply law of the State of Connecticut as required by the July 17, 2006 agreement. Venue is also improper in that this matter under the terms of the agreement should be tried in Connecticut.

Wherefore Defendant moves that the Order and Judgment be set aside pursuant to Rules 55(c) and 60 (b), SCRPC.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: E. Lloyd Willcox, II
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(843) 662-3258 - Tel
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ATTORNEY FOR DEFENDANTS

November 21, 2011

STATE OF SOUTH CAROLINA

COUNTY OF MARION

WELLS FARGO BANK, N.A., successor-in-
interest to WACHOVIA BANK, NATIONAL
ASSOCIATION,

Plaintiff,

vs.

MARION AMPHITHEATRE, LLC, DAVID P.
GANNON, MICHAEL GUARCO,
CAROLINA ENTERTAINMENT COMPANY, LLC
AND 4 PROPHETS, LLC a/k/a 4
PROFITS, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.: 2011-CP-33-00016

ORDER FOR JUDGMENT

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ORIGINAL FILED IN THIS OFFICE

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Sherry R. Rhodes
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

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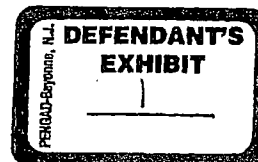
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16

This is an action wherein the plaintiff seeks to foreclose two real estate mortgages against the defendant Marion Amphitheater, LLC. The two real estate mortgages encumber the same property, being a tract of land in the Marion County hereinafter referred to as the subject property. Defendant 4 Prophets, LLC filed and served a number of Cross complaints against the defendants Michael Guarco and David Gannon. The matter was referred to me as Special Referee by order filed June 2, 2011. All issues related to the foreclosure of the real estate mortgages have been addressed in a separate order.

Affidavits of service reflect that the defendants Michael Guarco and David Gannon were personally served with the Answer, Counterclaim and Cross Complaint on May 19, 2011. An affidavit of default reflecting the failure of these two defendants to file pleadings or otherwise respond to the Cross Complaint was filed on June ---, 2010 and an Order of



Default was entered on July 20, 2010. Pursuant to Rule 55, S.C.R.C.P., the Cross Complainant has filed an affidavit setting forth the amount due.

APPLICABLE LAW

By defaulting, the Cross-Defendants have admitted liability to the Cross Complainant on the Cross Claims. Furthermore, the Cross-Defendants have admitted the truth of the allegations made against them in the Cross Claims. "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." *Roche v. Young Bros., Inc., of Florence* 332 S.C. 75, 504 S.E.2d 311 (1998); citing *Howard v. Holiday Inns Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978); *Schenk v. National Health Care, Inc.*, 322 S.C. 316, 471 S.E.2d 736 (Ct.App.1996); *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 334 S.E.2d 528 (Ct.App.1985).

412
42
Rule 55, S.C.R.C.P.(b)(1) provides "When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain or a sum which can by computation be made certain, the judge, upon motion or application of the party seeking default, and upon affidavit of the amount due, shall enter judgment for that amount and costs against the party against whom judgment by default is sought, if that party has been defaulted for failure to appear...".

FINDINGS OF FACT

Upon reviewing the allegations of the Cross-Claims, the truth thereof being admitted by the Cross-Defendants, the affidavits of personal service, and the affidavit of Mark Bauman, managing member of 4 Prophets, LLC, I find the following facts:

1. The Cross-Defendants Michael Guarco and David P. Gannon were duly and properly served with copies of the Answer, Counter-Claim and Cross-Complaint.
2. The Cross-Defendants failed to answer or otherwise respond to the Cross-Complaint as required by the South Carolina Rules of Civil Procedure and Order of Default was duly entered.
3. By virtue of the terms of an agreement between Michael Guarco and 4 Prophets LLC dated July 17, 2006 and the subsequent acquisition of the subject property, 4 Prophets LLC became the equitable owner of an undivided one half interest in the subject property. The equitable interest of 4 Prophets LLC in the subject property has been acknowledged by Michael Guarco from time to time.
4. The Cross-Defendants mortgaged the subject property to the plaintiff without the knowledge or consent of 4 Prophets LLC. This mortgaging of the property was done in direct contravention of the acknowledged equitable interest of 4 Prophets LLC and in violation of the agreement of July 17, 2006, referred to above.
5. The subject property has a fair market value of \$25 million, as alleged in the Cross-Complaint. This value, admitted to by the Cross-Defendants, is supported by two

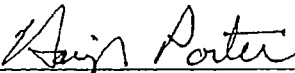
appraisals performed at the request of one or more of the Cross-Defendants, copies of which are attached to the aforementioned affidavit of Mark Bauman.

CONCLUSIONS

Based upon the foregoing findings of fact, I conclude that the Cross-Complainant 4 Prophets LLC is entitled to judgment against the Cross-Defendants Michael Guarco and David P. Gannon in an amount equal to one half of the value of the subject property, being the sum of \$12,500,000.00, plus costs. It is, therefore

#4
ORDERED that the Cross-Complainant 4 Prophets LLC have judgment against the said Michael Guarco and David P. Gannon in the sum of \$12,500,000.00, plus costs as allowed by law.

AND IT IS SO ORDERED.



Haigh Porter, Special Referee

November 7, 2011

Florence, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF MARION

WELLS FARGO BANK, N.A., successor-
in-interest to WACHOVIA BANK,
NATIONAL ASSOCIATION,

Plaintiff,

vs.

MARION AMPHITHEATRE, LLC,
DAVID P. GANNON, MICHAEL
GUARCO, CAROLINA
ENTERTAINMENT COMPLEX, LLC
AND 4 PROPHETS, LLC a/k/a 4
PROFITS, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO.: 2011-CP-33-00016

JUDGMENT

MARION COUNTY, SC
SHERRY R. RHODES
CLERK OF COURT

2011 NOV - 1 P 3:39

BOOK _____ PAGE _____

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It appears that an Order has been issued by the Honorable Haigh Porter, as Special Referee, ordering that the Defendant 4 Prophets, LLC have judgment against the Defendants Michael Guarco and David P. Gannon.

THEREFORE, let the Defendant 4 Prophets, LLC have judgment against the Defendants Michael Guarco and David P. Gannon, for the sum of Twelve Million Five Hundred Thousand and No/100's (\$12,500,000.00), together with its costs and disbursements in the amount of \$150.00, amounting in the whole to the sum of \$12,500,150.00.

Sherry R. Rhodes

Sherry R. Rhodes
Clerk of Court of Common Pleas and
General Sessions for Marion County
South Carolina

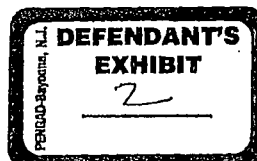
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PAGE _____

Sherry R. Rhodes
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

Marion, South Carolina

November 2, 2011



STATE OF SOUTH CAROLINA

COUNTY OF MARION

WELLS FARGO BANK, N.A.,
SUCCESSOR-IN-INTEREST TO
WACHOVIA BANK, N.A.,

Plaintiff,

vs.

MARION AMPHITHEATRE, LLC,
DAVID P. GANNON; MICHAEL
GUARCO, CAROLINA
ENTERTAINMENT COMPLEX, LLC
AND 4 PROPHETS, LLC A/K/A
4 PROFITS, LLC

Defendants

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
CASE NO.: 11-CP-33-00016

AFFIDAVIT OF PERSONAL SERVICE

MARION COUNTY SC
CLERK OF COURT
HENRY R. RHODES

2011 JUN 14 A 11:09

BOOK PAGE

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I, Edward Wilson, being duly sworn according to law depose and say that I am a competent adult not a party to the above referenced matter, and that on May 19, 2011 at 6:00 p.m.

I personally was able to substitute serve a true and correct attested copy of Answer, Counterclaim and Cross Complaint of 4 Prophets, LLC

on

Michael B. Guarco, Sr.

at the following address:

7 Bayberry Drive, East Granby, CT 06026.

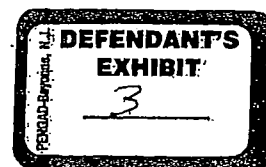
by delivering and leaving a copy of same with Alan Guarco, (son of defendant Michael B. Guraco, Sr.), a person of suitable age and discretion.

Edward Wilson
Edward Wilson

SWORN to before me this
day of May, 2011.

Christine R. Bedard (L.S.)
NOTARY PUBLIC FOR CONNECTICUT
MY COMMISSION EXPIRES:

CHRISTINE R. BEDARD
NOTARY PUBLIC
MY COMMISSION EXPIRES JULY 31, 2012

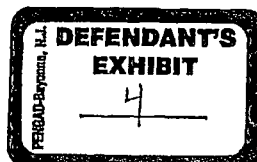


STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	CIVIL ACTION NO. 11-CP-33-00016
	)	
WELLS FARGO BANK N.A.,	)	
Successor-in-interest to	)	
WACHOVIA BANK,	)	
NATIONAL ASSOCIATION,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF ALAN GUARCO
vs.	)	
MARION AMPHITHEATRE LLC,	)	
MICHAEL GUARCO, <i>et al.</i>	)	

AFFIDAVIT OF ALAN GUARCO

I, the undersigned, being duly sworn, make affidavit and say:

1. I am over the age of eighteen and believe in the obligation of an oath.
2. I, Alan Guarco, am the son of the defendant, Michael Guarco Sr.
3. I am a resident of the town of Granby in the state of Connecticut.
4. My Connecticut driver's license and United States passport both reflect an address of 115 Notch Road, Granby, Connecticut.
5. On the evening of May 19, 2011, I was standing outside of my father's house at 7 Bayberry Drive, East Granby, Connecticut.
6. At that time and date, a vehicle pulled up to the house and a gentleman emerged from that vehicle.
7. At that time and place, the gentleman asked me to sign for receipt of documents he held in this hand.
8. At that time and place, the gentleman did not disclose the nature of the documents nor did he ask me for my address or identification.



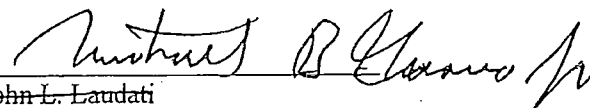
9. At that time and place, I obliged the gentleman's request and signed for the documents, upon receipt thereof I realized the documents were some out-of-state lawsuit which did not involve me.

Dated at Granby, Connecticut this 17th day of July, 2011.


Alan Guarco

STATE OF CONNECTICUT)
) ss. Granby, Ct.
COUNTY OF HARTFORD)

Subscribed and sworn to before me this 17th day of July, 2011.


John L. Laudati
Commissioner of the Superior Court

Notary Public
Comm. Expires 4/30/2012

COUNTY OF MARION

WELLS FARGO BANK, N.A., successor-in-interest to
WACHOVIA BANK, NATIONAL ASSOCIATION,

Plaintiff(s)

vs.

MARION AMPHITHEATRE, LLC, DAVID P. GANNON,
MICHAEL GUARCO, CAROLINA ENTERTAINMENT
COMPLEX, LLC AND 4 PROPHETS, LLC a/k/a
4 PROFITS, LLC,

Defendant(s)

(Please Print)

Submitted By: David B. Wheeler
Address: Moore & Van Allen PLLC
PO Box 22828
Charleston, SC 29413-2828

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP-33-00016

MARION COUNTY
CLERK OF COURT
SHERY R. ROBERTS

2011 JAN 12 P 1:15

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SC Bar #:
Telephone #:
Fax #:
Other:
E-mail:

843-579-7008
843-579-8727
davidwheeler@myvalaw.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

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

Submitting Party Signature:

Date: 1/6/2011

CHARLESTONW430240v1

Note: Frivolous civil proceedings are subject to sanctions pursuant to SCRCP, Rule 1 and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg and York

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

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

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

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

STATE OF SOUTH CAROLINA)

COUNTY OF MARION)

WELLS FARGO BANK, N.A.,
successor-in-interest to WACHOVIA
BANK, NATIONAL ASSOCIATION,)

Plaintiff,)

vs.)

MARION AMPHITHEATRE, LLC,
DAVID P. GANNON, MICHAEL
GUARCO, CAROLINA
ENTERTAINMENT COMPLEX,
LLC AND 4 PROPHETS, LLC a/k/a
4 PROFITS, LLC,)

Defendants.)

IN THE CIRCUIT COURT FOR THE
12th JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION
FROM ADR

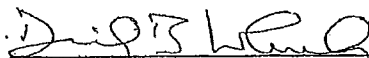
DOCKET NO. 2011 - CP - 33 - 00016

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is a forfeiture proceeding brought by the State;
- ☒ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

2011 JAN 12 P 1:54
MARION COUNTY SC
SHERY R. RHODES
CLERK OF COURT

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BOOK PAGE



David B. Wheeler, SC Bar #6055
Reid E. Dyer, SC Bar #79155
Moore & Van Allen, PLLC
40 Calhoun Street, Suite 300
Post Office Box 22828
Charleston, SC 29413-2828
Telephone: (843) 579-7000
Facsimile: (843) 579-7099
ATTORNEYS FOR PLAINTIFF
WELLS FARGO BANK, N.A., successor-in-interest to
WACHOVIA BANK, NATIONAL ASSOCIATION

CHARLESTON, SC
JANUARY 6, 2011

CHARLESTON\430240v1

STATE OF SOUTH CAROLINA

COUNTY OF MARION

WELLS FARGO BANK, N.A.,
SUCCESSOR-IN-INTEREST TO
WACHOVIA BANK, N.A.,

Plaintiff,

vs.

MARION AMPHITHEATRE, LLC,
DAVID P. GANNON, MICHAEL
GUARCO, CAROLINA
ENTERTAINMENT COMPLEX, LLC
AND 4 PROPHETS, LLC A/K/A
4 PROFITS, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) COURT FILE NO. 11-CP-33- 00016

) 2011 LP 33 00002

) LIS PENDENS
(FORECLOSURE/NON-JURY)

MARION COUNTY SC
SHERIFF R. RHODES
CLERK OF COURT

2011 JAN 12 P 1:54

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NOTICE IS HEREBY GIVEN THAT an action has been initiated and is pending in the Court of Common Pleas for the County and State aforesaid, by the above-named Plaintiff, against the Defendants above named, and that the object of such action is the foreclosure of those certain Mortgages to the Plaintiff, described as follows:

By: MARION AMPHITHEATRE, LLC a
Dated: April 27, 2007
Recorded On: April 27, 2007 at 03:24:40 p.m.
Recorded In: Book 859, Page 261
Office of: Clerk of Court for Marion County, SC

By: MARION AMPHITHEATRE, LLC a
Dated: May 13, 2009
Recorded On: May 25, 2009 at 02:33 p.m.
Recorded In: Volume 88, Page 77
Office of: ROD for Marion County, SC

and to sell the property described below for the purpose of paying the lien thereon.

That the real estate affected by such action is now and was at the time of commencement of such action situate in the County and State aforesaid, and the following is a description thereof, as contained in the above-referenced Mortgage:

All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. By Beasley Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and others; and on the Northeast by lands of William E. Thompson.

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, at Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

This being the same property conveyed to Marion Amphitheatre, LLC by deed of Jack H. Jones and Donald D. Godwin recorded in the Office of the Clerk of Court for Marion County on January 19, 2007 in Deed Book A-568 at Page 120.

TMS # 085-00-00-001-000



David B. Wheeler, SC Bar #6055

Reid E. Dyer, SC Bar #79155

Moore & Van Allen, PLLC

40 Calhoun Street, Suite 300

Post Office Box 22828

Charleston, SC 29413-2828

Telephone: (843) 579-7000

Facsimile: (843) 579-7099

ATTORNEYS FOR PLAINTIFF

WELLS FARGO BANK, N.A., successor-in-interest to

WACHOVIA BANK, NATIONAL ASSOCIATION

CHARLESTON, SC
JANUARY 6, 2011

CHARLESTON\430229\1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF MARION) COURT FILE NO. 11-CP-33- 00016

WELLS FARGO BANK, N.A.,
SUCCESSOR-IN-INTEREST TO
WACHOVIA BANK, N.A.,

Plaintiff,

vs.

MARION AMPHITHEATRE, LLC,
DAVID P. GANNON, MICHAEL
GUARCO, CAROLINA
ENTERTAINMENT COMPLEX,
LLC AND 4 PROPHETS, LLC A/K/A
4 PROFITS, LLC,

Defendants.

SUMMONS
(FORECLOSURE/NON-JURY)

MARION COUNTY SC
SHERY R. RHODES
CLERK OF COURT

2011 JAN 12 P 1:54

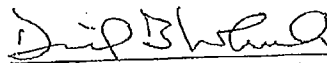
BOOK PAGE

FILED

TO THE DEFENDANTS: MARION AMPHITHEATRE, LLC, DAVID P. GANNON, MICHAEL GUARCO, CAROLINA ENTERTAINMENT COMPLEX, LLC and 4 PROPHETS, LLC A/K/A 4 PROFITS, LLC:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscribers at their offices, Moore & Van Allen PLLC, 40 Calhoun Street, Suite 300, Post Office Box 22828, Charleston, SC 29413-2828, or to otherwise appear and defend, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, or otherwise to appear and defend, within the time aforesaid, the Plaintiff in this action will obtain a judgment by default against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that the undersigned attorneys, on behalf of the Plaintiff herein, will seek the agreement and stipulation of all parties not in default for an Order of Reference to the Special Referee for the aforesaid County, stipulating that said Special Referee may enter a final judgment in this case.



David B. Wheeler, SC Bar #6055

Reid E. Dyer, SC Bar #79155

Moore & Van Allen, PLLC

40 Calhoun Street, Suite 300

Post Office Box 22828

Charleston, SC 29413-2828

Telephone: (843) 579-7000

Facsimile: (843) 579-7099

ATTORNEYS FOR PLAINTIFF

WELLS FARGO BANK, N.A., successor-in-interest to

WACHOVIA BANK, NATIONAL ASSOCIATION

CHARLESTON, SC
JANUARY 6, 2011

3. Upon information and belief, the Defendants, David P. Gannon and Michael Guarco (who together with Defendant, Marion Amphitheatre, LLC are sometimes referred to as "Obligor") are residents of the States of Massachusetts and Connecticut, respectively.

4. The real property subject to this action is located in Marion County, South Carolina and this Court has jurisdiction over the parties and the subject matter of this action, and venue is proper in this Court.

5. The loans that are the subject of Plaintiff's action are not subject to the Home Affordable Modification Program ("HAMP").

6. On or about April 27, 2007, for value, Marion Amphitheatre, LLC, David P. Gannon and Michael Guarco (collectively, "Obligors") executed and delivered to Plaintiff that certain Promissory Note in the original principal amount of Four Million and no/100 (\$4,000,000.00) Dollars (the "Note"), which provided for interest to accrue at the rate of 1-Month LIBOR, plus 2.5% and which called for monthly payments of \$22,222.22, plus accrued interest. A true copy of the Note is attached hereto as Exhibit "A" and the terms thereof are incorporated herein by reference. In conjunction with execution of the Note, Obligors executed that certain Waiver of Appraisal Rights in accordance with S.C. law.

7. On that same date, in order to secure payment of the Note, mortgagor, Marion Amphitheatre, LLC executed and delivered to Plaintiff that certain Mortgage and Assignment of Rents, which was recorded on April 27, 2007 at 3:24 p.m. in Book 859 at Page 261 in the Office of the Clerk of Court for Marion County, South Carolina (the "First Mortgage"). A true copy of the First Mortgage is attached hereto as Exhibit "B" and the terms thereof are incorporated herein by reference.

8. The First Mortgage encumbers the following described real property ("Property"),

to wit:

All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. By Beasley Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and others; and on the Northeast by lands of William E. Thompson.

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, at Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

This being the same property conveyed to Marion Amphitheatre, LLC by deed of Jack H. Jones and Donald D. Godwin recorded in the Office of the Clerk of Court for Marion County on January 19, 2007 in Deed Book A-568 at Page 120.

TMS # 085-00-00-001-000

9. On or about November 20, 2007, Obligor, Michael Guarco ("Guarco") executed and delivered to Plaintiff that certain Promissory Note in the original principal amount of Three Hundred Thousand and no/100 (\$300,000.00) Dollars, (said Promissory Note, along with any amendments or extensions thereof being referred to as the "Guarco Note", which, together with the Note, are collectively referred to as the "Notes"), which provided for interest to accrue at the Plaintiffs "Prime Rate", as defined therein and which was due and payable on October 31, 2008. A true copy of the Guarco Note is attached hereto as Exhibit "C" and the terms thereof are incorporated herein by reference. In conjunction with execution of the Guarco Note, Guarco executed that certain Waiver of Appraisal Rights in accordance with S.C. law.

10. On or about May 13, 2009, Obligor, Michael Guarco executed and delivered to Plaintiff that certain renewal, extension and modification of the Guarco Note, which provided for interest to accrue at the Plaintiff's "Prime Rate", as defined therein, plus 4.5% and which was due and payable on August 30, 2009. A true copy of the renewed, extended and modified Guarco Note is attached hereto as Exhibit "D" and the terms thereof are incorporated herein by reference.

11. On that same date, in order to secure payment of the Guarco Note, Marion Amphitheatre, LLC executed and delivered to Plaintiff that certain Mortgage and Assignment of Rents, which was recorded on May 26, 2009 at 2:33 p.m. in Volume 88 at Page 77 in the Office of the Register of Deeds for Marion County, South Carolina (the "Junior Mortgage", which together with the First Mortgage are collectively referred to as the "Mortgages"). A true copy of the Junior Mortgage is attached hereto as Exhibit "E" and the terms thereof are incorporated herein by reference.

12. The Junior Mortgage encumbers the Property, subject to the First Mortgage.

13. The Notes each provide, *inter alia*, that if a default occurs thereunder, a default rate of interest will be imposed at a rate 3.0% plus the then applicable interest rate under that Note (the "Default Rate").

14. In the Notes it was agreed by and between the parties that in the event of foreclosure of the Mortgages a reasonable attorneys' fee, which is also secured by the Mortgages, would be included in the judgment of foreclosure. It was further agreed by and between the parties that the Mortgagor, its successors or administrators, would insure the improvements on, and constituting a part of, the Property, and keep the same insured from loss or damage by fire or other casualties, and such insurance policy would contain a loss payable clause to the Mortgagee, its successors and assigns. It was further agreed by and between the parties that the Mortgagor,

its successors and administrators would pay promptly all insurance premiums, due and owing on the Property, and in default thereof, that the holder of the Mortgages would be entitled to pay the same and add such amount to principal. It was further agreed by and between the parties that in case of default in any of the provisions of the Notes or the Mortgages, all sums then owing would become immediately due and payable at the option of the Mortgagee. It was further agreed by and between the parties that the Mortgagor, its successors and administrators would pay promptly all taxes, assessed and chargeable against the Property and in default thereof, that the holder of the Mortgages would be entitled to pay the same and add such amount to principal.

15. Pursuant to the Mortgages, the Mortgagor assigned all the rents, issues and profits of the Property from and after any default thereunder, and it was agreed by and between the parties that should legal proceedings be instituted pursuant to the Mortgages, then the Mortgagee would have the right to have appointed a receiver of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as receiver, would apply the residue of rents, issues and profits toward the payment of the debts secured by the Mortgages.

16. The Notes and Mortgages provide for recovery by Plaintiff of its costs and expenses, including reasonable attorneys' fees, with such costs to be added to and secured by the Mortgages, and the Notes and Mortgages have been placed in the hands of Moore & Van Allen PLLC, Attorneys for Plaintiff, for collection and/or foreclosure.

17. The First Mortgage constitutes a first priority lien on the Property and the Junior Mortgage constitutes a second priority lien on the Property.

18. The conditions of the Notes, First Mortgage and Junior Mortgage have been breached in that the Obligor(s) under each Note have failed to pay all principal and interest due

thereunder as more fully described below. As such, Plaintiff, as holder of the Notes and Mortgages, has elected to declare a default and has made due demand for payment, which demand has been refused. Furthermore, as the Notes are in default, the Plaintiff is entitled to interest under each Note at the Default Rate as defined hereinabove.

19. The Defendant, Carolina Entertainment Complex, LLC, which Plaintiff is informed and believes is a limited liability corporation organized and existing under the laws of the State of South Carolina, is made a party hereto because it has, or may claim to have, a leasehold interest in the Property which is the subject of this action by reason of that certain Memorandum of Lease recorded on February 22, 2002 in the Office of the Register of Deeds for Marion County in Deed Book 463, page 214 and Deed Book 463, page 341 but which interest, if any, is subject to the Mortgages and the rights of Plaintiff herein.

20. The Defendant, 4 Prophets, LLC a/k/a 4 Profits, LLC, which Plaintiff is informed and believes is a limited liability corporation organized and existing under the laws of the State of South Carolina, is made a party hereto because it has, or may claim to have, an interest in the Property which is the subject of this action by reason of that certain Lis Pendens filed in the Office of the Clerk of Court for Marion County in Lis Pendens Index 2010-LP-33-055 in connection with that civil action captioned as *4 Prophets, LLC v Marion Amphitheatre, LLC and Michael Guarco*, but which interest, if any, is junior and subordinate to the Mortgages and the rights of Plaintiff herein.

21. Plaintiff demands an immediate personal judgment against the parties indicated herein, with said judgment to be subject to credit in an amount equal to the proceeds from the sale of the Property pursuant to this foreclosure action. The Plaintiff reserves its right to withdraw its demand for deficiency judgment at any time prior to the foreclosure sale herein.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of the First Mortgage)

22. Effective October 22, 2010, there is due on the First Mortgage the principal sum of Three Million One Hundred Seventy-Seven Thousand Seven Hundred Seventy-Seven and 86/100 (\$3,177,777.86) Dollars, together with interest thereon in the amount of Thirty-Six Thousand Seven Hundred Forty-Eight and 98/100 (\$36,748.98) Dollars, plus Late Charges in the amount of Five Thousand Nine Hundred Seventy-Seven and 76/100 (\$5,977.76) Dollars, additional interest accruing at the Default Rate as described herein from January 5, 2011 until paid, plus late charges subsequently accruing, any advances with interest, and attorneys' fees and costs.

23. The conditions of the Note and the First Mortgage have been broken in that Obligors have failed to make the required payments since on or about June 27, 2010, and Plaintiff, as holder of the Note and the First Mortgage, 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 the First Mortgage now due and owing, and has made due demand upon Obligors for such entire amount, which demand has been refused.

FOR A SECOND CAUSE OF ACTION
(Foreclosure of Junior Mortgage)

24. Plaintiff realleges Paragraphs 1 through 23 as fully as if set forth verbatim herein.

25. Effective October 22, 2010, there is due on the Junior Mortgage the principal sum of Two Hundred Ninety-Nine Thousand Nine Hundred Ninety-Nine and 99/100 (\$299,999.99) Dollars, together with interest thereon in the amount of One Thousand Four Hundred Twenty and 83/100 (\$1,420.83) Dollars, plus interest accruing at the Default Rate as described herein

from January 5, 2011 until paid, plus late charges subsequently accruing, any advances with interest, and attorneys' fees and costs.

26. The conditions of the Guarco Note and the Junior Mortgage have been broken in that the Guarco Note matured on August 30, 2009, and Plaintiff, as holder of the Guarco Note and the Junior Mortgage, has elected to declare a default, and has made due demand upon Obligor for such entire amount, which demand has been refused.

WHEREFORE, Plaintiff prays that:

UNDER ITS FIRST CAUSE OF ACTION:

(a) The lien of the First Mortgage be declared to constitute a first priority lien upon the Property.

(b) It have immediate judgment against the Defendants-Obligors, Marion Amphitheatre, LLC, David P. Gannon and Michael Guarco, and any and all other parties who may have or claim to have an interest in the Property under the First Mortgage in the principal sum of Three Million One Hundred Seventy-Seven Thousand Seven Hundred Seventy-Seven and 86/100 (\$3,177,777.86) Dollars, together with interest thereon in the amount of Thirty-Six Thousand Seven Hundred Forty-Eight and 98/100 (\$36,748.98) Dollars, plus Late Charges in the amount of Five Thousand Nine Hundred Seventy-Seven and 76/100 (\$5,977.76) Dollars, additional interest accruing at the Default Rate as described herein from January 5, 2011 until paid, plus late charges subsequently accruing, any advances with interest, and attorneys' fees and costs.

(c) The Property, as described in the First Mortgage, as well as any other property, real or personal, in which Plaintiff retains a security interest, be sold at public auction by the Court according to the statutes governing such sale subsequent to publication of notice of sale in

Marion County, and the proceeds of sale, after paying the costs and expenses of this suit and of sale, be applied to the payment of the amounts due under the First Mortgage along with costs and attorneys' fees, with the balance, if any, to be held subject to the further Order of this Court.

(d) That the Defendants and all persons claiming any interest in Property, through or under any Defendant, since the filing of the Lis Pendens in this action, be forever foreclosed and barred of any equity of redemption in and to the Property.

(e) It be granted an immediate money judgment against Defendants-Obligors, Marion Amphitheatre, LLC, David P. Gannon and Michael Guarco, for the amount due under the Note, with such amount to be subject to credit after application of the proceeds from any sale of the Property provided for hereunder.

(f) In the event the successful bidder shall be other than any Defendant, the Sheriff be ordered and directed to eject and remove from the premises the occupant or occupants of the property sold, together with all personal property located thereon, and to put the successful bidder or his assigns in the full, quiet, and peaceable possession of the premises without delay, and to keep the successful bidder or his assigns in such possession.

(g) For attorney's fees and costs associated with this cause of action.

UNDER ITS SECOND CAUSE OF ACTION:

(a) The lien of the Junior Mortgage be declared to constitute a second priority lien upon the Property.

(b) It have immediate judgment against the Defendant-Obligor, Michael Guarco, and any and all other parties who may have or claim to have an interest in the Property under the Junior Mortgage in the principal sum of Two Hundred Ninety-Nine Thousand Nine Hundred Ninety-Nine and 99/100 (\$299,999.99) Dollars, together with interest thereon in the amount of

One Thousand Four Hundred Twenty and 83/100 (\$1,420.83) Dollars, plus interest accruing at the Default Rate as described herein from January 5, 2011 until paid, plus late charges subsequently accruing, any advances with interest, and attorneys' fees and costs.

(c) The Property, as described in the Junior Mortgage, as well as any other property, real or personal, in which Plaintiff retains a security interest, be sold at public auction by the Court according to the statutes governing such sale subsequent to publication of notice of sale in Marion, and the proceeds of sale, after paying the costs and expenses of this suit and of sale, be applied to the payment of the amounts due under the Junior Mortgage along with costs and attorneys' fees, with the balance, if any, to be held subject to the further Order of this Court.

(d) That the Defendants and all persons claiming any interest in the Property, through or under any Defendant, since the filing of the Lis Pendens in this action, be forever foreclosed and barred of any equity of redemption in and to the Property.

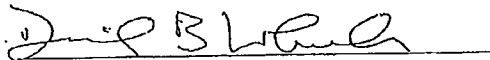
(e) It be granted an immediate money judgment against Defendant-Obligor, Michael Guarco, for the amount due under the Guarco Note, with such amount to be subject to credit after application of the proceeds from any sale of the Property provided for hereunder.

(f) In the event the successful bidder shall be other than any Defendant, the Sheriff be ordered and directed to eject and remove from the premises the occupant or occupants of the property sold, together with all personal property located thereon, and to put the successful bidder or his assigns in the full, quiet, and peaceable possession of the premises without delay, and to keep the successful bidder or his assigns in such possession.

(g) For attorney's fees and costs associated with this cause of action.

UNDER ALL CAUSES OF ACTION:

- (a) A receiver be appointed for the Property.
- (b) For such other and further relief as this Honorable Court deems just and proper.



David B. Wheeler, SC Bar #6055
Reid E. Dyer, SC Bar #79155
Moore & Van Allen, PLLC
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Charleston, SC 29413-2828
Telephone: (843) 579-7000
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ATTORNEYS FOR PLAINTIFF
WELLS FARGO BANK, N.A., successor-in-interest to
WACHOVIA BANK, NATIONAL ASSOCIATION

CHARLESTON, SC
JANUARY 6, 2011

PROMISSORY NOTE

\$4,000,000.00

April 27, 2007

Marion Amphitheatre, LLC
1548 State Highway 501
Marion, South Carolina 29571

David P. Gannon, Jr.
125 Estey Avenue
Hyannis, Massachusetts 02601

Michael Guarco
7 Bayberry Drive
East Granby, Connecticut 06026
(Individually and collectively, "Borrower")

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

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Four Million and No/100 Dollars (\$4,000,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

LOAN AGREEMENT. This Note is subject to the provisions of that certain Loan Agreement between Bank and Borrower of even date herewith, as modified from time to time.

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: To refinance existing debt used to purchase the Carolina Amphitheatre and provide funds to make improvements to the property.

SECURITY. Marion Amphitheatre, LLC has granted Bank a security interest in the collateral described in the Loan Documents, including, but not limited to, real and personal property collateral described in that certain security instrument of even date herewith.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note during each Interest Period from the date hereof at a rate per annum equal to 1-month LIBOR plus 2.5% ("Interest Rate"). Interest for each Interest Period shall accrue each day during such Interest Period, commencing on and including the first day to but excluding the last day. "Interest Period" means each period commencing on the last day of the immediately preceding Interest Period and ending on the same day of the month that Interest is due 1 month thereafter; provided (i) the first Interest Period shall commence on the date hereof and end on the first day thereafter that Interest is due, (ii) any Interest Period that ends in a month for which there is no day which numerically corresponds to the last day of the immediately preceding Interest Period shall end on the last day of the month and (iii) any Interest Period that would otherwise extend past the maturity date of this Note shall end on the maturity date of this Note. "LIBOR" means, with respect to each Interest Period, the rate for U.S. dollar deposits with a maturity equal to the number of months specified above, as reported on Telerate Successor Page 3750 as of 11:00 a.m., London time, on the second London business day before such Interest Period begins (or if not so reported, then as determined by the Bank from another recognized source or interbank quotation).

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INDEMNIFICATION. Borrower shall indemnify Bank against Bank's loss or expense as a consequence of (a) Borrower's failure to make any payment when due under this Note, (b) any payment, prepayment or conversion of any loan on a day other than the last day of the Interest Period, or (c) any failure to make a borrowing or conversion after giving notice thereof ("Indemnified Loss or Expense"). The amount of such Indemnified Loss or Expense shall be determined by Bank based upon the assumption that Bank funded 100% of that portion of the loan in the London Interbank market.

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

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

REPAYMENT TERMS. This Note shall be due and payable in consecutive monthly payments of principal equal to \$22,222.22 plus accrued interest, commencing on May 27, 2007, and continuing on the same day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on April 27, 2012.

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

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

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

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

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

If this Note is secured by owner-occupied residential real property located outside the state in which the office of Bank first shown above is located, the late charge laws of the state where the real property is located shall apply to this Note and the late charge shall be the highest amount allowable under such laws. If no amount is stated thereunder, the late charge shall be 5% of each payment past due for 10 or more days.

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

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

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

REMEDIES UPON DEFAULT. If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: Bank Lien. Foreclose its security interest or lien against Borrower's deposit accounts and investment property without notice. Acceleration Upon Default. Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be

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Immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable. Cumulative. Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

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

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

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

MISCELLANEOUS PROVISIONS. **Assignment.** This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and interpreted the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's deposit accounts and investment property with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state identified as the Jurisdiction above. **Sovereignty.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or

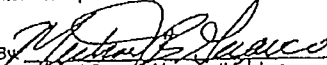
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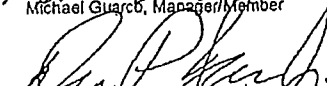
other such document. Payments. All payments shall be mailed to Bank at Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or other such address as provided by Bank in writing. Notices. Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. Plural; Captions. All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. Advances. Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. Posting of Payments. All payments received during normal banking hours after 2:00 p.m. local time at the office of Bank first shown above shall be deemed received at the opening of the next banking day. Joint and Several Obligations. If there is more than one Borrower, each is jointly and severally obligated together with all other parties obligated for the Obligations. Fees and Taxes. Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES. EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. Patriot Act Notice. To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. Final Agreement. This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

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

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

Marion Amphitheatre, LLC

By  (SEAL)
Michael Guarco, Manager/Member

 (SEAL)
David P. Gannon, Jr.

 (SEAL)
Michael Guarco

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Tracking #: 257855
CAT - Deal # 831202 Facility ID 621592

RETURN TO:
WILLCOX LAW FIRM
P. O. BOX 1909
FLORENCE, S.C. 29503

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STURN
WILLCOX
P. O. BOX 1909
FLORENCE, S.C. 29503

PREPARED BY: Jennifer O'Farrell
RETURN TO: Collateral Servicing Department, NC6038
Wachovia Bank, National Association
Commercial Loan Services
Collateral Servicing Department
P.O. Box 2705
Winston-Salem, NC 27199-8182

FILED, RECORDED, INDEXED
04/27/2007 03:24:40PM
Rec Fee: 16.00 St Fee: 0.00
Co Fee: 0.00 Pages: 10
Sherry A. Rhodes - Clerk of Court
Marion County, SC

MORTGAGE AND ASSIGNMENT OF RENTS

This MORTGAGE AND ASSIGNMENT OF RENTS (hereafter referred to as "Mortgage") made April 27, 2007, by and between WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association, whose address is 10 South Jefferson Street, Roanoke, Virginia 24011 ("Bank"), and MARION AMPHITHEATRE, LLC, whose address is 1548 State Highway 501, Marion, South Carolina 29571 ("Mortgagor"). Bank is the mortgagee hereunder for indexing purposes by the clerk of court.

WITNESSETH:

To secure payment and performance of obligations under a Promissory Note (the "Note") of even date herewith, in the amount of \$4,000,000.00, made by Mortgagor, David P. Gannon, Jr., and Michael Guarco payable to Bank, this Mortgage), any present or future Letters of Credit issued by Bank for the account of Mortgagor, other loan documents as defined in the Note (the "Loan Documents"), and swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), all other indebtedness of Mortgagor to Bank whenever borrowed or incurred, whether or not reasonably contemplated by the parties hereto as of the date hereof, and any renewals, extensions, novations, or modifications of the foregoing (collectively the "Obligations"), and in consideration of these premises and for other consideration, Mortgagor does mortgage, grant and convey unto Bank (for itself and its affiliates), its successors and assigns all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "Property"): (i) all those certain tracts of land in the County of Marion, State of South Carolina described in EXHIBIT A attached hereto and made part hereof (the "Land"); (ii) all buildings and improvements now or hereafter erected on the Land; (iii) all fixtures attached to the Land or any buildings or improvements situated thereon; and (iv) all estates, rights, tenements, hereditaments, privileges, rents, issues, profits easements, and appurtenances of any kind benefiting the Land; all means of access to and from the Land, whether public or private; and all water and mineral rights.

In the event that Mortgagor is the owner of a leasehold estate with respect to any portion of the Property and Mortgagor obtains a fee estate in such portions of the Property, then, such fee estate shall automatically, and without further action of any kind on the part of the Mortgagor, be and become subject to the security title and lien of this Agreement.

TO HAVE AND TO HOLD the Property and all the estate, right, title and interest, in law and in equity, of Mortgagor's in and to the Property unto Bank, its successors and assigns, forever.

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DOTM

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Mortgagor WARRANTS AND REPRESENTS that Mortgagor is lawfully seized of the Property, in fee simple, absolute, that Mortgagor has the legal right to convey and encumber the same, and that the Property is free and clear of all liens and encumbrances. Mortgagor further warrants and will forever defend all and singular the Property and title thereto to Bank and Bank's successors and assigns, against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS that if (i) all the Obligations (including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder) are paid in full, (ii) each and every representation, warranty, agreement, covenant and condition of this Mortgage, and the other Loan Documents, are complied with and abided by, and (iii) any and all swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder have matured or been terminated, then this Mortgage and the estate hereby created shall cease and be null, void, and canceled of record.

To protect the security of this Mortgage, Mortgagor further represents and agrees with Bank as follows:

Payment of Obligations. That the Obligations shall be timely paid and performed.

Future Advances. This Mortgage is given to secure not only existing Obligations, but also future advances, including obligations under swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) to the same extent as if such future advances and obligations under swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) are made on the date of the execution of this Mortgage. The principal amount (including any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) and future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed \$8,000,000.00, plus all interest, costs, reimbursements, fees and expenses due under this Mortgage and secured hereby. Mortgagor shall not execute any document that impairs or otherwise impacts the priority of any existing or future Obligations secured by this Mortgage.

Nothing herein obligates Bank to provide credit in excess of the Obligations.

Leases, Subleases and Easements. Mortgagor shall maintain, enforce and cause to be performed all of the terms and conditions under any lease, sublease or easement which may constitute a portion of the Property. Mortgagor shall not, without the consent of Bank (which consent shall not be unreasonably withheld or delayed), enter into any new lease of all or any portion of the Property, agree to the cancellation or surrender under any lease of all or any portion of the Property, agree to prepayment of rents, issues or profits (other than rent paid at the signing of a lease or sublease), modify any such lease so as to shorten the term, decrease the rent, accelerate the payment of rent, or change the terms of any renewal option; and any such purported new lease, cancellation, surrender, prepayment or modification made without the consent of Bank shall be void as against Bank.

Required Insurance. Mortgagor shall maintain with respect to the Property: (i) during construction of any improvements on the Property, "all-risk" builders risk insurance which must include windstorm, hail damage, fire and vandalism (non-reporting Completed Value with Special Cause of Loss form), in an amount not less than the completed replacement value of the improvements under construction, naming Bank as mortgagee and loss payee; (ii) upon completion of construction, upon occupancy of any improvements, and at all other times, insurance against loss or damage by fire and other casualties and hazards by insurance written on an "all risks" basis, including malicious mischief coverage, in an amount not less than the replacement cost thereof, including coverage for loss of rents or business interruption if applicable, naming Bank as loss payee and mortgagee; (iii) If the Property is required to be insured pursuant to the National Flood Reform Act of 1994, and the regulations promulgated thereunder, flood insurance is required in the amount equal to the lesser of the loan amount or maximum available under the National Flood Insurance Program, but in no event should the amount of coverage be less than the value of the improved structure, naming Bank as mortgagee and loss payee. If,

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after closing, the Property (or any part thereof) is remapped and if the vertical improvements are determined to be located in a special flood hazard area, Mortgagor must obtain and maintain a flood insurance policy. If, within forty-five (45) days of receipt of notification from Bank that the Property has been reclassified by FEMA as being located in a special flood hazard area, Mortgagor has not provided sufficient evidence of flood insurance, Bank is mandated under federal law to purchase flood insurance on behalf of Mortgagor, and Bank will add the associated costs to the principal balance of the Note. If the land or any portion thereof is located in a special flood hazard area, this Agreement may be terminated by Bank at its sole option; (iv) as applicable, insurance which complies with the workers' compensation and employers' liability laws of all states in which Mortgagor shall be required to maintain such insurance; and (v) liability insurance providing coverage in such amount as Bank may require but in no event less than \$1,000,000.00 combined single limit, naming Bank as an additional insured; and (vi) such other insurance as Bank may require from time to time.

All property insurance policies shall contain an endorsement or agreement by the insurer in form satisfactory to Bank that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor and the further agreement (within both the property and liability policies) of the insurer waiving rights of subrogation against Bank, and rights of set-off, counterclaim or deductions against Mortgagor.

All insurance policies shall be in form, provide coverages, be issued by companies and be in amounts satisfactory to Bank. At least 30 days prior to the expiration of each such policy, Mortgagor shall furnish Bank with evidence satisfactory to Bank that such policy has been renewed or replaced or is no longer required hereunder. All such policies shall provide that the policy will not be canceled or materially amended without at least 30 days prior written notice to Bank. In the event Mortgagor fails to provide, maintain, keep in force, and furnish to Bank the policies of insurance required by this paragraph, Bank may procure such insurance or single-interest insurance in such amounts, at such premium, for such risks and by such means as Bank chooses, at Mortgagor's expense; provided however, Bank shall have no responsibility to obtain any insurance, but if Bank does obtain insurance, Bank shall have no responsibility to assure that the insurance obtained shall be adequate or provide any protection to Mortgagor.

Insurance Proceeds. After occurrence of any loss to any of the Property, Mortgagor shall give prompt written notice thereof to Bank.

In the event of such loss all insurance proceeds, including unearned premiums, shall be payable to Bank, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Bank and not to Bank and Mortgagor jointly. Bank is hereby authorized by Mortgagor to make proof of loss if not promptly made by Mortgagor, settle, adjust or compromise any claims for loss or damage under any policy or policies of insurance and Mortgagor appoints Bank as its attorney-in-fact to receive and endorse any insurance proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any obligations remain unsatisfied. Mortgagor shall pay the costs of collection, including attorneys' fees, of insurance proceeds payable on account of such damage or destruction. Mortgagor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Bank as security for payment of the obligations.

In the event of any damage to or destruction of the Property, Bank shall have the option of applying or paying all or part of the insurance proceeds to (i) the obligations in such order as Bank may determine, (ii) restoration, replacement or repair of the Property in accordance with Bank's standard construction loan disbursement conditions and requirements, or (iii) Mortgagor. Nothing herein shall be deemed to excuse Mortgagor from restoring, repairing and maintaining the Property as required herein.

Impositions; Escrow Deposit. Mortgagor will pay all taxes, levies, assessments and other fees and charges imposed upon or which may become a lien upon the Property under any law or ordinance (all of the foregoing collectively "impositions") before they become delinquent and in any event in the same calendar year in which they first become due. Upon request of Bank, Mortgagor shall add to each

periodic payment required under the Note the amount estimated by Bank to be sufficient to enable Bank to pay, as they come due, all impositions and insurance premiums which Mortgagor is required to pay hereunder. Payments requested under this provision shall be supplemented or adjusted as required by Bank from time to time. Such funds may be commingled with the general funds of Bank and shall not earn interest. Upon the occurrence of a Default, Bank may apply such funds to pay any of the Obligations.

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Use of Property. Mortgagor shall use and operate, and require its lessees or licensees to use and operate, the Property in compliance with all applicable laws (including, for example, the Americans with Disabilities Act and the Fair Housing Act) and ordinances, covenants, and restrictions, and with all applicable requirements of any lease or sublease now or hereafter affecting the Property. Mortgagor shall not permit any unlawful use of the Property or any use that may give rise to a claim of forfeiture of any of the Property. Mortgagor shall not allow changes in the stated use of Property from that disclosed to Bank at the time of execution hereof. Mortgagor shall not initiate or acquiesce to a zoning change of the Property without prior notice to, and written consent of, Bank.

Maintenance, Repairs and Alterations. Mortgagor shall keep and maintain the Property in good condition and repair and fully protected from the elements to the satisfaction of Bank. Mortgagor will not remove, demolish or structurally alter any of the buildings or other improvements on the Property (except such alterations as may be required by laws, ordinances or regulations) without the prior written consent of Bank. Mortgagor shall promptly notify Bank in writing of any material loss, damage or adverse condition affecting the Property.

Eminent Domain. Should the Property or any interest therein be taken or damaged by reason of any public use or improvement or condemnation proceeding ("Condemnation"), or should Mortgagor receive any notice or other information regarding such Condemnation, Mortgagor shall give prompt written notice thereof to Bank. Bank shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation and, at its option, may commence, appear in and prosecute in its own name any action or proceedings relating thereto. Bank shall be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, and damages awarded to Mortgagor related to any Condemnation (the "Proceeds") are hereby assigned to Bank and Mortgagor agrees to execute such further assignments of the Proceeds as Bank may require. Bank shall have the option of applying or paying the Proceeds in the same manner as insurance proceeds as provided herein. Mortgagor appoints Bank as its attorney-in-fact to receive and endorse the Proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

Environmental Condition of Property and Indemnity. Mortgagor warrants and represents to Bank, except as reported by Mortgagor to Bank in writing, that: (i) Mortgagor has inspected and is familiar with the environmental condition of the Property; (ii) the Property and Mortgagor, and any occupants of the Property, are in compliance with and shall continue to be in compliance with all applicable federal, state and local laws and regulations intended to protect the environment and public health and safety as the same may be amended from time to time ("Environmental Laws"); (iii) the Property is not and has never been used to generate, handle, treat, store or dispose of, in any quantity, oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances or hazardous air pollutants ("Hazardous Materials") in violation of any Environmental Laws; (iv) no Hazardous Materials (including asbestos, mold or lead paint in any form) are located on or under the Property or emanate from the Property; (v) there are no unregistered underground storage tanks on the Property that are subject to any underground storage tank registration laws or regulations; (vi) no notice has been received with regard to any Hazardous Material on the Property; (vii) no action, investigation or proceeding is pending or to Mortgagor's knowledge threatened which seeks to enforce any right or remedy against Mortgagor or the Property under any Environmental Law; and (viii) all licenses, permits and other governmental or regulatory actions necessary for the Property to comply with Environmental Laws shall be obtained and maintained and Mortgagor shall assure compliance therewith.

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To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisal, valuation, stay, extension or redemption, and Mortgagor for themselves and their respective heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Property, to the extent permitted by law, hereby waive and release all rights of valuation, appraisal, redemption, stay of execution, the benefit of all exemption laws, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. Mortgagor further waives any and all notices including, without limitation, notice of intention to accelerate and of acceleration of the Obligations.

Payments by Bank. In the event of Default (as hereinafter defined) in the timely payment or performance of any of the Obligations, Bank, at its option and without any duty on its part to determine the validity or necessity thereof, may pay the sums for which Mortgagor is obligated. Further, Bank may pay such sums as Bank deems appropriate for the protection and maintenance of the Property including, without limitation, sums to pay impositions and other levies, assessments or liens, maintain insurance, make repairs, secure the Property, maintain utility service, intervene in any condemnation and pay attorneys' fees and other fees and costs to enforce this Mortgage or protect the lien hereof (including foreclosure) or collect the Obligations, without limitation, including those incurred in any proceeding including bankruptcy or arbitration. Any amounts so paid shall bear interest at the default rate stated in the Note and shall be secured by this Mortgage.

Indemnification. Mortgagor shall protect, indemnify and save harmless Bank from and against all losses, liabilities, obligations, claims, damages, penalties, fines, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Damages") imposed upon, incurred by or asserted or assessed against Bank on account of or in connection with (i) the Loan Documents or any failure or alleged failure of Mortgagor to comply with any of the terms of, or the inaccuracy or breach of any representation in, the Loan Documents; (ii) the Collateral or any claim of loss or damage to the Property or any injury or claim of injury to, or death of, any person or property that may be occasioned by any cause whatsoever pertaining to the Property or the use, occupancy or operation thereof; (iii) any failure or alleged failure of Mortgagor to comply with any law, rule or regulation applicable to it or to the Property or the use, occupancy or operation of the Property (including, without limitation, the failure to pay any taxes, fees or other charges); (iv) any Damages whatsoever by reason of any alleged action, obligation or undertaking of Bank relating in any way to or any matter contemplated by the Loan Documents; (v) any claim for brokerage fees or such other commissions relating to the Property or any other Obligations; or (vi) any and all liability arising from any leases related to the Property. Nothing contained herein shall require Mortgagor to indemnify Bank for any Damages resulting from Bank's gross negligence or its willful and wrongful acts, and such indemnity shall be effective only to the extent of any Damages that may be sustained by Bank in excess of any net proceeds received by it from any insurance of Mortgagor (other than self-insurance) with respect to such Damages. The indemnity provided for herein shall survive payment of the Obligations and shall extend to the officers, directors, employees and duly authorized agents of Bank. In the event the Bank incurs any Damages arising out of or in any way relating to the transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such Damages shall be added to the Obligations, shall bear interest, to the extent permitted by law, at the interest rate borne by the Obligations from the date incurred until paid and shall be payable on demand.

Assignment of Rents. Mortgagor hereby absolutely assigns and transfers to Bank all the leases, rents, issues and profits of the Property (collectively "Rents"). Although this assignment is effective immediately, so long as no Default exists, Bank gives to and confers upon Mortgagor the privilege under a revocable license to collect as they become due, but not prior to accrual, the Rents and to demand, receive and enforce payment, give receipts, releases and satisfactions, and sue in the name of Mortgagor for all such Rents. Mortgagor represents there has been no prior assignment of leases or Rents, and agrees not to further assign such leases or Rents. Upon any occurrence of Default, the license granted to Mortgagor herein shall be automatically revoked without further notice to or demand upon Mortgagor, and Bank shall have the right, in its discretion, without notice, by agent or by a receiver

appointed by a court, and without regard to the adequacy of any security for the Obligations, (i) to enter upon and take possession of the Property, (ii) notify tenants, subtenants and any property manager to pay Rents to Bank or its designee, and, upon receipt of such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by Mortgagor, and (iii) in its own name, sue for or otherwise collect Rents, including those past due, and apply Rents, less costs and expenses of operation and collection, including attorneys' fees, to the Obligations in such order and manner as Bank may determine or as otherwise provided for herein. Bank's exercise of any one or more of the foregoing rights shall not cure or waive any Default or notice of Default hereunder.

Due on Sale or Further Encumbrance or Transfer of an Interest in Mortgagor. Without the prior written consent of Bank in each instance, Mortgagor shall not (i) sell, convey, transfer or encumber the Property, or any part thereof or interest therein, whether legal or equitable, (ii) cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, or (iii) enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (a) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument effecting all or any portion of the Property; (c) if Mortgagor or any general partner or member of Mortgagor, is a corporation, partnership, limited liability company, trust or other business entity, the transfer, pledge, assignment or encumbrance (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity including, without limitation, changes in stockholders, partners, members, managers, trustees, beneficiaries, or their respective interests; whether directly or indirectly; (d) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

Bank's consent to any conveyance or encumbrance may be conditioned upon an increase in the interest rate specified in the Note (or other Obligations), an extension or curtailment of the maturity of the Obligations, or other modification of the Note or this instrument.

Remedies of Bank on Default. Failure of Mortgagor or any other person liable to timely pay or perform any of the Obligations is a default ("Default") under this Mortgage. Upon the occurrence of Default the following remedies are available, without limitation, to Bank: (i) Bank may exercise any or all of Bank's remedies under this Mortgage or other Loan Documents including, without limitation, acceleration of the maturity of all payments and Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or any of its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time); (ii) Bank may take immediate possession of the Property or any part thereof (which Mortgagor agrees to surrender to Bank) and manage, control or lease the same to such persons and at such rental as it may deem proper and collect and apply Rents to the payment of: (a) the Obligations, together with all costs and attorneys' fees; (b) all impositions and any other levies, assessments or liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items; and (c) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Bank in its sole discretion may determine. The taking of possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property; (iii) Bank may apply to any court of competent jurisdiction for the appointment of a receiver for all purposes including, without limitation, to manage and operate the Property or any part thereof, and to apply the Rents therefrom as hereinabove provided. In the event of such application, Mortgagor consents to the appointment of a receiver, and agrees that a receiver may be appointed without notice to Mortgagor, without regard to whether Mortgagor has committed waste or permitted deterioration of the Property, without regard to the adequacy of any security for the Obligations, and without regard to the solvency of

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Mortgagor or any other person, firm or corporation who or which may be liable for the payment of the Obligations; (iv) Bank may exercise all the remedies of a mortgagee as provided by law and in equity including, without limitation, foreclosure upon this Mortgage and sale of the Property, or any part of the Property, at public sale conducted according to applicable law (referred to as "Sale") and conduct additional Sales as may be required until all of the Property is sold or the Obligations are satisfied; (v) With respect to any portion of the Property governed by the UCC, Bank shall have all of the rights and remedies of a secured party thereunder. Bank may elect to foreclose upon any Property that is fixtures under law applicable to foreclosure of interests in real estate or law applicable to personal property; (vi) Bank may bid at Sale and may accept, as successful bidder, credit of the bid amount against the Obligations as payment of any portion of the purchase price; and (vii) Bank shall apply the proceeds of Sale, first to any fees or attorney fees permitted Bank by law in connection with Sale, second to expenses of foreclosure, publication, and sale permitted Bank by law in connection with Sale, third to the Obligations, and any remaining proceeds as required by law.

Miscellaneous Provisions. Mortgagor agrees to the following: (i) All remedies available to Bank with respect to this Mortgage or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Bank in exercising any remedy shall operate as a waiver of that remedy or of any Default. Any payment by Bank or acceptance by Bank of any partial payment shall not constitute a waiver by Bank of any Default; (ii) Mortgagor represents that Mortgagor (a) is (1) an adult individual and is sui juris, or (2) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Mortgage and any other Loan Document to which it is a party. (iii) The provisions hereof shall be binding upon and inure to the benefit of Mortgagor, its heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Bank, its successors and assigns and any future holder of the Note or other Obligations; (iv) Any notices, demands or requests shall be sufficiently given Mortgagor if in writing and mailed or delivered to the address of Mortgagor shown above or to another address as provided herein and to Bank if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011, or such other address as Bank may specify from time to time and in the event that Mortgagor changes Mortgagor's address at any time prior to the date the Obligations are paid in full, that party shall promptly give written notice of such change of address by registered or certified mail, return receipt requested, all charges prepaid. Notices to Bank must include the mail code. (v) All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or such other address as provided by Bank in writing. (vi) This Mortgage may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (vii) All references to "Bank" shall mean to "Bank (for itself and its affiliates)"; (viii) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Mortgage; (ix) If the lien of this Mortgage is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations and if any clause, provision or obligation hereunder is determined invalid or unenforceable the remainder of this Mortgage shall be construed and enforced as if such clause, provision or obligation had not been contained herein; (x) This Mortgage shall be governed by and construed under the laws of the jurisdiction where this Mortgage is recorded; (xi) Mortgagor by execution and Bank by acceptance of this Mortgage agree to be bound by the terms and provisions hereof. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

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By: Michael Guardo (SEAL)
Michael Guardo, Manager/Member

Florence AC
Address

Dorothy L. Beverage
Notary Public

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EXHIBIT "A"

07227P030333
All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. By Beasley Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002, in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and others; and on the Northeast by lands of William E. Thompson.

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, at Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

This being the same property conveyed to Marion Amphitheatre, LLC by deed of Jack H. Jones and Donald D. Godwin recorded in the Office of the Clerk of Court for Marion County on January 19, 2007 in Deed Book A-568 at Page 120.

000015308 Bk: 00859 Pg: 00270

I hereby certify that the within instrument ~~Estate~~
Mortgage was filed for record in my office at 3:24
P. M o'clock on the 27th day of April
2007, and was immediately entered upon the proper
indexes and duly recorded in Book 859 of Real
Estate Mortgages page 265
Sherry K. Rhoads
Clerk of Court of Common Pleas and General Sessions for
Morton County, SC

PROMISSORY NOTE

\$300,000.00

November 20, 2007

Michael Guarco
7 Bayberry Drive
East Granby, Connecticut 06026
(Hereinafter referred to as "Borrower")

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

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Three Hundred Thousand and No/100 Dollars (\$300,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

LINE OF CREDIT. Borrower may borrow, repay and reborrow, and, upon the request of Borrower, Bank shall advance and readvance under this Note from time to time (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if a demand for payment is made under this Note or if a Default (as defined in the other Loan Documents) under any Loan Document occurs or in any event, on October 31, 2008 hereof unless renewed or extended by Bank in writing upon such terms then satisfactory to Bank. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date.

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

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

SECURITY. Marion Amphitheatre, LLC has granted Bank a security interest in the collateral described in the Loan Documents, including, but not limited to, real and personal property collateral described in that certain security instrument, of even date herewith.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the Bank's Prime Rate, as that rate may change from time to time in accordance with changes in the Bank's Prime Rate ("Interest Rate"). "Bank's Prime Rate" means that rate announced by Bank from time to time as its prime rate and is one of several interest rate bases used by Bank. Bank lends at rates both above and below Bank's Prime Rate, and Borrower acknowledges that Bank's Prime Rate is not represented or intended to be the lowest or most favorable rate of interest offered by Bank.



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

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

REPAYMENT TERMS. This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on December 15, 2007, and continuing on the same day of each month thereafter until fully paid. In any event, this Note shall be due and payable in full, including all principal and accrued interest, on demand.

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

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

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

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

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

If this Note is secured by owner-occupied residential real property located outside the state in which the office of Bank first shown above is located, the late charge laws of the state where the real property is

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located shall apply to this Note and the late charge shall be the highest amount allowable under such laws. If no amount is stated thereunder, the late charge shall be 5% of each payment past due for 10 or more days.

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

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

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

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

PERSONAL FINANCIAL STATEMENTS. Each Borrower who is an individual shall deliver to Bank annually, within thirteen months of the previous statement date on file with Bank, Borrower's financial statement. Said financial statement shall disclose all of Borrower's assets, liabilities, net worth, income and contingent liabilities, all in reasonable detail and acceptable to Bank and submitted on a form to be provided by Bank or on such other form acceptable to Bank, signed by Borrower and certified by Borrower to Bank to be true, correct and complete.

TAX RETURNS. Borrower shall deliver to Bank, within 30 days of filing, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Borrower to be true and complete copies of such returns. In the event an extension is filed, Borrower shall deliver a copy of the extension within 30 days of filing.

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

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

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or

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any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

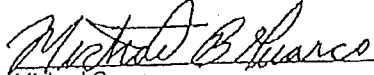
MISCELLANEOUS PROVISIONS. **Assignment.** This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Organization; Powers.** Borrower represents that Borrower (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Compliance with Laws.** Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, any federal or state laws relating to liquor (including 18 U.S.C. § 3617, et seq.) or narcotics (including 21 U.S.C. § 801, et seq.) and/or any commercial crimes; all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's deposit accounts and investment property with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap

agreements except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in the Bank's address on the first page hereof. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or other such document. **Payments.** All payments shall be mailed to Bank at Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or other such address as provided by Bank in writing. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the office of Bank first shown above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated together with all other parties obligated for the Obligations. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **Final Agreement.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

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

HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED,
SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

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

 (SEAL)
Michael Guarco

Tracking #: 388894
CAT - Deal # 909445 Facility ID 693929

07527P101175

PROMISSORY NOTE

\$300,000.00

May 13, 2009

Michael Guarco
7 Bayberry Drive
East Granby, Connecticut 06026
(Hereinafter referred to as "Borrower")

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

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Three Hundred Thousand and No/100 Dollars (\$300,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

RENEWAL/MODIFICATION. This Promissory Note renews, extends and/or modifies that certain Promissory Note dated November 20, 2007, in the original amount of \$300,000.00, as renewed and/or extended from time to time (the "Original Promissory Note"). This Promissory Note is not a novation.

NON-REVOLVING LINE OF CREDIT. Borrower may borrow, and, upon the request of Borrower, Bank shall advance under this Note from time to time until the maturity hereof (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if Borrower is in Default. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date. Advances, once repaid, may not be reborrowed.

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

SECURITY. Marlon Amphitheatre, LLC has granted Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain security instrument, of even date herewith, as modified, restated or replaced from time to time.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the Bank's Prime Rate plus 4.50%, as that rate may change from time to time in accordance with changes in the Bank's Prime Rate ("Interest Rate"). "Bank's Prime Rate" means that rate announced by Bank from time to time as its prime rate and is one of several interest rate bases used by Bank. Bank lends at rates both above and below Bank's Prime Rate, and Borrower acknowledges that Bank's Prime Rate is not represented or intended to be the lowest or most favorable rate of interest offered by Bank.

DEFAULT RATE. In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and as long as a Default continues, all outstanding obligations, other than obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and

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Bank or its affiliates, shall bear interest at the interest rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the obligations or any judgment thereon is paid in full.

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

INTEREST RATE LIMITATION (FLOOR). The interest rate will not be less than 5.00%.

REPAYMENT TERMS. This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on May 15, 2009, and continuing on the same day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on August 30, 2009.

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

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

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

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

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

If this Note is secured by owner-occupied residential real property located outside the state in which the office of Bank first shown above is located, the late charge laws of the state where the real property is located shall apply to this Note and the late charge shall be the highest amount allowable under such laws. If no amount is stated thereunder, the late charge shall be 5% of each payment past due for 10 or more days.

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

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

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

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

PERSONAL FINANCIAL STATEMENTS. Each Borrower who is an individual shall deliver to Bank annually, by April 30th, Borrower's financial statement. Said financial statement shall disclose all of Borrower's assets, liabilities, net worth, income and contingent liabilities, all in reasonable detail and acceptable to Bank and submitted on a form to be provided by Bank or on such other form acceptable to Bank, signed by Borrower and certified by Borrower to Bank to be true, correct and complete.

TAX RETURNS. Borrower shall deliver to Bank, by October 15th of each year, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Borrower to be true and complete copies of such returns. In the event an extension is filed, Borrower shall deliver a copy of the extension within 30 days of filing.

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

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

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

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

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

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

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

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

 (SEAL)
Michael Guarco

Tracking #: 1053734
CAT - Deal # 1152884 Facility ID 911873

200900023162
Filed for Record in
MARION COUNTY, SC
SHERRY R. RHODES
05-26-2009 At 02:33 PM.
MORTGAGE 18.00
Vol 88 Page 77 - 88

PREPARED BY: Jewel Mitchell
RETURN TO:
Wachovia Bank, National Association
Commercial Loan Services, NC6375
Commercial Trailing Documents
100 N. Main Street
P.O. Box 2705
Winston-Salem, NC 27199-8182

MORTGAGE AND ASSIGNMENT OF RENTS

This MORTGAGE AND ASSIGNMENT OF RENTS (hereafter referred to as "Mortgage") made May 13, 2009, by and between Marlon Amphitheatre, LLC, whose mailing address is 1548 State Highway 501, Marlon, South Carolina 29571 ("Mortgagor"), and Wachovia Bank, National Association, a national banking association, whose address is 7711 Plantation Road, Roanoke, Virginia 24019 ("Bank"). Bank is the mortgagee hereunder for indexing purposes by the clerk of court.

WITNESSETH:

To secure payment and performance of obligations under a Promissory Note (the "Note") of even date herewith, in the amount of \$300,000.00, made by Michael Guarco (the "Borrower") payable to Bank, any present or future Letters of Credit Issued by Bank or its affiliates for the account of Borrower, other loan documents as defined in the Note (the "Loan Documents"), and swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Mortgagor and Bank or any of its affiliates as defined in 11 U.S.C. § 101, as in effect from time to time, all other indebtedness of Borrower to Bank whenever borrowed or incurred, whether or not reasonably contemplated by the parties hereto as of the date hereof, and any renewals, extensions, novations, or modifications of the foregoing (collectively the "Obligations"), and in consideration of these premises and for other consideration, Mortgagor does mortgage, grant and convey unto Bank (for itself and its affiliates), its successors and assigns all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "Property"): (i) all those certain tracts of land in the City of Marion, County of Marion, State of South Carolina described in EXHIBIT A attached hereto and made part hereof (the "Land"); (ii) all buildings and improvements now or hereafter erected on the Land; (iii) all fixtures attached to the Land or any buildings or improvements situated thereon; and (iv) all estates, rights, tenements, hereditaments, privileges, rents, issues, profits easements, and appurtenances of any kind benefiting the Land; all means of access to and from the Land, whether public or private; and all water and mineral rights.

In the event that Mortgagor is the owner of a leasehold estate with respect to any portion of the Property and Mortgagor obtains a fee estate in such portions of the Property, then, such fee estate shall automatically, and without further action of any kind on the part of the Mortgagor, be and become subject to the security title and lien of this Agreement.

TO HAVE AND TO HOLD the Property and all the estate, right, title and interest, in law and in equity, of Mortgagor's in and to the Property unto Bank, its successors and assigns, forever.

Mortgagor WARRANTS AND REPRESENTS that Mortgagor is lawfully seized of the Property, in fee simple, absolute, that Mortgagor has the legal right to convey and encumber the same, and that the

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Property is free and clear of all liens and encumbrances except as set forth in EXHIBIT B. Mortgagor further warrants and will forever defend all and singular the Property and title thereto to Bank and Bank's successors and assigns, against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS that if (i) all the Obligations (including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder) are paid in full, (ii) each and every representation, warranty, agreement, covenant and condition of this Mortgage, and the other Loan Documents, are complied with and abided by, and (iii) any and all swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder have matured or been terminated, then this Mortgage and the estate hereby created shall cease and be null, void, and canceled of record.

To protect the security of this Mortgage, Mortgagor further represents and agrees with Bank as follows:

Payment of Obligations. That the Obligations shall be timely paid and performed.

Future Advances. This Mortgage is given to secure not only existing Obligations, but also future advances, including obligations under swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) to the same extent as if such future advances and obligations under swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) are made on the date of the execution of this Mortgage. The principal amount (including any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) and future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed \$600,000.00, plus all interest, costs, reimbursements, fees and expenses due under this Mortgage and secured hereby. Mortgagor shall not execute any document that impairs or otherwise impacts the priority of any existing or future Obligations secured by this Mortgage.

Nothing herein obligates Bank to provide credit in excess of the Obligations.

Leases, Subleases and Easements. Mortgagor shall maintain, enforce and cause to be performed all of the terms and conditions under any lease, sublease or easement which may constitute a portion of the Property. Mortgagor shall not, without the consent of Bank (which consent shall not be unreasonably withheld or delayed), enter into any new lease of all or any portion of the Property, agree to the cancellation or surrender under any lease of all or any portion of the Property, agree to prepayment of rents, issues or profits (other than rent paid at the signing of a lease or sublease), modify any such lease so as to shorten the term, decrease the rent, accelerate the payment of rent, or change the terms of any renewal option; and any such purported new lease, cancellation, surrender, prepayment or modification made without the consent of Bank shall be void as against Bank.

Required Insurance. Mortgagor shall maintain with respect to the Property: (i) during construction of any improvements on the Property, "all-risk" builders risk insurance which must include windstorm, hail damage, fire and vandalism (non-reporting Completed Value with Special Cause of Loss form), in an amount not less than the completed replacement value of the improvements under construction, naming Bank as mortgagee and loss payee; (ii) upon completion of construction, upon occupancy of any improvements, and at all other times, insurance against loss or damage by fire and other casualties and hazards by insurance written on an "all risks" basis, including malicious mischief coverage, in an amount not less than the replacement cost thereof, including coverage for loss of rents or business interruption if applicable, naming Bank as loss payee and mortgagee; (iii) if the Property is required to be insured pursuant to the National Flood Reform Act of 1994, and the regulations promulgated thereunder, flood insurance is required in the amount equal to the lesser of the loan amount or maximum available under the National Flood Insurance Program, but in no event should the amount of coverage be less than the value of the improved structure, naming Bank as mortgagee and loss payee. If, after closing, the Property (or any part thereof) is remapped and if the vertical improvements are determined to be located in a special flood hazard area, Mortgagor must obtain and maintain a flood insurance policy. If, within forty-five (45) days of receipt of notification from Bank that the Property has

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been reclassified by FEMA as being located in a special flood hazard area, Mortgagor has not provided sufficient evidence of flood insurance, Bank is mandated under federal law to purchase flood insurance on behalf of Mortgagor, and Bank will add the associated costs to the principal balance of the Note. If the land or any portion thereof is located in a special flood hazard area, this Agreement may be terminated by Bank at its sole option; (iv) as applicable, insurance which complies with the workers' compensation and employers' liability laws of all states in which Mortgagor shall be required to maintain such insurance; and (v) liability insurance providing coverage in such amount as Bank may require but in no event less than \$1,000,000.00 combined single limit, naming Bank as an additional insured; and (vi) such other insurance as Bank may require from time to time.

All property insurance policies shall contain an endorsement or agreement by the insurer in form satisfactory to Bank that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor and the further agreement (within both the property and liability policies) of the insurer waiving rights of subrogation against Bank, and rights of set-off, counterclaim or deductions against Mortgagor.

All insurance policies shall be in form, provide coverages, be issued by companies and be in amounts satisfactory to Bank. At least 30 days prior to the expiration of each such policy, Mortgagor shall furnish Bank with evidence satisfactory to Bank that such policy has been renewed or replaced or is no longer required hereunder. All such policies shall provide that the policy will not be canceled or materially amended without at least 30 days prior written notice to Bank. In the event Mortgagor fails to provide, maintain, keep in force, and furnish to Bank the policies of insurance required by this paragraph, Bank may procure such insurance or single-interest insurance in such amounts, at such premium, for such risks and by such means as Bank chooses, at Mortgagor's expense; provided however, Bank shall have no responsibility to obtain any insurance, but if Bank does obtain insurance, Bank shall have no responsibility to assure that the insurance obtained shall be adequate or provide any protection to Mortgagor.

Insurance Proceeds. After occurrence of any loss to any of the Property, Mortgagor shall give prompt written notice thereof to Bank.

In the event of such loss all insurance proceeds, including unearned premiums, shall be payable to Bank, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Bank and not to Bank and Mortgagor jointly. Bank is hereby authorized by Mortgagor to make proof of loss if not promptly made by Mortgagor, settle, adjust or compromise any claims for loss or damage under any policy or policies of insurance and Mortgagor appoints Bank as its attorney-in-fact to receive and endorse any insurance proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any obligations remain unsatisfied. Mortgagor shall pay the costs of collection, including attorneys' fees, of insurance proceeds payable on account of such damage or destruction. Mortgagor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Bank as security for payment of the obligations.

In the event of any damage to or destruction of the Property, Bank shall have the option of applying or paying all or part of the insurance proceeds to (i) the obligations in such order as Bank may determine, (ii) restoration, replacement or repair of the Property in accordance with Bank's standard construction loan disbursement conditions and requirements, or (iii) Mortgagor. Nothing herein shall be deemed to excuse Mortgagor from restoring, repairing and maintaining the Property as required herein.

Impositions; Escrow Deposit. Mortgagor will pay all taxes, levies, assessments and other fees and charges imposed upon or which may become a lien upon the Property under any law or ordinance (all of the foregoing collectively "impositions") before they become delinquent and in any event in the same calendar year in which they first become due. Upon request of Bank, Mortgagor shall add to each periodic payment required under the Note the amount estimated by Bank to be sufficient to enable Bank to pay, as they come due, all impositions and insurance premiums which Mortgagor is required to pay hereunder. Payments requested under this provision shall be supplemented or adjusted as required by

Bank from time to time. Such funds may be commingled with the general funds of Bank and shall not earn interest. Upon the occurrence of a Default, Bank may apply such funds to pay any of the Obligations.

Use of Property. Mortgagor shall use and operate, and require its lessees or licensees to use and operate, the Property in compliance with all applicable laws (including, for example, the Americans with Disabilities Act and the Fair Housing Act) and ordinances, covenants, and restrictions, and with all applicable requirements of any lease or sublease now or hereafter affecting the Property. Mortgagor shall not permit any unlawful use of the Property or any use that may give rise to a claim of forfeiture of any of the Property. Mortgagor shall not allow changes in the stated use of Property from that disclosed to Bank at the time of execution hereof. Mortgagor shall not initiate or acquiesce to a zoning change of the Property without prior notice to, and written consent of, Bank.

Maintenance, Repairs and Alterations. Mortgagor shall keep and maintain the Property in good condition and repair and fully protected from the elements to the satisfaction of Bank. Mortgagor will not remove, demolish or structurally alter any of the buildings or other improvements on the Property (except such alterations as may be required by laws, ordinances or regulations) without the prior written consent of Bank. Mortgagor shall promptly notify Bank in writing of any material loss, damage or adverse condition affecting the Property.

Eminent Domain. Should the Property or any interest therein be taken or damaged by reason of any public use or improvement or condemnation proceeding ("Condemnation"), or should Mortgagor receive any notice or other information regarding such Condemnation, Mortgagor shall give prompt written notice thereof to Bank. Bank shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation and, at its option, may commence, appear in and prosecute in its own name any action or proceedings relating thereto. Bank shall be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, and damages awarded to Mortgagor related to any Condemnation (the "Proceeds") are hereby assigned to Bank and Mortgagor agrees to execute such further assignments of the Proceeds as Bank may require. Bank shall have the option of applying or paying the Proceeds in the same manner as insurance proceeds as provided herein. Mortgagor appoints Bank as its attorney-in-fact to receive and endorse the Proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

Environmental Condition of Property and Indemnity. Mortgagor warrants and represents to Bank, except as reported by Mortgagor to Bank in writing, that: (i) Mortgagor has inspected and is familiar with the environmental condition of the Property; (ii) the Property and Mortgagor, and any occupants of the Property, are in compliance with and shall continue to be in compliance with all applicable federal, state and local laws and regulations intended to protect the environment and public health and safety as the same may be amended from time to time ("Environmental Laws"); (iii) the Property is not and has never been used to generate, handle, treat, store or dispose of, in any quantity, oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances or hazardous air pollutants ("Hazardous Materials") in violation of any Environmental Laws; (iv) no Hazardous Materials (including asbestos, mold or lead paint in any form) are located on or under the Property or emanate from the Property; (v) there are no unregistered underground storage tanks on the Property that are subject to any underground storage tank registration laws or regulations; (vi) no notice has been received with regard to any Hazardous Material on the Property; (vii) no action, investigation or proceeding is pending or to Mortgagor's knowledge threatened which seeks to enforce any right or remedy against Mortgagor or the Property under any Environmental Law; and (viii) all licenses, permits and other governmental or regulatory actions necessary for the Property to comply with Environmental Laws shall be obtained and maintained and Mortgagor shall assure compliance therewith.

Further, Mortgagor represents to Bank that no portion of the Property is a protected wetland. Mortgagor agrees to notify Bank immediately upon receipt of any citations, warnings, orders, notices, consent agreements, process or claims alleging or relating to violations of any Environmental Laws or to the environmental condition of the Property and shall conduct and complete all investigations and all

cleanup actions necessary to comply with the Environmental Laws and to remove, in accordance with Environmental Laws, any Hazardous Material from the Property.

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Mortgagor shall indemnify, hold harmless, and defend Bank from and against any and all damages, penalties, fines, claims, suits, liabilities, costs, judgments and expenses, including attorneys' fees, consultants' or experts' fees of every kind and nature incurred, suffered by or asserted against Bank as a direct or indirect result of: (i) representations made by Mortgagor in this Section being or becoming untrue in any material respect; (ii) Mortgagor's violation of or failure to meet the requirements of any Environmental Laws; or (iii) Hazardous Materials which, while the Property is subject to this Mortgage, exist on the Property. Bank shall have the right to arrange for or conduct environmental inspections of the Property from time to time (including the taking of soil, water, air or material samples). The cost of such inspections made after Default (as hereinafter defined) or which are required by laws or regulations applicable to Bank shall be borne by Mortgagor. However, Mortgagor's Indemnity shall not apply to any negligent or intentional act of Bank which takes place after foreclosure or satisfaction of this Mortgage. These indemnification obligations are in addition to General Indemnification provisions set forth hereafter. Mortgagor's Obligations under this section shall continue, survive and remain in full force and effect notwithstanding the repayment of the Obligations, a foreclosure of or exercise of power of sale under this instrument, a delivery of a deed in lieu of foreclosure, a cancellation or termination of record of this instrument and the transfer of the Property.

Appraisals. Mortgagor agrees that Bank may obtain an appraisal of the Property when required by the regulations of the Federal Reserve Board or the Office of the Comptroller of the Currency, or any other regulatory agency or at such other times as Bank may reasonably require. Such appraisals shall be performed by an independent third party appraiser selected by Bank. The cost of such appraisals shall be borne by Mortgagor. If requested by Bank, Mortgagor shall execute an engagement letter addressed to the appraiser selected by Bank. Mortgagor's failure or refusal to sign such an engagement letter, however, shall not impair Bank's right to obtain such an appraisal. Mortgagor agrees to pay the cost of such appraisal within 10 days after receiving an invoice for such appraisal.

Inspections. Bank, or its representatives or agents, are authorized to enter at any reasonable time upon any part of the Property for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage.

Lien and Subrogation. Mortgagor shall pay and promptly discharge all liens, claims and encumbrances upon the Property except for those described in EXHIBIT B. Mortgagor shall have the right to contest in good faith the validity of any such lien, claim or encumbrance, provided: (i) such contest suspends the collection thereof or there is no danger of the Property being sold or forfeited while such contest is pending; (ii) Mortgagor first deposits with Bank a bond or other security satisfactory to Bank in such amounts as Bank shall reasonably require; and (iii) Mortgagor thereafter diligently proceeds to cause such lien, claim or encumbrance to be removed and discharged.

Bank shall be subrogated to any liens, claims and encumbrances against Mortgagor or the Property that are paid or discharged through payment by Bank or with loan proceeds, notwithstanding the record cancellation or satisfaction thereof.

Waiver of Mortgagor's Rights. To the fullest extent permitted by law, Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Property, (ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or any of the other Obligations, and any rights to hearing prior to the exercise by Bank of any right, power, or remedy herein provided to Bank.

To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisal, valuation, stay, extension or redemption, and Mortgagor for themselves and their respective heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Property, to the extent

permitted by law, hereby waive and release all rights of valuation, appraisement, redemption, stay of execution, the benefit of all exemption laws, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. Mortgagor further waives any and all notices including, without limitation, notice of intention to accelerate and of acceleration of the Obligations.

Payments by Bank. In the event of Default (as hereinafter defined) in the timely payment or performance of any of the Obligations, Bank, at its option and without any duty on its part to determine the validity or necessity thereof, may pay the sums for which Mortgagor is obligated. Further, Bank may pay such sums as Bank deems appropriate for the protection and maintenance of the Property including, without limitation, sums to pay impositions and other levies, assessments or liens, maintain insurance, make repairs, secure the Property, maintain utility service, intervene in any condemnation and pay attorneys' fees and other fees and costs to enforce this Mortgage or protect the lien hereof (including foreclosure) or collect the Obligations, without limitation, including those incurred in any proceeding including bankruptcy or arbitration. Any amounts so paid shall bear interest at the default rate stated in the Note and shall be secured by this Mortgage.

Indemnification. Mortgagor shall protect, indemnify and save harmless Bank from and against all losses, liabilities, obligations, claims, damages, penalties, fines, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Damages") imposed upon, incurred by or asserted or assessed against Bank on account of or in connection with (i) the Loan Documents or any failure or alleged failure of Mortgagor to comply with any of the terms of, or the inaccuracy or breach of any representation in, the Loan Documents; (ii) the Collateral or any claim of loss or damage to the Property or any injury or claim of injury to, or death of, any person or property that may be occasioned by any cause whatsoever pertaining to the Property or the use, occupancy or operation thereof, (iii) any failure or alleged failure of Mortgagor to comply with any law, rule or regulation applicable to it or to the Property or the use, occupancy or operation of the Property (including, without limitation, the failure to pay any taxes, fees or other charges), (iv) any Damages whatsoever by reason of any alleged action, obligation or undertaking of Bank relating in any way to or any matter contemplated by the Loan Documents, (v) any claim for brokerage fees or such other commissions relating to the Property or any other Obligations, or (vi) any and all liability arising from any leases related to the Property. Nothing contained herein shall require Mortgagor to indemnify Bank for any Damages resulting from Bank's gross negligence or its willful and wrongful acts, and such indemnity shall be effective only to the extent of any Damages that may be sustained by Bank in excess of any net proceeds received by it from any insurance of Mortgagor (other than self-insurance) with respect to such Damages. The indemnity provided for herein shall survive payment of the Obligations and shall extend to the officers, directors, employees and duly authorized agents of Bank. In the event the Bank incurs any Damages arising out of or in any way relating to the transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such Damages shall be added to the Obligations, shall bear interest, to the extent permitted by law, at the interest rate borne by the Obligations from the date incurred until paid and shall be payable on demand.

Assignment of Rents. Mortgagor hereby absolutely assigns and transfers to Bank all the leases, rents, issues and profits of the Property (collectively "Rents"). Although this assignment is effective immediately, so long as no Default exists, Bank gives to and confers upon Mortgagor the privilege under a revocable license to collect as they become due, but not prior to accrual, the Rents and to demand, receive and enforce payment, give receipts, releases and satisfactions, and sue in the name of Mortgagor for all such Rents. Mortgagor represents there has been no prior assignment of leases or Rents, and agrees not to further assign such leases or Rents. Upon any occurrence of Default, the license granted to Mortgagor herein shall be automatically revoked without further notice to or demand upon Mortgagor, and Bank shall have the right, in its discretion, without notice, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, (i) to enter upon and take possession of the Property, (ii) notify tenants, subtenants and any property manager to pay Rents to Bank or its designee, and upon receipt of such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by Mortgagor, and (iii) in its own name, sue for or otherwise collect Rents, including those past due, and

apply Rents, less costs and expenses of operation and collection, including attorneys' fees, to the Obligations in such order and manner as Bank may determine or as otherwise provided for herein. Bank's exercise of any one or more of the foregoing rights shall not cure or waive any Default or notice of Default hereunder.

Due on Sale or Further Encumbrance or Transfer of an Interest in Mortgagor. Without the prior written consent of Bank in each instance, Mortgagor shall not (i) sell, convey, transfer or encumber the Property, or any part thereof or interest therein, whether legal or equitable, (ii) cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, or (iii) enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (a) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (c) if Mortgagor or any general partner or member of Mortgagor, is a corporation, partnership, limited liability company, trust or other business entity, the transfer, pledge, assignment or encumbrance (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity including, without limitation, changes in stockholders, partners, members, managers, trustees, beneficiaries, or their respective interests; whether directly or indirectly; (d) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

Bank's consent to any conveyance or encumbrance may be conditioned upon an increase in the interest rate specified in the Note (or other Obligations), an extension or curtailment of the maturity of the Obligations, or other modification of the Note or this instrument.

Remedies of Bank on Default. Failure of Mortgagor or any other person liable to timely pay or perform any of the Obligations or a violation of the preceding section is a default ("Default") under this Mortgage. Upon the occurrence of Default the following remedies are available, without limitation, to Bank: (i) Bank may exercise any or all of Bank's remedies under this Mortgage or other Loan Documents including, without limitation, acceleration of the maturity of all payments and Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or any of its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time); (ii) Bank may take immediate possession of the Property or any part thereof (which Mortgagor agrees to surrender to Bank) and manage, control or lease the same to such persons and at such rental as it may deem proper and collect and apply Rents to the payment of: (a) the Obligations, together with all costs and attorneys' fees; (b) all impositions and any other levies, assessments or liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items; and (c) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Bank in its sole discretion may determine. The taking of possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property; (iii) Bank may apply to any court of competent jurisdiction for the appointment of a receiver for all purposes including, without limitation, to manage and operate the Property or any part thereof, and to apply the Rents therefrom as hereinabove provided. In the event of such application, Mortgagor consents to the appointment of a receiver, and agrees that a receiver may be appointed without notice to Mortgagor, without regard to whether Mortgagor has committed waste or permitted deterioration of the Property, without regard to the adequacy of any security for the Obligations, and without regard to the solvency of Mortgagor or any other person, firm or corporation who or which may be liable for the payment of the Obligations; (iv) Bank may exercise all the remedies of a mortgagee as provided by law and in equity including, without limitation, foreclosure upon this Mortgage and sale of the Property, or any part of the Property, at public sale conducted according to applicable law (referred to as "Sale") and conduct additional Sales as may be required until all of the Property is sold or the Obligations

are satisfied; (v) With respect to any portion of the Property governed by the UCC, Bank shall have all of the rights and remedies of a secured party thereunder. Bank may elect to foreclose upon any Property that is fixtures under law applicable to foreclosure of interests in real estate or law applicable to personal property; (vi) Bank may bid at Sale and may accept, as successful bidder, credit of the bid amount against the Obligations as payment of any portion of the purchase price; and (vii) Bank shall apply the proceeds of Sale, first to any fees or attorney fees permitted Bank by law in connection with Sale, second to expenses of foreclosure, publication, and sale permitted Bank by law in connection with Sale, third to the Obligations, and any remaining proceeds as required by law.

Miscellaneous Provisions. Mortgagor agrees to the following: (i) All remedies available to Bank with respect to this Mortgage or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Bank in exercising any remedy shall operate as a waiver of that remedy or of any Default. Any payment by Bank or acceptance by Bank of any partial payment shall not constitute a waiver by Bank of any Default; (ii) Mortgagor represents that Mortgagor (a) is (1) an adult individual and is sol juns, or (2) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Mortgage and any other Loan Document to which it is a party. (iii) The provisions hereof shall be binding upon and inure to the benefit of Mortgagor, its heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Bank, its successors and assigns and any future holder of the Note or other Obligations; (iv) Any notices, demands or requests shall be sufficiently given Mortgagor if in writing and mailed or delivered to the address of Mortgagor shown above or to another address as provided herein and to Bank if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019, or such other address as Bank may specify from time to time and in the event that Mortgagor changes Mortgagor's address at any time prior to the date the Obligations are paid in full, that party shall promptly give written notice of such change of address by registered or certified mail, return receipt requested, all charges prepaid. Notices to Bank must include the mail code. (v) All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or such other address as provided by Bank in writing. (vi) This Mortgage may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (vii) All references to "Bank" shall mean to "Bank (for itself and its affiliate)"; (viii) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Mortgage; (ix) If the lien of this Mortgage is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations and if any clause, provision or obligation hereunder is determined invalid or unenforceable the remainder of this Mortgage shall be construed and enforced as if such clause, provision or obligation had not been contained herein; (x) This Mortgage shall be governed by and construed under the laws of the jurisdiction where this Mortgage is recorded; (xi) Mortgagor by execution and Bank by acceptance of this Mortgage agree to be bound by the terms and provisions hereof. (xii) **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH

091688P158070

MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. (xiii) Telephone Communication Monitoring. Mortgagor agrees that Mortgagor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. (xiv) Final Agreement. This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

Minimum Standards. In addition to the requirements set forth in the Loan Documents, all surveys, insurance, title policies, construction documents, environmental reports, payment and performance bonds, and any other due diligence or additional documents required in connection with this Loan, shall comply with Bank's minimum standards in place from time to time for such documents, which shall be provided in writing by Bank to Borrower upon request.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DEED, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS DEED, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS DEED.

MORTGAGOR AND BANK AGREE THAT THEY 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 WHETHER THE DISPUTE IS RESOLVED BY ARBITRATION OR JUDICIALLY.

SIGNATURE(S) ON FOLLOWING PAGE

IN WITNESS WHEREOF, Mortgagor has duly signed and sealed this instrument as of the day and year first above written.

Mortgagor

Marlon Amphitheatre, LLC

By *Michael Guarco* (SEAL)
Michael Guarco, Manager/Member

Signed, sealed and delivered in presence of:

Charles W. Williams
Witness

Florence S.C.
Address

Deane Thompson
Witness

Florence, S.C.
Address

State of South Carolina
County of Marlon

PARTNERSHIP, LIMITED PARTNERSHIP or L.L.C. PROBATE

I, Landis D. Turner, Notary Public, do hereby certify that Michael Guarco, a Manager/Member of Marlon Amphitheatre, LLC, a limited liability company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal, this the 13th day of May, 2009.

My commission expires:
10/09/2010

Landis D. Turner
Notary Public

Tracking #: 1053734
CAT - Deal # 1152684 Facility ID 911873

EXHIBIT A

09168P138078

All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. By Beasley Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 11, 2002, in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and others; and on the Northeast by lands of William E. Thompson.

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, at Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

This being the same property conveyed to Marion Amphitheatre, LLC by deed of Jack H. Jones and Donald D. Godwin recorded in the Office of the Clerk of Court for Marion County on January 19, 2007 in Deed Book A-568 at Page 120.

EXHIBIT B

That certain Dood of Trust by and between Marlon Amphitheatre, LLC, David P. Gannon, Jr., and Michael Guarco and Wachovia Bank, National Association dated April 27, 2007 in the original principal amount of \$4,000,000.00, Recorded in Marlon County, State of South Carolina.

09168P138073

NOTICE OF WAIVER OF APPRAISAL RIGHTS LETTER

07327P101193

Marion Amphitheatre, LLC
1548 State Highway 501
Marion, South Carolina 29571

Michael Guarco
7 Bayberry Drive
East Granby, Connecticut 06026
(Individually and collectively, "Borrower")

RE: Term loan in the amount of \$300,000.00

Borrower: Michael Guarco

Dear Borrower,

This notice is required under South Carolina law.

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. You will be required to sign a waiver of appraisal rights in connection with the referenced transaction.

Wachovia Bank, National Association

(SEAL)

By: Charles K. Williams
Charles K. Williams, Senior Vice President

Tracking #: 388894
CAT - Deal # 909445 Facility ID 693929

540461 (Rev 4 0)

DOTM

ZPCI621582XXXX001 CDDOTMXXXX

Wach doc

WAIVER OF APPRAISAL RIGHTS

Mortgagor: Marlon Amphitheatre, LLC
Borrower: Michael Guarco
Date of Mortgage: November 20, 2007
Mortgagee: Wachovia Bank, National Association

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.

Further, the undersigned acknowledges receipt of written notification before this transaction that signing of a waiver of appraisal rights would be required during this transaction.

MORTGAGOR

Marlon Amphitheatre, LLC

By: Michael B. Guarco (SEAL)
Michael Guarco, Manager/Member

BORROWER

Michael B. Guarco (SEAL)
Michael Guarco

Tracking #: 388894
CAT - Deal #909445 Facility ID 693929

S40460 (Rev 4.0)

DOTM

WPC1621582XXXX001 CDDOTMXXXX

Wdrfm doc

STATE OF SOUTH CAROLINA
COUNTY OF MARION

WELLS FARGO BANK, N.A.,
SUCCESSOR-IN-INTEREST TO
WACHOVIA BANK, N.A.,

Plaintiff,

vs.

MARION AMPHITHEATRE, LLC,
DAVID P. GANNON, MICHAEL
GUARCO, CAROLINA
ENTERTAINMENT COMPLEX, LLC
AND 4 PROPHETS, LLC A/K/A
4 PROFITS, LLC

Defendants

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
CASE NO.: 11-CP-33-00016

ANSWER, COUNTER CLAIM
AND
CROSS COMPLAINT

MARION COUNTY SC
SHERRY R. RHODES
CLERK OF COURT

2011 APR 18 A 10:26

BOOK _____ PAGE _____

FILED

The Defendant 4 Prophets, LLC, answering the Complaint herein, says:

FIRST DEFENSE

1. Each and every allegation contained in the Complaint not herein after specifically admitted, qualified, are explained is denied.
2. The allegations of paragraphs 1, 2, 3, and 4 of the Complaint are admitted.
3. This Defendant lacks sufficient information so as to form a belief as to the allegations contained in paragraphs 5, 6, and 7 of the Complaint and therefore denies the same.
4. The allegations contained in paragraph 8 of the Complaint are denied and this Defendant would allege to the contrary that the mortgage referred to therein

encumbers only an undivided one half interest in the real property described in said paragraph 8, which is the subject of this action.

5. This Defendant lacks sufficient information so as to form a belief as to the allegations contained in paragraphs 9, 10, and 11 of the Complaint and therefore denies same.
6. The allegations contained in paragraph 12 of the Complaint are denied and this Defendant would allege to the contrary that the said Junior Mortgage encumbers only an undivided one half interest in the real property described therein.
7. This Defendant lacks sufficient information so as to form a belief as to the allegations contained in paragraphs 13 and 14 of the Complaint and therefore denies same.
8. The allegations contained in paragraph 15 of the Complaint are denied.
9. This Defendant lacks sufficient information so as to form a belief as to the allegations contained in paragraphs 16 of the Complaint and therefore denies same.
10. The allegations contained in paragraph 17 are denied.
11. This Defendant lacks sufficient information so as to form a belief as to the allegations contained in paragraphs 18 and 19 and therefore denies same.
12. This Defendant denies the allegations contained in paragraph 20 of the Complaint, and would allege to the contrary that it is a limited liability company organized and existing under the laws of the State of Florida; this Defendant further alleges that it is the owner of an undivided one half interest in the real property which is the subject of this action and that this defendant's interest in said real property is senior and superior to the liens of Plaintiff's mortgages.

13. Answering the allegations contained in paragraphs 21, 22, 23, 24, 25, and 26 of the Complaint, this Defendant specifically denies so much thereof as alleges that the Plaintiff is entitled to foreclosure of this Defendant's interest in the subject property. This Defendant lacks sufficient information so as to form a belief as to the remaining allegations of said paragraphs and therefore denies the same.

SECOND DEFENSE AND COUNTER-CLAIM

14. Each and every allegation contained in the foregoing First Defense is realleged as though set forth herein verbatim.
15. Plaintiff knew or should have known that this Defendant was the owner of an undivided one half interest in the Subject Property, and that the Defendant Marion Amphitheater, LLC had neither the capacity ignored the authority to mortgage or otherwise encumber this Defendant's interest in the Subject Property.
16. This Defendant is entitled to an order compelling the Plaintiff to release this Defendant's undivided one half interest in the Subject Property from the liens of its mortgages.

FIRST CROSS COMPLAINT

The Defendant-4 Prophets, LLC, complaining of the Defendants Marion Amphitheater, LLC, Michael Guarco, and David P. Gannon, alleges:

17. The Defendant-4 Prophets, LLC, hereinafter 4 Prophets, is a limited liability company organized and existing under the laws of the State of Florida duly authorized to own property and conduct business in the State of South Carolina.
18. The Defendant Marion Amphitheater, LLC, hereinafter referred to as Marion, is upon information and belief a limited liability company organized and existing

under the laws of the State of South Carolina. The Defendant David P. Gannon, hereinafter referred to as Gannon, is upon information and belief a resident of the State of Connecticut. This Defendant lacks sufficient information so as to form a belief as to the residency of the Defendant Michael Guarco, hereinafter referred to as Guarco.

19. On or about July 17, 2006 4 Prophets entered into a written agreement, hereinafter referred to as the July 6 Agreement, with Guarco, under the terms of which it was agreed that 4 Prophets would own an undivided one half interest in the property described in the Complaint, hereinafter referred to as the Subject Property, should Guarco acquire it. Guarco subsequently acquired the Subject Property, taking title to it in Marion's name. Guarco and Marion thereafter acknowledged the interest of 4 Prophets in the Subject Property.
20. Marion, Guarco and Gannon there after executed and delivered to the Plaintiff herein real estate mortgages purporting to convey to the Plaintiff herein, by way of mortgage, the interest of 4 Prophets in the Subject Property.
21. Marion, Guarco and Gannon executed and delivered the aforementioned real estate mortgages without the knowledge or consent of 4 Prophets.
22. The actions of Marion, Guarco and Gannon in executing and delivering one or more documents granting or purporting to grant mortgage liens against the interest in the Subject Property owned by 4 Prophets were intentionally wrongful and fraudulent.
23. Upon information and belief, the Subject Property has a fair market value well in excess of \$25 million dollars.

24. 4 Prophets is entitled to judgment against Marion, Guarco, and Gannon, jointly and severally, in an amount equal to one half of the value of the Subject Property, together with punitive damages in such amount as may be established by the trier of fact.

SECOND CROSS COMPLAINT

25. Each and every allegation set forth in the foregoing First Cross Complaint is realleged as though set forth herein verbatim.
26. Marion, Guarco and Gannon breached the July 6 Agreement by executing and delivering one or more real estate mortgages encumbering or purporting to encumber the interest of 4 Prophets in the Subject Property.
27. At the time of the said breach, Marion, Guarco and Gannon engaged in fraudulent conduct towards 4 Prophets and the said breach was committed with fraudulent intent and was accompanied by fraudulent acts in that the said Marion, Guarco and Gannon knew of the interest of 4 Prophets.
28. The conduct of Marion, Guarco and Gannon in mortgaging the interest of 4 Prophets in the Subject Property, in breach of the July 6 Agreement entitles the said 4 Prophets to recover compensatory and punitive damages from the said Marion, Guarco and Gannon in an amount to be proven a trial based upon their intentional and deceptive conduct.

THIRD CROSS COMPLAINT

29. Each and every allegation contained in the foregoing Cross Complaints is realleged herein as though set forth herein verbatim.

30. Marion, Guarco and Gannon have breached the July 6 Agreement by failing to make payments due on the real estate mortgages owed to the Plaintiff herein.

31. That this breach was committed by Marion, Guarco and Gannon with fraudulent intent and was accompanied by fraudulent acts and that the said Marion, Guarco and Gannon failed and refused to make payments due to the Plaintiff for the purpose of defeating the interest of 4 Prophets in the Subject property and causing 4 Prophets interest in the Subject Property to be extinguished as a result of the foreclosure of the real estate mortgages held by Plaintiff.

32. The conduct of Marion, Guarco and Gannon entitles the said 4 Prophets to recover compensatory and punitive damages against the said Marion, Guarco and Gannon based upon their intentional and deceptive conduct.

FOURTH CROSS COMPLAINT

33. Each and every allegation contained in the foregoing Cross Complaints is realleged herein as though set forth herein verbatim.

34. At various dates and times unknown to 4 Prophets, Marion, Guarco and Gannon maliciously conspired together with the intent to injure 4 Prophets, in that they agreed among and between themselves to withhold and refuse to make payment on the mortgage indebtedness due to Plaintiff for the purpose of bringing about a foreclosure action so as to defeat and extinguish the interest of 4 Prophets in the Subject Property.

35. As a result of these wrongful acts, 4 Prophets is entitled to recover actual and punitive damages from the said Marion, Guarco and Gannon based upon their deceptive and wrongful conduct.

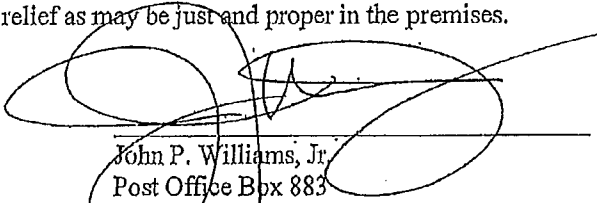
FIFTH CROSS COMPLAINT

36. Each and every allegation contained in the foregoing Cross Complaints is realleged herein as though set forth herein verbatim.
37. Under the terms and conditions of the July 6 Agreement, 4 Prophets is entitled to one half of all rental and other income arising out of the use of the Subject Property.
38. Marion, Guarco in Gannon have received various sums unknown to 4 Prophets.
39. 4 Prophets is entitled to an order requiring the said Marion, Guarco and Gannon to prepare and produce an accurate accounting setting forth all income and reasonable and necessary expenses, and to judgment against the said Marion, Guarco and Gannon for the amounts due to 4 Prophets according to said accounting.

WHEREFORE, having fully answered the complaint herein, Defendant 4 Prophets prays of this Honorable Court as follows:

- A. That the Complaint be dismissed as to this Defendant;
- B. That Plaintiff be ordered to release the interest of this Defendant in the real property described in the Complaint and in the real estate mortgages referred to therein from the lien of said mortgages;
- C. That this defendant have judgment against the Defendants Michael Guarco, David Gannon and Marion Amphitheater, LLC on its First, Second, Third and Forth Cross Complaints in an amount not less than \$12,500,000.00, plus punitive damages in such amount as may be determined by the trier of fact;

- D. That this defendant have judgment against the Defendants Michael Guarco, David Gannon and Marion Amphitheater, LLC on its Fifth Cross Complaint in such amount as may be determined by the accounting prayed for there in; and
- E. For such other and further relief as may be just and proper in the premises.



John P. Williams, Jr.
Post Office Bpx 883
Marion, South Carolina 29571
(843) 423-7630
Attorney for 4 Prophets, LLC

Marion, South Carolina
April 15, 2011

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF MARION) Case No. 11-CP-33-00016

3 WELLS FARGO BANK, NA,)
4 SUCCESSOR and INTEREST OF)
5 WACHOVIA BANK, NATIONAL)
6 ASSOCIATION,)

Plaintiff(s),)

-vs-

8 MARION AMPHITHEATER, LLC,)
9 DAVID P. GANNON, MICHAEL)
10 GUARCO, CAROLINA ENTERTAINMENT)
11 COMPLEX, LLC, and 4 PROFETS,)
12 LLC a/k/a 4 PROFITS, LLC,)

Defendant(s).)

13
14 Given before Molly C. Newton, Court
15 Reporter and Notary Public, at the office of Haigh
16 Porter, 152 South McQueen Street, Florence, South
17 Carolina, on Thursday, July 21st, 2011, commencing at
18 10:42 o'clock, a.m.

19
20
21 RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA
22 -Professional Court Reporters-
23 Serving the Legal Community Since 1957
24 1-800-822-8711

25
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A P P E A R A N C E S

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For the Plaintiff(s): Moore & VanAllen, PLLC
By: David B. Wheeler, Esquire
Post Office Box 22828
Charleston, SC 29413

For the Defendant(s): Willcox, Buyck, Williams
(Guarco) By: E. Lloyd Willcox, II, Esquire
Post Office Box 1909
Florence, SC 29503

For the Defendant(s):
(4 Profets) By: John P. Williams, Esquire
Post Office Box 883
Marion, SC 29571

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INDEX TO EXHIBITS

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1 **THE COURT:** This is Marion County case 2011-
 2 CP-33-00016; it's the matter of Wells Fargo
 3 Bank, NA, Successor and Interest of Wachovia
 4 Bank, National Association, Plaintiff, versus
 5 Marion AMPHITHEATER, LLC, David P. Gannon,
 6 Michael Guarco, Carolina Entertainment Complex,
 7 LLC, and 4 Profets, LLC also known as 4 Profits,
 8 spelled differently, LLC. The matter before me
 9 presents a reference filed on June 2nd of this
 10 year referring the matter to me with finality.
 11 I think in reading the pleadings, Mr. Wheeler,
 12 you are here representing Wells Fargo?

13 **MR. WHEELER:** That's correct, Your Honor.

14 **THE COURT:** Mr. Williams, you are here
 15 representing 4 Profets?

16 **MR. WILLIAMS:** That's correct.

17 **THE COURT:** Mr. Willcox, you are here based
 18 on a motion filed this week, I believe,
 19 representing Mr. Guarco?

20 **MR. WILLCOX:** And Marion AMPHITHEATER.

21 **THE COURT:** And Marion AMPHITHEATER.

22 **MR. WILLCOX:** That's correct, Your Honor.

23 **THE COURT:** Mr. Gannon, you're here
 24 representing yourself?

25 **MR. GANNON:** That's correct.

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1 **THE COURT:** Carolina Entertainment Complex
2 is represented by?

3 **MR. WHEELER:** No one here.

4 **MR. GUARCO:** That's part of Marion
5 AMPHITHEATER.

6 **THE COURT:** I have briefly looked at the
7 Summons and Complaint, the answer, counterclaim,
8 cross complaint, reply to counterclaim, and
9 then, I believe, on Monday evening I received
10 Mr. Willcox's notice of motion to be relieved of
11 entry of default which you filed on behalf of
12 Guarco and Marion AMPHITHEATER.

13 **MR. WILLCOX:** That's correct.

14 **THE COURT:** Gentlemen, unless someone thinks
15 I'm getting things out order, the first thing to
16 deal with today, I suppose, is Mr. Willcox's
17 motion.

18 **MR. WHEELER:** Yes, sir.

19 **MR. WILLIAMS:** Yes, sir.

20 **THE COURT:** Mr. Gannon, you're here
21 representing yourself and according to the
22 information you're in default. I sometimes bend
23 the rules a little bit in favor of people who
24 are representing themselves; I don't believe
25 you're an attorney, there's been no indication

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1 that you're an attorney.

2 MR. GANNON: No, sir.

3 THE COURT: At appropriate times you will be
4 given the opportunity to ask any necessary
5 questions so don't feel like you are left out
6 there on a limb by yourself because you are not
7 represented.

8 MR. GANNON: Thank you. I'm not sure I'd
9 even know what to ask.

10 THE COURT: That's fine. A lot of lawyers
11 don't; been guilty of that myself. Ready?

12 MR. WILLCOX: Thank you. Your Honor, the
13 ground for our motion to set aside the defaults
14 are, I think, laid out in the motion.
15 Specifically, Marion AMPHITHEATER, LLC, the
16 registered agent was served on January 21st, 2011
17 and then Mr. Wheeler got a letter from the
18 registered agent saying we can't find the
19 company and we're returning your summons and
20 complaint. Then, on March --

21 THE COURT: Is there any question that they
22 were the registered agent of record?

23 MR. WHEELER: No.

24 THE COURT: Okay.

25 MR. WILLCOX: Then, again on March 29th

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1 prepared to go forward in that fashion.

2 MR. WILLIAMS: Your Honor, Mr. Willcox
3 raised the question whether we considered being
4 that the Defendant's are in default simply
5 getting our judgement by default and we pay a
6 liquidated damage. However, Rule 55 says that I
7 can proceed on the complaint if it's liquidated
8 damages if it's verified; if it's not verified I
9 can satisfy that with an affidavit. My question
10 to The Court is -- and I would have had an
11 affidavit and had an order of judgment by
12 default before today, in fact that is what I was
13 going to tell you day before yesterday. My
14 question is, I can submit an affidavit and order
15 of judgement by default, I can have Mr. Bauman
16 testify that he is familiar with all the
17 allegations and the answer and counter and cross
18 complaint, the simple language of verification,
19 or I can have him testify fully as to damages
20 but I don't think I need to do that being they
21 are in default but I'll do as I'm instructed.

22 MR. WILLCOX: I agree with Mr. Williams'
23 outline of the rule which is that liquidated
24 damages can be verified, which I don't think
25 they are in this case, or in lieu thereof an

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affidavit can be submitted if that is what the rule says. I wish I could fight it but I can't.

THE COURT: As I understand it your discussion really ends up with this: Mr. Wheeler, you have prepared testimony which you'd like to submit; is that your testimony or an officer of the bank?

MR. WHEELER: An officer of the bank who has authorized me in the affidavit to present the testimony on his behalf.

THE COURT: Could you summarize that for us?

MR. WHEELER: Your Honor, it is attached to the reference testimony as Exhibit Two, it's an affidavit of indebtedness and authorization to testify. Presentation of evidence in this fashion is similar to the affidavit requirement to Rule 55. I'll just read the affidavit; Personally appeared before me the undersigned witness who, being duly sworn, deposes and says he is an officer of Wells Fargo Bank, servicer of the loan which is the subject of the above referenced foreclosure action that the amount of the indebtedness is as follows; then we go through the balance due. There is a similar affidavit with respect to the second loan and

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1 THE COURT: You've shown this to the other
2 gentlemen?

3 MR. WHEELER: I have not shown the decree to
4 the others; it's consistent with the
5 indebtedness, the facts, exhibited and prepared
6 testimony.

7 THE COURT: On the proposed order I have
8 changed the time of the sale to 12 noon. I
9 changed the sale time in Marion County. The
10 second sale is 11; deficiency sales are always
11 11 unless the order provides otherwise and I
12 don't know if that etched in stone with the
13 Supreme Court but that's the way it is around
14 all 46 counties.

15 Mr. Williams, if you haven't had a chance
16 to look at the decree, he doesn't make any
17 provisions to your case in this decree.

18 MR. WILLIAMS: That's correct, Your Honor.
19 On page two, it provides that there will be a
20 separate order.

21 THE COURT: So you will provide a separate
22 order with the affidavit?

23 MR. WILLIAMS: Yes, sir. Unless you would
24 have me have him testify today.

25 THE COURT: I think Mr. Willcox indicated
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1 that the affidavit will suffice.

2 MR. WILLCOX: I think it qualifies under the
3 rule.

4 THE COURT: I think it does. We'll just do
5 it that way, then.

6 Mr. Wheeler, I think your decree is
7 prepared appropriately and I will sign that and
8 I'll also sign the notice of sale for the
9 September 13th sale date for the first sale and
10 the follow-up sale is October 13th.

11 Let me make sure you non-lawyers
12 understand, they are seeking a deficiency
13 judgement and in South Carolina where a
14 deficiency judgement is sought, at the first
15 sale, as sort of an unwritten rule nobody but
16 the bank bids and the reason for that is that
17 the high bid at the first sale cannot bid again
18 at the second sale. The first sale the bank
19 will bid and then at the second sale any of you
20 folks can bid or Sammy Unknown can bid. The
21 sale will not be final until October 13th.

22 In the meantime that does not prevent you
23 folks from reaching other agreements as may be
24 appropriate or not. There is nothing in the
25 meantime that prevents the debtors to come in

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1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF MARION) CASE NO. 2011-CP-33-00016
Wells Fargo Bank, N.A.)
3 Successor-In-Interest)
To Wachovia Bank,) TRANSCRIPT OF HEARING
4 National Association)
Plaintiff,)
-vs)
6 Marion Amphitheater)
7 David P. Gannon, Michael)
Guarco, Carolina)
8 Entertainment Complex, LLC,)
And 4 Prophets, LLC)
9 a/k/a 4 Profits, LLC)
Defendant(s),)

10 -----

11

Given before Courtney Young, Court Reporter and
12 Notary Public, at the office of Haigh Porter, 152 South
McQueen Street, Florence, South Carolina on Monday,
13 September 12, 2011 at 11:00 a.m.

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A-P-P-E-A-R-A-N-C-E-S

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Special Referee:
Haigh Porter, Esquire
152 South McQueen Street
Florence, SC 29501

For the Defendants,
Marion Amphitheatre, LLC and Michael Guarco
Wilcox, Buyck, & Williams
By: E. Loyd Wilcox, II
P.O. Box 1909
Florence, SC 29503

For the Defendants,
4 Prophets, LLC a/k/a 4 Profits, LLC:
John P. Williams, LLC
By: John P. Williams
300 North Main Street
Marion, SC 29571

On the phone: Dave Wheeler

Also present: Mark Bauman

INDEX TO EXHIBITS

(None were marked.)

1
2 THE REFEREE: For the sake of the court
3 reporter, this is a matter of Wells Fargo Bank,
4 N.A. vs. Marion Amphitheatre, LLC, et al, file
5 number 2011-CP-33-16. The matter has been before me
6 pursuant to an order of reference. An order for
7 foreclosure has been entered, but today we're here
8 due to the motions of Mr. Wilcox on behalf of
9 Mr. Guarco, I believe.

10 MR. WILCOX: That's correct and Marion
11 Amphitheatre.

12 THE REFEREE: And Marion Amphitheatre, but not
13 as to the defendant, David Gannon.

14 MR. WILCOX: That's correct.

15 THE REFEREE: No one is here on his behalf.
16 All right. Gentlemen. . .

17 MR. WILCOX: You're ready?

18 THE REFEREE: We're ready.

19 MR. WILCOX: Thank you. I won't take up most
20 of y'all's time. We did file some objections, Your
21 Honor. Just a brief background, we're dealing with
22 the cross-claim of 4 Profits against Guarco and
23 Gannon. The cross-claims are for fraud, breach of
24 contract, and breach of contract with fraudulent
25 intent. The contract at issue is part of the courts

1 filed. It clearly says that any disagreement about
2 this contract will be governed my Connecticut law
3 and governed in the Courts of Connecticut. We are
4 -- we have done neither in this case. It also says
5 on the signature page that profits are defined as
6 only the funds after Guarco, my client, recoups his
7 initial investment which includes the cost of the
8 mortgage, borrowing the principal of the mortgage
9 and the interest on the mortgage.

10 We list in our objections, Your Honor, to the
11 order that has been signed. I don't know whether
12 it's been filed, but it has been signed by Your
13 Honor. I -- same old complaint that we've made
14 since I've made an appearance in this action,
15 failure to serve, that the letter/contract is
16 governed by Connecticut law and should be governed
17 by Connecticut cause of action and -- in a
18 Connecticut court which is ongoing, a current
19 Connecticut action is on going; that 4 Profits also
20 knew about the mortgage about which they are
21 complaining and that David Gannon is not a party to
22 the contract that is the basis of the cross-claim
23 against him.

24 Finally, Your Honor, the -- Your Honor
25 granted a judgment against Guarco and Gannon and

1 Marion Amphitheater based on some affidavits
2 submitted by 4 Profits based on the fair market
3 value of the property which are in turn based on
4 some appraisals. We assert that those -- that the
5 figure that the court came up with does not take
6 into consideration the cost that Guarco has
7 expended to purchase this property, including the
8 mortgage, including improvements, and including
9 money he's put in himself. The damages that -- in
10 our opinion are not liquidated or not a sum
11 certain. We submit as part of our objections Mr.
12 Guarco's affidavit to that effect as well as Mr.
13 Rouson. And I apologize for the pronunciation,
14 R-o-u-s-o-n, affidavit who tells me he is a member
15 of 4 Profits and that Guarco gets paid first, gets
16 paid back before 4 Profits should get anything. He
17 says that in his affidavit and he says that under
18 oath.

19 Thank you, Your Honor. Those are the basis of
20 our objections.

21 THE REFEREE: Do you have a copy of that order
22 for judgment? I don't appear to have --

23 MR. WILLIAMS: I have the original as a matter
24 of fact, if I can put my fingers on it. I'm
25 supposed to have the original, because it has not

1 been filed.

2 THE REFEREE: Y'all bear with me a minute.
3 Let me refresh my memory just a second. I've only
4 had one foreclosure that's probably more convoluted
5 than this one, and Mr. Wheeler, you were the
6 plaintiff's attorney in that one.

7 MR. WHEELER: I do what I can, Your Honor.

8 THE REFEREE: I will say this; in this
9 previous case with Mr. Wheeler, of about five six
10 years ago, a lot of money was involved like this
11 case, and it was one of those rare cases where
12 everybody got paid. It was competitive bidding for
13 the property and everybody got paid in full.

14 MR. WHEELER: Maybe that will happen in this
15 case.

16 MR. WILCOX: From your lips to God's ears,
17 Dave.

18 THE REFEREE: All right, Mr. Williams.
19 What's your response?

20 MR. WILLIAMS: Your Honor, if it please the
21 Court, the first -- and I'll speak of first as in
22 roman numeral I, the lack of personal jurisdiction.
23 Your Honor has ruled on that issue several times
24 already as to the efficacy of the service of
25 process. The roman numeral II and III relate to

1 the July 17th agreement which is the -- the
2 referred to in the -- in our cross-claims and
3 elsewhere is a letter agreement as Exhibit A
4 attached to the -- our affidavit. And to the part,
5 thereof, which says that any action arise out of it
6 will be brought in the State of Connecticut and all
7 facts where that's correct certainly. The problem
8 is that our allegations are that we had a contract,
9 and that they -- by failure to make the payments to
10 the plaintiff bank, the purpose thereof was to you
11 -- extinguished by foreclosure sale, the rights of
12 4 Profits and that was a fraudulent and it was
13 wrongful that they conspired to -- conspiracy
14 cross-complaint, breach of contract by fraudulent
15 act and so forth.

16 Now, it was our view and still is my view and
17 these -- these cross-claims were alleged and set
18 forth on the basis that they are proceeded in the
19 Court of Equity in Connecticut. There's a
20 proceeding here in a Court of Equity, and that if
21 they wish to avail themselves of the terms of the
22 contract, that is, the restriction of jurisdiction
23 to the State of Connecticut in a Court of Equity,
24 then they need to be doing equity. And therefore,
25 by argument had they not been in default would had

1 been just that. They have waived the right to set
2 fourth that as a defense.

3 Now, beyond that, Your Honor, all of these --
4 all of these objections, roman numerals I through
5 VI are matters that they would have been entitled
6 to a raise had it not been in default, but all of
7 these things have been admitted by virtue of the
8 default as found in your order for judgment, Your
9 Honor, is that -- and under South Carolina law,
10 they have admitted conceited liability, admitted
11 liability and have admitted the truth of every
12 well plead fact of the complaint. And so I think
13 that that's positive -- their default that it's
14 just positive of roman numerals I through VI.

15 Roman numeral VII; Mr. Wilcox takes position
16 that the rules of civil procedure provide that on a
17 default matter if the damages are liquidated or a
18 sum certain or a sum which can be determined by
19 computation, then there's no need of an evidentiary
20 or damages hearing. I will say this, You're Honor,
21 is it my belief and my opinion that we did not have
22 liquidated damages, but we do have a sum which can
23 be determined by computation, because if alleged,
24 one, the value of the property which they've
25 admitted to, and two, we've alleged that we own

1 half interest in it which they have admitted to.

2 And that's leads to a fairly simple computation.

3 However, the belief in that, that I do,
4 that's the reason we proceeded to way we have. If
5 Your Honor feels differently or upon reflection
6 feels like it's appropriate, then we don't have any
7 problem conducting an evidentiary hearing, a
8 damages hearing that is to say. I say that in
9 response to roman numeral VII, and I think I've
10 already respond roman numerals I through VI
11 already.

12 THE REFEREE: That's it Mr. Wilcox?

13 MR. WILCOX: Yeah. The only thing I'd like
14 to add after Mr. William's positions are that the
15 contract at issue, in our opinion, does not
16 describe the property appropriately. Their copies
17 have a legal description attached to it; our don't.
18 Our copies don't have any legal descriptions.

19 Number two, in addition to asserting that the
20 sum certain can not be ascertained -- and Mr.
21 Williams says he'd be glad to have a damages
22 hearing -- we'd also would like to point out that
23 we don't think we've been given credit for the cost
24 that we've expended. In other words, we haven't
25 been given a credit to the tune of the mortgage

1 that he clearly owe, as well as Mr. Guarco says
2 he's spent seven million dollars of his own money
3 in here. And therefore their judgment, if it
4 stands, should be reduced by those amounts or at
5 least half of those amounts. Thank you, Your
6 Honor.

7 THE REFEREE: As to the description, even if
8 there's not a descriptive page attached to your
9 copy, the copy that was furnished to me does have a
10 schedule A. But I notice in the first paragraph,
11 and I presume y'all are referring to the letter
12 form agreement dated July 17th of 2006 on a
13 letterhead of Michael Guarco, Sr. And the first
14 paragraph refers to the "that certain property
15 known as the Carolina Amphitheater property located
16 in Marion, South Carolina." I think that
17 adequately describe the property, what the property
18 is. It's well known in the community and the
19 county of where the amphitheater property is.

20 MR. WILCOX: I think you're probably right in
21 South Carolina, Your Honor, but I would point out
22 that we're asserting in Connecticut, it wouldn't be
23 and it should be in Connecticut.

24 THE REFEREE: Well --

25 Mr. WILCOX: And also it says it's in Marion;

1 it's not in Marion. It's in Marion County. I
2 don't believe it's in the city limits.

3 THE REFEREE: I take that Marion County --
4 it's out in the country. The Court is aware of
5 where the property is located out on the highway
6 east of -- southwest of the town of Marion.

7 MR. WILCOX: We all know where it is.

8 THE REFEREE: I think that adequately
9 describes it. Someone from some unknown county up
10 in Connecticut will probably not know, because he
11 might not know where South Carolina is unless he's
12 been down Highway 95, I-95. So I think that -- I
13 don't think that's an issue.

14 I will review all of the documents further.
15 I'll take into consideration what you all have
16 said. Mr. Williams, if you'll hold up on the
17 filing this proposed letter I recently signed, I
18 will take that into further consideration, and
19 we'll let you fellows know something hopefully by
20 the end of the week. I will say that starting
21 tomorrow, I am loaded up either with sales or
22 hearings almost every day this week until Friday.
23 But I will -- I have a couple of things scheduled
24 this afternoon. I'll try and spend some time on
25 this this afternoon. A quit taking things home to

1 work on at night anymore. I'm old enough to that I
2 don't do that anymore, but I will try to let you
3 all know something.

4 Mr. Wilcox, one of the things that's
5 bothering me is there's litigation right here in
6 South Carolina involving all of these people, and
7 not withstanding any argument that can be made
8 about the terms of the July 17th, 2006 letter
9 agreement as to jurisdiction and venue. I think
10 once this action was brought down here with the
11 parties all identified, with the properties all
12 identified, the only way to resolve the whole issue
13 is for it to be tried here in South Carolina.

14 Now, on the other hand, if there was no
15 foreclosure action -- and we'll just for sake of
16 argument say, well, the payments were all current
17 and all, there was no problem, the bank was happy,
18 and then they have -- the parties had the falling
19 out. Yes, I would agree with you; it would have to
20 be tried probably up in Connecticut even though the
21 property is situated here in South Carolina. But I
22 think -- and this is something I will take into
23 consideration, but with the venue and jurisdiction
24 established through the foreclosure, I am not sure
25 that that precludes Mr. Williams and his clients

1 from proceeding as part of this action, because
2 they are part of the action along with your
3 clients. So I think Mr. Wheeler's client in affect
4 has opened the door, but I will certainly take all
5 of that into consideration and try and let you all
6 know something no later than the first of next
7 week.

8 MR. WILCOX: Thank you.

9 MR. WILLIAMS: Thank you, Your Honor.

10 THE REFEREE: That will conclude it.

11 MR. WHEELER: Thank you, Your Honor. I
12 appreciate you letting me participate via phone.

13 THE REFEREE: Unless Mr. Wheeler you want to
14 add anything to it.

15 MR. WHEELER: No, sir.

16 THE REFEREE: Okay. Well, that will do it
17 now.

18 (Whereupon the proceedings concluded.)
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25

1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF RICHLAND)

4 I, Courtney Young, Court Reporter and Notary
5 Public, certify that I did appear at 11:00 a.m. on
6 Monday, September 12, 2011 at the office of Haigh Porter,
7 152 South McQueen Street, Florence, South Carolina; that
8 the witness was sworn and cautioned to tell the truth,
9 the pages constitute a true and accurate transcript of
10 the testimony given at that time and place.

11 I further certify that I am not of counsel or kin
12 to any of the parties to this cause of action, nor am I
13 interested in any manner in its outcome.

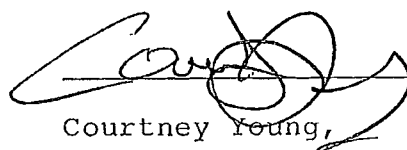
14 IN WITNESS WHEREOF, I have hereunto set my hand and
15 seal this 21st day of September, 2011.

16

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Courtney Young,

20

Notary Public for South Carolina

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My Commission Expires: July 13, 2021

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25

MICHAEL GUARCO, Sr.

c/o 314 Salmon Street

Granby, Connecticut 06035

4 Prophets, LLC
c/o Mark Bauman
5545 Netherland Avenue, #3-C
Riverdale, NY 10471

July 17, 2006

VIA FAX: 860-653-5909

Gentlemen:

I acknowledge the efforts and dedication that 4 Prophets, LLC has provided to me or my assigns, in connection with that certain property known as the "Carolina Amphitheater Property" located in Marion, South Carolina, as more particularly described in Schedule "A" attached hereto. When countersigned by you below, will set forth the terms of the agreement pursuant to which you will be entitled to share in the profits distributions and ownership, with me, in this property. Our understanding is as follows:

1. I will put up the funds to purchase the property in the form of a Bank Draft to the seller. The terms of the purchase will be set forth on the Bank Draft itself.
1. Upon our (Guarco) purchase of the property, 4 Prophets, LLC, a Florida Limited Liability Corporation shall be entitled to gross profit distributions from me or my assigns, to be paid to you anytime a profit distribution is made, in an amount of Fifty (50%) Percent. All of the property, realty and personalty, including all attachments fixtures thereon and all revenue streams, shall be owned by both of us (Guarco/ Assigns and 4 Prophets, LLC) on a Fifty/Fifty (50%/50%) Percent basis. A separate agreement covering the operation of the Amphitheater facility will be drafted and executed prior to closing. This letter agreement is effective as of the date hereof and shall automatically terminate upon failure to purchase the above mentioned property. Salaries, if any, shall be negotiated within six months after the first event profits shall be timely and reasonably distributed within 30 days after events or no later than every quarter.
2. This letter agreement is effective as of the date hereof and shall automatically terminate if the property is not purchased.

DE 4 809 1234 *MAB*

2.

3. The parties agree that each shall have a right to a quarterly accounting of financial information relating to the Property. Each party shall have the right to audit the books of the other, using an accounting firm at the sole cost and expense of the party requesting such audit.
4. This letter shall be governed by and construed in accordance with the laws of the State of Connecticut applicable to agreements made and to be performed wholly in such State. Any action, suit or proceeding arising out of or relating to this letter shall be brought in the State of Connecticut Supreme Court located in Hartford County, Connecticut, and all parties consent to the venue and jurisdiction of such court.
5. This letter sets forth the entire agreement and understanding of the parties in respect of the subject matter hereof and supersedes all prior and contemporaneous agreements, arrangements and understandings, expressed or implied, oral or written, relating to the subject matter hereof.
6. This letter may be amended or modified only by a written instrument executed by all of the parties hereto. The failure of a party at any time or times to require performance of any provisions here to shall in no manner affect the party's right at a later time to enforce the same. No waiver by any party of the breach of any term contained in this letter, where by conduct or otherwise, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such breach or of the breach of any other term of this letter.
7. Reference to this letter herein shall include any amendments or renewal hereof.
8. If any provisions of this letter shall be held to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provisions and only to the extent such provision shall be held to be invalid or unenforceable and shall not in any way affect the validity or enforceability of the other provisions hereof, all of which provisions are hereby declared severable, and this letter shall be carried out as if such invalid or unenforceable provision or portion thereof was not embodied herein.

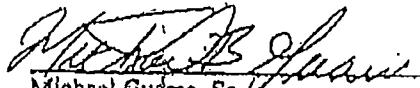
JOJ MBS (MBS)
Bel

3.

9. This letter may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement. Facsimile transmitted copies and signatures will be accepted by the parties as if they are original and hard copies. Completely executed copies will be supplied to all parties.
10. Words and phrases used herein in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender, unless the context requires otherwise.
11. Rouson and Dudley, PA shall cause the title policy and insurance to be issued by an appropriate agent or agency. Darryl E. Rouson, Esq. shall act as general counsel for the project and development.

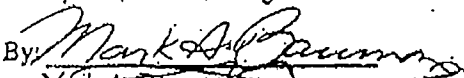
If the foregoing is consistent with our understanding, kindly so indicate by signing where indicated below.

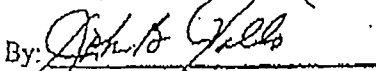
Very Truly Yours,

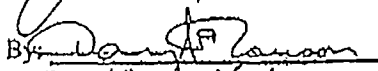

Michael Guarco, Sr.

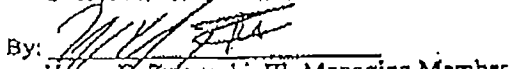
Accepted and Agreed:

4 Prophets, LLC or Assigns

By: 
Mark A. Bauman

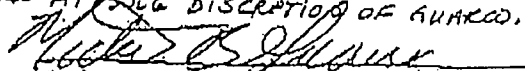
By: 
John B. Gallo, Member

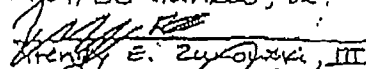
By: 
Darryl E. Rouson, Member

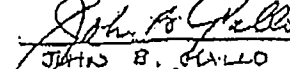
By: 
Henry E. Zukowski, III, Managing Member

PROFITS ARE ONLY THOSE FUNDS AFTER
GUARCO RECOUPS INITIAL INVESTMENTS (EXPENSES,
REMODELING AND REFINANCING COSTS, INTEREST
INCLUDING ANY INTEREST BORROWED).

DISTRIBUTIONS PRIOR TO TOTAL RECOUPMENT
ARE AT THE DISCRETION OF GUARCO.


MICHAEL GUARCO, SR.


HENRY E. ZUKOWSKI, III


JOHN B. GALLO


DARRYL E. ROUSON

SCHEDULE "A"
LEGAL DESCRIPTION

All that certain place, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 241.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. by Beasley Land Surveying, Inc. dated February 14, 2001 and revised March 24, 2002. The said map as revised is recorded in the office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303, at page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Jones; on the Northeast and East by lands now or formerly of Philip V. Graves and William H. Cheek and others; on the South by lands now or formerly of Cheek and others; on the Southwest by U.S. Highway 501 and lands of Aukerson and others; and on the Northwest by lands of William E. Thompson. There is excepted from this description Tracts A-1, A-2, A-3 and A-4, shown on the aforementioned map as "All exempt Areas."

LESS AND EXCEPT: All that certain place, parcel or lot of land containing 0.85 acres as shown on a survey prepared for the City of Marion recorded in the office of the Clerk of Court for Marion County in Plat Book 304 at page 6 and a Part (30) temporary easement for construction, to said lot and easement being more fully and completely described in the subdivision of Dennis M. Goetts and Jack H. Jones to The City of Marion recorded in the office of the Clerk of Court for Marion County on April 23, 2002 in Deed Book A-472 at page 296.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	CIVIL ACTION NO.: 2011-CP-33-00016
	)	
WELLS FARGO BANK, N.A., successor-in-	)	
interest to WACHOVIA BANK, NATIONAL	)	
ASSOCIATION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT
	)	
MARION AMPHITHEATRE, LLC, DAVID P.	)	
GANNON, MICHAEL GUARCO, CAROLINA	)	
ENTERTAINMENT COMPLEX, LLC AND 4	)	
PROPHETS, LLC a/k/a 4 PROFITS, LLC,	)	
	)	
Defendants.	)	

PERSONALLY appeared before me Mark Bauman, who being first duly sworn,
deposes and says:

1. I am a citizen and resident of Marion County South Carolina and I am the managing member of 4 Prophets, LLC, one of the defendants in this action.
2. As alleged in the First Cross Complaint, 4 Prophets, LLC entered into a written agreement with Michael Guarco on July 17, 2006. This agreement specifically provided that in consideration of the work and efforts of 4 Prophets, LLC and its members related to the Amphitheater Property 4 Prophets, LLC would own an undivided one half interest in the Amphitheater Property if it was acquired by Mr. Guarco. A copy of this agreement is attached hereto and identified as Exhibit A.
3. The Amphitheater Property was purchased by Mr. Guarco with the closing taking place in January of 2007. The contract of sale for the purchase of the Amphitheater

Property referred to Mr. Guarco as the buyer but at the closing the property was conveyed to Marion Amphitheater, LLC. As part of the purchase price, a promissory note and real estate mortgage were executed in favor of the Sellers of the Amphitheater Property. Michael Guarco executed the promissory note and real estate mortgage as "Sole Member". A copy of the first page and signature page of the contract of sale of the purchase of the Amphitheater Property is attached hereto and identified as Exhibit B. A copy of the first page and signature page of the real estate mortgage is attached hereto and identified as Exhibit C.

4. After the Amphitheater Property was acquired, three separate applications for zoning changes were made to the City of Marion. In each of these applications, the then current members of 4 Prophets, LLC were listed as additional owners. Copies of these zoning applications are attached hereto and collectively identified as Exhibit D.
5. As a result of statements made by Michael Guarco to the effect that he would sell the property in order to defeat the ownership interest of 4 Prophets LLC, 4 Prophets LLC filed suit seeking an injunction restraining Marion Amphitheater LLC and Michael Guarco from selling or hypothecating the property during the pendency of a suit pending in the State of Connecticut between these parties. The suit was filed against Marion Amphitheater LLC and Michael Guarco in the Court of Common Pleas for Marion County on May 19, 2010 and the Summons and Complaint were served on Michael Guarco on June 2, 2010. The result of this suit was a Consent Order restraining the sale or hypothecation of the Amphitheater Property until

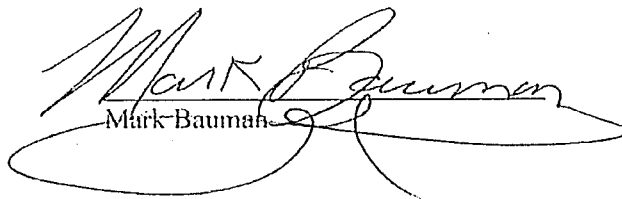
further order of the court. A copy of this order is attached hereto and identified as Exhibit E.

6. The testimony presented by the plaintiff in this case reflects that the last mortgage payments made to the plaintiff were made on May 27, 2010, five days before Michael Guarco was served with the Summons and Complaint in the case referred to above. No payments were made to the plaintiff after Michael Guarco was served.
7. Just prior to the purchase of the property, the defendants Michael Guarco and David P. Gannon produced letters from their respective accountants regarding their net worth. The letter from Mr. Guarco's accountant indicated a personal net worth for Mr. Guarco and his wife of \$23,708,208.00. The letter from Mr. Gannon's accountant indicated his net worth to be approximately \$6,800,000.00. Copies of these two letters are attached hereto and identified as Exhibit F. It is my opinion that these two defendants had, at the time of the default in payment of the mortgage indebtedness owed to the plaintiff, the financial ability to make the mortgage payments in a timely manner if they chose to do so.
8. On April 27, 2007, the same date of the first mortgage and note given to the plaintiff, defendant Marion Amphitheatre, LLC executed a lease agreement with Carolina Entertainment Complex, LLC, (hereinafter CEC), leasing the Amphitheatre Property to CEC for the sum of \$22,222.00 per month. A copy of this lease agreement is attached hereto and identified as Exhibit G.
9. The defendants caused the amphitheater property to be appraised in May, 2007. The "as is" value given by the appraiser at that time was \$25 million. The

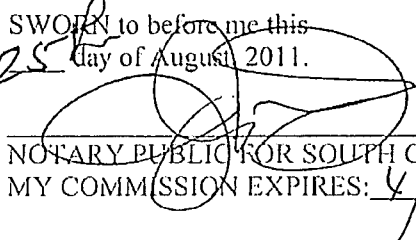
defendants had the property appraised a second time in January of 2010. The "as is" given by the appraiser, effective January 29, 2010 was again \$25 million. Copies of the valuation sections of these appraisals are attached hereto and collectively identified as Exhibit H. I am unaware of any information which would lead me to believe that the value of this property has declined in any amount since these two appraisals were made and therefore I believe the present fair market value of the subject property to be the sum of \$25 million, the value reached by the appraiser in both appraisals.

10. As a result of the actions of the said Michael Guarco and David P. Gannon in breaching the agreement with 4 Prophets LLC's and taking actions designed and intended to defeat the valid interests of 4 Prophets LLC, there is due and payable to 4 Prophets LLC by the said Michael Guarco and David P. Gannon the sum of \$12,500,000.00, being the value of the equitable interest of 4 Prophets LLC in the property.

AND FURTHER AFFIANT SAYETH NOT.


Mark Bauman

SWORN to before me this
25th day of August 2011.


(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 4/18/2013

the 1990s, the number of people in the world who are under 15 years of age is expected to increase by 1.2 billion, from 1.1 billion in 1990 to 2.3 billion in 2010. The number of people aged 65 and over is expected to increase by 1.1 billion, from 0.4 billion in 1990 to 1.5 billion in 2010. The number of people aged 15-64 is expected to increase by 1.1 billion, from 1.1 billion in 1990 to 2.2 billion in 2010. The number of people aged 65 and over is expected to increase by 1.1 billion, from 0.4 billion in 1990 to 1.5 billion in 2010. The number of people aged 15-64 is expected to increase by 1.1 billion, from 1.1 billion in 1990 to 2.2 billion in 2010.



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STATE OF SOUTH CAROLINA)
)
COUNTY OF MARION)
)
WELLS FARGO BANK, N.A.)
Successor-in-interest to)
WACHOVIA BANK, NATIONAL)
ASSOCIATION,)

Plaintiff,)
)
)

vs.)
)
)

MARION AMPITHEATRE, LLC,)
DAVID P. GANNON, MICHAEL)
GUARCO, CAROLINA)
ENTERTAINMENT COMPLEX,)
LLC, AND 4 PROPHETS LLC a/k/a)
4 PROFITS, LLC)
)

Defendants)
)
)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-33-0016

AFFIDAVIT

PERSONALLY appeared before me Darryl E. Rouson, Esq., who being duly sworn, deposes and says:

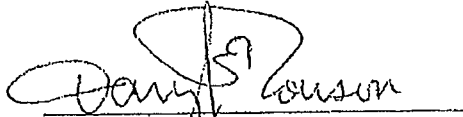
1. I am citizen and resident of Florida and I am a member of 4 Prophets, LLC, "4 Profits" one of the Defendants in this action and the Plaintiff in the Cross Complaint.
2. I am an attorney duly licensed to practice law in the State of Florida.
3. I drafted the agreement executed by 4 Prophets, LLC and Michael Guarco on July 17, 2006.

4. To my knowledge I have never transferred, sold or otherwise relinquished or conveyed my partnership interests in 4 Prophets to any individual or entity. I have not been noticed by anyone of any such transaction and as far as I know I still maintain an interest in 4 Prophets.
5. There was a communication from me to Mark Baumann in what I thought was his role as "managing partner" requesting that he call a meeting and give an accounting to me of any meetings or business of 4 Prophets. Despite my requests Mr. Bauman has refused to call meetings or provide an accounting.
6. My best recollection is that 4 Prophets was an organization that owned nothing but a contingency interest in Marion Amphitheater. John Gallo, Mark Bauman, Henry Zukowski and I understood and agreed that NO property interest, NO right to distribution of funds, proceeds or revenue would occur, except in the sole discretion of Michael Guarco, UNLESS Michael Guarco was first paid back his expenses, including mortgage or improvement costs associated with the property.
7. We further understood that this venture and real estate was being financed, underwritten and invested in by Mr. Michael Guarco and that we (Gallo, Zukowski, Rouson and Bauman) owned nothing until certain acts occurred beyond the mere purchase.
8. As the handwritten notary on the bottom of the agreement states, any and all

Distributions were to be at Guarco's sole discretion. By its terms, the 4 Prophets Agreement provides that it shall be governed and construed in accordance with the laws of the State of Connecticut. Connecticut has jurisdiction

9. I have provided deposition testimony in the lawsuit pending in Connecticut between 4 Prophets and Michael Guarco Sr. attesting to these facts.

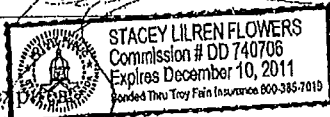
AND FURTHER AFFIANT SAYETH NOT


Darryl E. Rouison, Esq.

cell 727 224 4557
ofc 813 223 0505

SWORN to before me this
26th day of August, 2011

Notary Public
My commission expires



STATE OF SOUTH CAROLINA

COUNTY OF MARION

WELLS FARGO BANK, N.A.,
successor-in-interest to
WACHOVIA BANK, NATIONAL
ASSOCIATION,

Plaintiffs

vs.

MARION AMPHITHEATRE, LLC,
DAVID P. GANNON, MICHAEL
GUARCO, CAROLINA
ENTERTAINMENT COMPLEX, LLC
AND 4 PROPHETS, LLC a/k/a
4 PROFITS, LLC,

Defendants

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-33-00016

AFFIDAVIT

PERSONALLY appeared before me Michael Guarco Sr., who being duly sworn
deposes and says;

1. I am a citizen and resident of East Granby, Connecticut and I am a
managing member of Marion Amphitheater, LLC.
2. I am a named defendant in the present action.
3. Marion Amphitheatre, LLC is a named defendant in the present action
and I am a manager of Marion Amphitheatre, LLC.
4. I am a party to the July 17, 2006 letter (the "July 17th letter") between me
and 4 Prophets, LLC (the "4 Prophets").

5. The July 17, letter was drafted by Darryl Rouson, an attorney licensed in the State of Florida and a member of 4 Prophets. I was not represented by counsel in the preparation, negotiation and execution of the July 17, 2006 letter.

6. In accordance with the understanding and verbal agreement between me and the members of 4 Prophets, following the execution of the July 17th letter 4 Prophets, LLC was to perform certain management services for the Marion Amphitheatre property (hereinafter the "Marion Amphitheatre property") and its development, and contribute towards the costs of acquisition and development of the Marion Amphitheatre property.

7. The agreements of 4 Prophets as stated in the foregoing paragraph was the sole reason I signed the July 17th letter even though the letter, prepared by a member of 4 Prophets, who was an attorney and who agreed to have his firm represent the venture, failed to contain such agreements.

8. 4 Prophets failed to perform any of the agreements that induced the undersigned to sign the July 17th letter.

9. The failure of 4 Prophets to perform as agreed was a breach of the agreements between the undersigned and 4 Prophets.

10. Paragraph 4 of the July 17th letter provides in relevant part that the letter would be governed and construed in accordance with the laws of the State of Connecticut applicable to agreements made to be wholly performed in such state.

11. Paragraph 4 of the July 17th letter provides in relevant part that any action, suit or proceeding arising out of or relating to the letter be brought in the courts of the State of Connecticut and all parties to the letter consented to the venue and jurisdiction of such Courts.

12. By complaint dated February 20, 2010, Marion Amphitheatre, LLC commenced a declaratory judgment action in the Superior Court for the Judicial District of Hartford (Docket No. HHD-CV10-6008478) (the "Connecticut Action") so that a Connecticut Court would determine whether or not 4 Prophets had any interest in the Marion Amphitheater Property and whether the July 17th letter was a valid contract.

13. Marion Amphitheatre has incurred in excess of \$50,000 in costs and attorneys' fees to prosecute the Connecticut Action.

14. The Connecticut Action is scheduled for trial on November 2, 2011.

15. That Marion Amphitheatre Property has not been sold or hypothecated since the Consent Order was entered in the matter entitled 4 Prophets, LLC v. Marion Amphitheatre, LLC and Michael Guarco (South Carolina Docket No. 10-CP-33-388).

Such order contemplated that the issues between the parties would be resolved in the Connecticut Action.

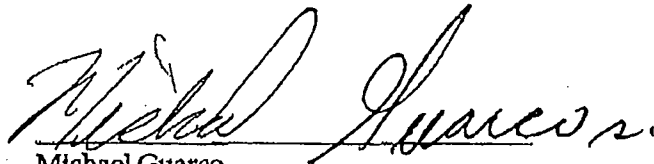
16. That in addition to the funds borrowed from Wells Fargo that is the subject of the foreclosure action, I have invested approximately 7 million dollars of my own funds in the acquisition, development and carrying costs for the Marion Amphitheatre Property.

17. That David P. Gannon has invested approximately 2.4 million dollars of his funds for the acquisition, development and carrying costs for the Marion Amphitheatre Property.

18. That I and members of my family have made approximately two million dollars of improvements to the Marion Amphitheatre Property.

19. Although 4 Prophets has no claim to the Marion Amphitheatre property or for payment by me or David P. Gannon (who was not even a party to the July 17th letter) that the equitable value of any sums that may be due 4 Prophets must take into account the sums due Wells Fargo Bank used in the acquisition of the Marion Amphitheatre Property, my cash investment, David Gannon's cash investment and the investment of my family for the cost of improvements made to the Marion Amphitheatre Property.

AND FURTHER AFFIANT SAYETH NOT.


Michael Guarco
Member

SWORN to before me this
27th day of August, 2011.


Philip D. Marin
Notary Public
My commission expires:
Commissioner of the Superior Court

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Haigh Porter, Special Referee

Case No. 2011-CP-33-00016

Wells Fargo Bank, N.A. successor-in-interest
to Wachovia Bank, National Association Respondent,

v.

Marion Amphitheatre, LLC, David P. Gannon,
Michael Guarco, Carolina Entertainment Complex, LLC
and 4 Prophets, LLC a/k/a 4 Profits, LLC Defendants,

Of Whom,
David P. Gannon, and Michael Guarco are the Appellants,

And 4 Prophets, LLC a/k/a 4 Profits, LLC is the Respondent.

CERTIFICATE OF COUNSEL

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

WILLCOX, BUYCK & WILLIAMS, P.A.

By: E. Lloyd Willcox II
E. LLOYD WILLCOX, II
I.D. No. 015093
PO Box 1909
Florence, SC 29503-1909
(843) 662-3258 - Tel
(843) 662-1342 - Fax
ATTORNEY FOR APPELLANTS

May 17, 2013

RECEIVED
JUN 06 2013

SC Court of Appeal

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Haigh Porter, Special Referee

Case No. 2011-CP-33-00016

Wells Fargo Bank, N.A. successor-in-interest
to Wachovia Bank, National Association Respondent,

v.

Marion Amphitheatre, LLC, David P. Gannon,
Michael Guarco, Carolina Entertainment Complex, LLC
and 4 Prophets, LLC a/k/a 4 Profits, LLC Defendants,

Of Whom,
David P. Gannon, and Michael Guarco are the Appellants,

And 4 Prophets, LLC a/k/a 4 Profits, LLC is the Respondent.

PROOF OF SERVICE

I certify that I have served the *Record on Appeal and Final Brief of Appellant* on the Respondent, through their attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

John P. Williams Jr.

PO Box 883

Marion SC 29571

Attorney for Respondent 4 Prophets, LLC a/k/a 4 Profits, LLC

WILLCOX, BUYCK & WILLIAMS, P.A.

RECEIVED

JUN 06 2013

By: E. Lloyd Willcox **SC Court of Appeals**

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ATTORNEY FOR APPELLANTS

June 5, 2013