

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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OCT 17 2019

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2011-CP-07-1933

Case No. 2017-000487
Appellate Case No. 2017-000487

Deep Keel, LLC,

Respondent,

v.

Atlantic Private Equity Group, LLC, Terry L. Rohlfig,
Jerry T. Caldwell, and Bluffton Village Town Center
Property Owners' Association, Inc.,

Defendants,

Of Whom Atlantic Private Equity Group, LLC,
Terry L. Rohlfig, and Jerry T. Caldwell are the

Appellants.

**APPENDIX TO APPELLANTS'
PETITION FOR WRIT OF CERTIORARI**

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III
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Trial Court Case No. 2011-CP-07-1933

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JUN 05 2017

SC Court of Appeals

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Property Owners' Association, Inc.,

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Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COMMUNITY FIRSTBANK

Plaintiff

vs.

ATLANTIC PRIVATE EQUITY
GROUP, LLC, TERRY L.
ROHLFING, JERRY T.
CALDWELL and BLUFFTON
VILLAGE TOWN CENTER
PROPERTY OWNERS'
ASSOCIATION, INC.

Defendants

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2011-CP-07-1933

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CLERK OF COURT
BEAUFORT COUNTY, S.C.

ORDER SUBSTITUTING PLAINTIFF

This matter comes before me upon the motion of the attorneys of the firm of Altman & Coker, LLC, Attorneys for the Plaintiff, who are seeking an order to substitute the Plaintiff.

IT APPEARING TO THE COURT that Plaintiff Community FirstBank was merged into CresCom Bank on July 29, 2011, as evidenced by the articles of merger filed with the South Carolina Secretary of State and the Register of Deeds Office for Beaufort County.

IT APPEARING TO THE COURT that CresCom Bank, successor by merger with Community FirstBank, has transferred and assigned all of its rights, title and interests in and to the Note, Mortgage and other loan documents which are the subject of this action to Deep Keel, LLC.

Now, on motion of the attorneys of the firm of Altman & Coker, LLC, Attorneys for the Plaintiff, and after careful consideration of the record of this case:

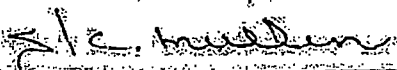
Page 1 of 2

IT IS ORDERED that Deep Keel, LLC, a South Carolina limited liability company, is hereby substituted for Community FirstBank as the Plaintiff in this action; and

IT IS FURTHER ORDERED that the caption and each of the pleadings now or hereafter filed in this action are hereby amended so as to reflect this substitution; and

IT IS FURTHER ORDERED that such substitution shall have the same effect as if Deep Keel, LLC, a South Carolina limited liability company, had been named as the original Plaintiff in this action and as if this action had been commenced in the name of Deep Keel, LLC, a South Carolina limited liability company.

IT IS SO ORDERED.



Presiding Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina
Dated: 4-15, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

DEEP KEEL, LLC,)

CIVIL ACTION NO. 2011-CP-07-01933

Plaintiff,)

vs.)

ATLANTIC PRIVATE EQUITY GROUP,)
LLC, TERRY L. ROHLFING, JERRY T.)
CALDWELL, and BLUFFTON VILLAGE)
TOWN CENTER PROPERTY OWNERS')
ASSOCIATION, INC.,)

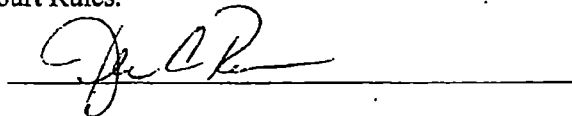
Defendants.)

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CLERK OF COURT
BEAUFORT COUNTY, S.C.

**CONSENT ORDER OF REFERENCE
TO MASTER-IN-EQUITY**

Upon motion of the Plaintiff, Deep Keel, LLC, and with the consent of the Defendants, Atlantic Private Equity Group, LLC, Terry L. Rohlfing and Jerry T. Caldwell, it is hereby

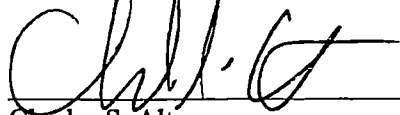
ORDERED, ADJUDGED AND DECREED that this case is referred to The Honorable Marvin H. Dukes, III, as Master-in-Equity for Beaufort County, who pursuant to SCRCP Rule 53(c), shall exercise all power and authority which a Circuit Judge sitting without a jury would have, including but not limited to making findings of fact and conclusions of law; directing entry of final judgment on the remaining issues in this action under SCRCP Rule 53(b); and issuing any and all Orders and Supplemental Orders. Pursuant to SCRCP Rule 53(e), any appeal from the final judgment entered by the Master-in-Equity shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.



Beaufort, South Carolina
Dated: 7-18, 2016

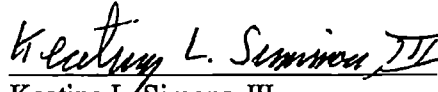
WE CONSENT:

ALTMAN & COKER, LLC



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Attorneys for Defendants Atlantic Private
Equity Group, LLC, Terry L. Rohlffing,
and Jerry T. Caldwell

with permission
CSJ

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

DEEP KEEL, LLC,)
) CIVIL ACTION NO. 2011-CP-07-01933
Plaintiff,)
) vs.)
) ATLANTIC PRIVATE EQUITY GROUP,)
) LLC, TERRY L. ROHLFING, JERRY T.)
) CALDWELL, and BLUFFTON VILLAGE)
) TOWN CENTER PROPERTY OWNERS')
) ASSOCIATION, INC.,)
) Defendants.)

ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION

This matter is before the Court on the Motion for Reconsideration of Defendants Terry L. Rohlfings and Jerry T. Caldwell, (the "Defendants"), of the Court's Order, filed August 23, 2016, granting summary judgment as against said Defendants. A hearing on the Motion was held on December 12, 2016. For the reasons set forth below, the Motion is denied.

The Defendants raise two (2) issues in their Motion. First, they assert the affidavits presented by Plaintiff were not sufficient. Second, they contend that even though they each executed separate Guaranties, they should be treated to have both executed the same Guaranty.

The record in this matter shows Plaintiff's Motion for Summary Judgment and Memorandum in support thereof were filed on July 6, 2016. Thereafter, Plaintiff filed and served the Affidavits of Jamin M. Hujik, Executive Vice President of CresCom Bank as successor to the original lender, Community FirstBank, and of Scott Bynum, sole member of Plaintiff.

AFFIDAVITS

The standard for granting a Motion for Summary Judgment is set forth in Rule 56, SCRCP.

It provides in pertinent part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Plaintiff's Motion for Summary Judgment was accompanied by affidavits of Jamin M. Hujik, Executive Vice President of CresCom Bank, the original lender on the loan and guaranties which are the subject of this matter, and of Scott Bynum, the sole member of Plaintiff, the current owner of the loan and holder of the Guaranties. Mr. Hujik specifically states in his affidavit he is an Executive Vice President of the Bank and has relied on the records maintained by the Bank up to the time of the assignment of the loan to Plaintiff in setting forth the facts contained in the affidavit, including the calculation of the amount owed at the time of the assignment to Plaintiff.

Mr. Bynum specifically states in his affidavit that he is the sole member of the Plaintiff. He sets forth the calculation of the amount due based on the balance due at the time of the assignment to Plaintiff and provides a detailed calculation of the balance due. The affidavits of Mr. Hujik and Mr. Bynum included copies of the guaranties executed by the Defendants respectively and the promissory note guaranteed thereby and executed by the borrower, Atlantic Private Equity, LLC.

In response to Plaintiff's Motion, Defendants did not file or serve affidavits, nor any memoranda setting forth any disputed facts. Defendants' counsel orally argued at the hearing that Plaintiff's affidavits are deficient as they are not based on personal knowledge of each affiant, and further that the Bynum affidavit is based solely on the information from Mr. Hujik.

Mr. Hujik, as Executive Vice President of CresCom Bank, provided the information in his affidavit based on bank records kept in the ordinary course of business. Mr. Hujik's affidavit conveys information from a person with knowledge at the time the records were created, a situation specifically allowed under Rule 803(6), SCRE. *Twelfth RMS Partners, L.P. v National Safe Corp.* (335 S.C. 635, 518 S.E.2d 44 (1999)). The affidavit does not reflect any personal opinions of Mr. Hujik. It solely reflects the records of the Bank.

Mr. Bynum, as the sole member of Plaintiff, provided the information in his affidavit based on the records kept in the ordinary course of business by CresCom Bank, and the records he thereafter maintained as the sole member of Plaintiff. *Twelfth RMS Partners, L.P. v National Safe Corp. supra.*

Defendants have not contested the facts contained in either of the affidavits presented by Plaintiff. Instead, they assert the affidavits are not sufficient because the affiants were not involved in the creation of the documents and records. Defendants are incorrect. The facts contained in the affidavits are based on facts and information kept in the ordinary course of business by Plaintiff and its predecessor and are therefore sufficient to support Plaintiff's Motion pursuant to Rule 803(6), SCRE.

Defendants assert that in paragraph 17 of their Answer to the Complaint, they denied the amount claimed to be due in the Complaint. The Answer states: "They [the Defendants] lack knowledge or information sufficient to truthfully admit or deny the allegations of paragraph 25, therefore deny the same and demand strict proof thereof." *Answer*, June 17, 2011, at ¶ 17. Rule 56(e), SCRCPP, is clear. If the Motion for Summary Judgment is supported by affidavits, the party opposing the Motion may not rely on their pleadings, but they must respond by affidavit or other

testimony with specific facts evincing a genuine issue for trial. Defendants filed nothing to meet their burden.

AMOUNT DUE

On or about January 8, 2008, Atlantic Private Equity Group executed a Promissory Note in the amount of Two Million Dollars (\$2,000,000.00). Thereafter, Defendants each executed and delivered to the lender a Guaranty, which set forth that the Guarantor would be liable to the lender for a principal amount not to exceed \$350,000.00, plus interest and costs, to include attorneys' fees. Defendants argue that, despite the fact each of them executed a separate Guaranty, Defendants should be entitled jointly to a single exposure limit of \$350,000.00, rather than each being individually liable. Each Defendant executed a separate Guaranty. Each Guarantor agreed to a potential liability amount of \$350,000.00, plus interest, costs and attorneys' fees. Defendants point to the language of paragraph 13 of the respective Guaranties to support their contention that the two (2) Guaranties should be deemed one. Said Paragraph clearly sets forth that, if more than one person executed the same Guaranty document, each signer would be liable for the amount stated in that specific Guaranty. In the present case, each of the Defendants executed a separate Guaranty, and each Guaranty limited its respective executor to a liability limit of \$350,000.00, plus interest and costs, to include attorneys' fees.

For the reasons set forth, the Motion of Defendants for Reconsideration is denied.

AND IT IS SO ORDERED.

Marvin H. Dukes, III
Master-in-Equity for Beaufort County

Beaufort, SC

Dated: _____, 2017



Beaufort Common Pleas

Case Caption: Deep Keel LLC , plaintiff, et al VS Atlantic Private Equity Group Llc
, defendant, et al

Case Number: 2011CP0701933

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2017-01-12 14:12:19 page 5 of 5

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOR THE FOURTEENTH JUDICIAL CIRCUIT

DEEP KEEL, LLC,) CIVIL ACTION NO. 2011-CP-07-01933
Plaintiff,)
vs.)
ATLANTIC PRIVATE EQUITY GROUP,)
LLC, TERRY L. ROHLFING, JERRY T.)
CALDWELL, and BLUFFTON VILLAGE)
TOWN CENTER PROPERTY OWNERS')
ASSOCIATION, INC.,)
Defendants.)

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JEROME A. ROBERTSON
CLERK OF COURT

ORDER

This matter is before the Court on Plaintiff Deep Keep, LLC Motion for Summary Judgment. For the reasons stated herein, the Plaintiff's Motion for Summary Judgment is granted.

SUMMARY JUDGMENT STANDARD AND OTHER APPLICABLE LAW

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct.App.2004). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct.App.2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the

light most favorable to the nonmoving party. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct.App.2005).

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rule 56, SCRCP; *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct.App.2003). Rather, the nonmoving party must respond, by affidavits or otherwise, with specific facts showing there is a genuine issue for trial. Rule 56, SCRCP; *Rife*, 363 S.C. at 214, 609 S.E.2d at 568. If the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against him. Rule 56, SCRCP.

“In an action with respect to an instrument, *the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings.*” S.C. Code Ann. § 36-3-308(a) (1976, as amended) (emphasis added).¹ If the authenticity of the signatures is proven pursuant to S.C. Code Ann. § 36-3-308(a), a plaintiff producing the instrument is entitled to payment as the holder of the instrument. S.C. Code Ann. § 36-3-308(b) (1976, as amended).

FINDINGS OF FACT

After reviewing the pleadings of the parties, the motion for summary judgment and affidavits filed by the Plaintiff (the Defendants did not file any opposition to Plaintiff's motion

¹Rule 7(a) of the South Carolina Rules of Civil Procedure discusses the pleadings allowed: “There shall be a complaint and an answer; and a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under Rule 14, and there shall be a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except that the court may order a reply to an answer or a third-party answer; and there may be a reply to affirmative defenses as provided in Rule 8(c).”

by affidavit or otherwise), and hearing the arguments of counsel for the parties, I make the following findings of fact.

On July 6, 2016, Deep Keel, LLC moved for Summary Judgment, which Motion was heard on August 3, 2016. Prior to the hearing, Plaintiff filed and served a memorandum and affidavits in support of its Motion for Summary Judgment. Plaintiff submitted an affidavit of Jamin M. Hujik, the Executive Vice President of CresCom Bank², with sufficient competency, authority and personal knowledge to testify as to the authenticity of the loan documents as well as the amounts due and owing on the loan as of the date of the Assignment of Debt and Lien to Plaintiff based on the official records of CresCom Bank. Plaintiff also submitted an affidavit of Scott Bynum, the sole member of Plaintiff Deep Keel, LLC, with sufficient competency, authority and personal knowledge to testify as to the authenticity of the loan documents maintained by Deep Keel, LLC, as well as the amounts due and owing on the loan as of the date of the hearing. Defendants did not present any response to Plaintiff's Motion for Summary Judgment, by affidavit or otherwise, setting forth specific facts showing there is a genuine issue for trial, nor did the Defendants provide anything to contest status of the affiants or the information contained in the affidavits.

Defendants Rohlfig and Caldwell, instead, merely rested on their Answer. Paragraph 28 of Plaintiff's Complaint contains the allegation, "[o]n or about March 27, 2008, Defendants Terry L. Rohlfig and Jerry T. Caldwell each executed and delivered to the Bank a Guaranty...whereby each guaranteed, jointly and severally, the payment and performance of each

²CresCom Bank f/k/a Community FirstBank was the original Plaintiff to the captioned matter, and was the original holder of the loan documents issued by Defendants, Atlantic Private Equity Group, LLC, Terry L. Rohlfig and Jerry T. Caldwell, until the September 28, 2012 Assignment of Debt and Lien to Deep Keel, LLC.

and every debt, liability and obligation of every type and description which Atlantic Private Equity Group, LLC owed Plaintiff up to a principal amount of \$350,000.00." Paragraph 20 of Defendants' Answer provides, "[Rohlfing and Caldwell] admit only that various forms were executed in connection with the subject loan, crave reference to the original loan documents and deny any allegations of this paragraph inconsistent therewith." At no point in their responsive pleadings did Defendants Rohlfing and Caldwell specifically deny executing the Guaranties or challenge the authenticity of the Guaranties, therefore, the Guaranties are deemed authentic and authorized pursuant to S.C. Code Ann. §36-3-308(a) (1976, as amended).

On or about March 27, 2008, Defendant Atlantic Private Equity Group, LLC (hereinafter "Atlantic") issued to Community FirstBank n/k/a CresCom Bank (the "Bank") a promissory note (the "Note"), establishing a revolving line of credit in the principal amount of \$2,000,000.00 with an initial variable interest rate of 6.50% and a maturity date of March 25, 2009. The Note provided, in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 3.00% per annum until paid in full.

On or about March 27, 2008, to better secure payment of the Note, Atlantic executed and delivered a mortgage (the "Mortgage") to the Bank, granting a security interest in two properties in Beaufort County, South Carolina, which was recorded on March 28, 2008 in Book 02701 at Page 0632 in the Beaufort County ROD Office.

On or about March 27, 2008, Defendants Terry L. Rohlfing and Jerry T. Caldwell each individually executed and delivered to the Bank Guaranties, jointly and severally guaranteeing the payment and performance of each and every debt, liability and obligation of every type under the Note and any extensions, renewals or modifications thereto. The Guaranties made Terry L.

Rohlfing and Jerry T. Caldwell each individually liable for a limited principal amount of \$350,000.00 plus accrued interest thereon and all attorney's fees, collection costs and enforcement expenses.

On or about April 23, 2009, the Bank and Atlantic entered into a Loan Modification Agreement (the "1st Modification") wherein Atlantic acknowledged it was indebted to the Bank in the sum of \$1,550,000.00. The 1st Modification changed the initial interest rate to 5.50%, the variable rate to remain the same at 0.50% over the Bank's Prime rate, the principal due on April 16, 2010, and provided, in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 5.00% per annum until paid in full.

On or about May 24, 2010, the Bank and Atlantic entered into a Loan Modification Agreement (the "2nd Modification"), wherein Atlantic acknowledged it was indebted to the Bank in the sum of \$2,000,000.00. The 2nd Modification changed the initial interest rate to 6.00%, the variable rate to remain the same at 0.50% over the Bank's Prime rate, the principal due on June 9, 2015, and provided, in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 5.00% per annum until paid in full.

After Atlantic failed to perform its obligations under the Note and Loan Modification Agreements, the Bank made demands to Defendants Terry L. Rohlfing and Jerry T. Caldwell for payment in accord with their obligations under the Guaranties. Defendants Terry L. Rohlfing and Jerry T. Caldwell failed and/or refused to honor their obligations under the Guaranties. On April 25, 2011, the Bank commenced the captioned action for foreclosure of the Mortgage with deficiency demanded and Breach of the Guaranties.

On or about August 30, 2012, the Bank executed and delivered to Atlantic a Partial Release of Mortgage and Assignment of Leases, Rents and Profits ("Partial Release") for the property labeled as "Parcel 2" in the Mortgage. The Partial Release was recorded on September 24, 2012 in the Beaufort County ROD Office in Book 3176 at Page 2243. The Partial Release resulted from the sale of Parcel 2, and Atlantic was credited with net proceeds from the sale in the amount of \$540,375.61.

On or about September 28, 2012, the Bank executed and delivered to Plaintiff an Assignment of Debt and Lien (the "Assignment") of the remaining property, labeled as "Parcel 1" in the Mortgage (the "Property"), which includes the Note, Mortgage, Guaranties and additional loan documents. The Assignment was recorded on October 9, 2012 in the Beaufort County ROD Office in Book 3181 at Page 257.

On or about April 15, 2013, the presiding Judge for the Court of Common Pleas for the Fourteenth Judicial Circuit, Beaufort County, issued an Order substituting Plaintiff for the Bank in this matter. On or about April 15, 2013, the captioned matter was referred to me as the Master in Equity for Beaufort County, South Carolina to direct entry of final judgment on the foreclosure action. At no point during the foreclosure proceedings did Defendants Atlantic Private Equity Group, LLC, Terry L. Rohlifing or Jerry T. Caldwell deny or contest the authenticity of any of the loan documents, thus, the loan documents were admitted.

I issued a Master's Report and Judgment of Foreclosure and Sale on July 18, 2013, and an Amended Master's Report and Judgment of Foreclosure and Sale on August 27, 2013, ordering the sale of the Property. Pursuant to my Amended Master's Report and Judgment of Foreclosure and Sale, the amount due and owing on the Note and Mortgage, with interest at the

rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage was \$1,655,025.52 with per diem interest of \$468.1395. On or about September 3, 2013, a public auction of the Property was held, where Plaintiff was the high bidder with a bid of \$900,000.00, and remained the successful bidder on October 3, 2013 after the thirty (30) day deficiency period.

I issued a Release and Cancellation of Mortgage by Foreclosure on November 14, 2013 and an Amended Release and Cancellation of Mortgage by Foreclosure on August 12, 2014, releasing and cancelling the Mortgage pursuant to the above-referenced foreclosure sale. On or about November 5, 2013, I executed and delivered a Master's Deed to the Property to Plaintiff, which was filed in the Beaufort County ROD Office on November 14, 2013 in Book 03286 at Page 1649. There was due on the Note as of August 3, 2016, the principal sum of \$794,818.39, together with interest in the amount of \$247,232.59 at the rate of 11.00% *per annum* and \$242.8612 *per diem* from October 4, 2013. Pursuant to the terms of the Note and the respective Guaranties, Defendants were also liable for all costs of collection, including attorneys' fees to be shown in the affidavit of attorneys' fees filed subsequently hereto.

On or about October 10, 2013, Defendants served their Notice of Appeal of the Amended Master's Report and Judgment of Foreclosure and Sale, Appellate Case No. 2013-002281. On appeal, the Defendants challenged my admission of evidence on authentication and hearsay grounds. The Court of Appeals affirmed the judgment of foreclosure, finding the loan documents upon which the judgment was based were properly admitted into evidence. The Court of Appeals, however, reversed the deficiency judgment, finding the testimony of the amount remaining due on the Note was hearsay, and vacated my finding that Rohlfing and

Caldwell were liable on the Guaranties because that finding was outside the scope of the order for reference. The matter was remanded for further proceedings and disposition of the remaining issues.

The affidavits filed in support of the Motion for Summary Judgment contain the amounts due Plaintiff as of the dates stated therein, including as of the date of the hearing on the Motion. The amounts as stated have not been contested.

CONCLUSION OF LAW

For the reasons stated above, there is no genuine issue as to any material fact, and Plaintiff is entitled to judgment as a matter of law. The Guaranties of Defendants Rohlring and Caldwell are valid and binding contracts. Defendants Rohlring and Caldwell have breached said Guaranties and, as a direct and proximate result of said breaches, Plaintiff suffered damages. This Court has considered the calculations and, pursuant to the Guaranties and other loan documents, finds a principal amount of \$794,818.39 due and owing, with Defendants Rohlring and Caldwell each individually liable for a limited amount of \$350,000.00 of that principal. Additionally, Defendants Rohlring and Caldwell are each individually liable for the accrued interest thereon at 11% *per annum*, for a total interest amount of \$107,314.17. Interest continues to accrue at a rate of \$105.4167 *per diem*. Defendants Rohlring and Caldwell are also jointly and severally liable for all costs and expenses in the amount of \$2,757.34, and all attorney's fees in the amount of \$35,112.00.

Accordingly, it is hereby **ORDERED, ADJUDGED, and DECREED,**

1. Deep Keel, LLC's Motion for Summary Judgment as to Defendants Terry L. Rohlring and Jerry T. Caldwell is **GRANTED**;

2. Defendant Terry L. Rohlfing is individually liable to Plaintiff for limited principal and interest in the amount of \$457,314.17;
3. Defendant Jerry T. Caldwell is individually liable to Plaintiff for limited principal and interest in the amount of \$457,314.17; and
4. Defendants Terry L. Rohlfing and Jerry T. Caldwell are jointly and severally liable to Plaintiff for all expenses, costs and attorney's fees in the amount of \$37,869.34.

IT IS SO ORDERED!



Marvin H. Dukes, III
Master-in-Equity for Beaufort County

Beaufort County, South Carolina
8/28, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

COMMUNITY FIRST BANK,)
Plaintiff,)

CIVIL ACTION NO.: 2011-CP-⁰⁷~~26~~ 1933

vs.)

ATLANTIC PRIVATE EQUITY)
GROUP, LLC, TERRY L.)
ROHLFING, JERRY T.)
CALDWELL and BLUFFTON)
VILLAGE TOWN CENTER)
PROPERTY OWNERS')
ASSOCIATION, INC.,)
Defendants.)

2011 APR 25 PM 2:42
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

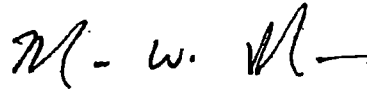
SUMMONS AND NOTICE

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or to otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscribers at their office, 575 King Street, Suite A Charleston, South Carolina, 29403 or Post Office Box 265, Charleston, South Carolina, 29402, within thirty (30) days after service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that pursuant to Rule 53(b) SCRCF as amended effective September 1, 2002, the Plaintiff will move for a general Order of Reference to the Master in Equity for Beaufort County, which Order shall, pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity is authorized and empowered to enter a final judgment in this action. If there are counterclaims requiring a jury trial, any party may file a demand under Rule 38, SCRCF and the case will be returned to the Circuit Court.

ALTMAN & COKER, LLC



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Attorney for the Plaintiff

April 22, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

COMMUNITY FIRSTBANK,)
Plaintiff,)

CIVIL ACTION NO.: 2011-CP-~~26~~ ⁰⁷ 1933

vs.)

ATLANTIC PRIVATE EQUITY)
GROUP, LLC, TERRY L.)
ROHLFING, JERRY T.)
CALDWELL and BLUFFTON)
VILLAGE TOWN CENTER)
PROPERTY OWNERS')
ASSOCIATION, INC.,)

Defendants.)

2011 APR 25 PM 2:42
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

COMPLAINT
(Mortgage Foreclosure - Deficiency Demanded)

Plaintiff, Community FirstBank (hereinafter "Plaintiff" or "Bank"), by and through undersigned counsel, complaining of the Defendants Atlantic Private Equity, LLC, Terry L. Rohlfing, and Jerry T. Caldwell, alleges the following:

PARTIES AND JURISDICTION

1. Plaintiff is a corporation organized and existing under the laws of the State of South Carolina and conducts business in Beaufort County.
2. Plaintiff is the owner and holder of the Note and Mortgage covering real property, which is the subject of the foreclosure action herein, located in the County of Beaufort, State of South Carolina.

3. Defendant Atlantic Private Equity, LLC is a limited liability organized and existing under the law of the State of South Carolina with its principal place of business in Beaufort County.

4. Upon information and belief, Defendants Terry L. Rohlfing and Jerry T. Caldwell are citizens and residents of Beaufort County and are not in the military service of the United States of America pursuant to the provisions of the 'Soldiers' and Sailors' Civil Relief Act of 1940, as Amended.

5. Defendant Bluffton Village Town Center Property Owners' Association, Inc. is a corporation organized and existing under the laws of the State of South Carolina and may claim an interest in the property that is the subject of the above-captioned foreclosure action by virtue of any liens or assessments recorded or unrecorded that are due or that may become due in the future.

6. The loan that is the subject of this action is not secured by the Defendant's principal residence, as contemplated under the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program (HMP) or the United States Treasury Directive 09-01.

7. The loan that is the subject of this action is not owned or guaranteed by the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac") or held by a servicer who has signed an agreement to participate in the HMP.

8. Upon information and belief, the loan that is the subject of this action is not subject to the stay imposed by the May 22, 2009 Administrative Order of the South Carolina Supreme Court.

9. Venue in this Court is proper pursuant to S.C. Code Ann. § 15-7-30 (1976, as amended).

10. Jurisdiction is proper pursuant to the Constitution of the State of South Carolina and the South Carolina Code of Laws.

**AS AND FOR A FIRST CAUSE OF ACTION AS TO SEACAM, LLC
(Mortgage Foreclosure - Deficiency Demanded)**

Plaintiff reasserts and realleges the previous allegations of this Complaint as fully and completely as if set forth herein verbatim.

11. On or about January 8, 2008, for value received, Defendant Atlantic Private Equity Group, LLC, by and through its managing member New Colony Holdings Corporation, by and through its President Terry L. Rohlfing, executed and delivered to Community FirstBank Note #0145003387 (the "Note") in the sum of \$2,000,000.00, together with the interest thereon at a variable rate, with the initial rate being 6.50% and the principal due on March 27, 2008. The Note provided that in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 3.00% per annum until paid in full.

12. To better secure the payment of the said Note and debt, including all extensions, renewals, modifications or substitutions, in accordance with the terms and conditions thereof, Atlantic Private Equity Group, LLC, by and through its managing member New Colony Holdings Corporation, by and through its President Terry L. Rohlfing, executed and delivered on March 27, 2008 to the Bank, its successors and assigns, a mortgage (the "Mortgage"), covering the following described property:

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

This being the same property conveyed to Atlantic Private Equity Group, LLC by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

AND

ALL that certain piece, parcel or lot, of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase I Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Yormg, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

The property intended to be mortgaged herein is the same property conveyed to Atlantic Private Equity Group, LLC by Deed recorded in Book 2559 at Page 376, Beaufort County Records.

13. Thereafter, the Mortgage was recorded in the Register of Deeds Office for Beaufort County in Book 2701 at Page 632 on March 28, 2008.

14. The above-referenced instrument constitutes a first mortgage on the described property.

15. Pursuant to the terms of the Mortgage, any sums paid by the Plaintiff for inspecting and securing the subject property, for fire and other hazard insurance, taxes and assessments for the mortgaged premises, and any costs of collection, including a reasonable attorney's fee, is secured by the Mortgage.

16. Additionally, in order to better secure its obligation to Plaintiff, on March 27, 2008, Defendant Atlantic Private Equity Group, LLC, by and through its managing member New Colony Holdings Corporation, by and through its President Terry L. Rohlfsing executed an Assignment of Leases and Rents whereby it assigned all Leases, rents, issues and profits to Plaintiff. The

Assignment of Leases and Rents was recorded in the Office of the Register of Deeds for Beaufort County on March 28, 2008 in Book 2701 at page 641.

17. According to the terms of said Mortgage, from and after any default thereunder, and should legal proceedings be instituted pursuant to said Mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses for attending such proceedings, and the execution of his/her trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said Seacam Mortgage.

18. On or about April 23, 2009, Plaintiff and Defendant Atlantic Private Equity Group, LLC, entered into a Loan Modification Agreement (the "1st Modification"), which was a Modification of the Note referenced in Paragraph 11, wherein Atlantic Private Equity Group, LLC acknowledged it was indebted to Plaintiff in the sum of \$1,550,000.00. The 1st Modification changed the interest rate to a variable rate of Community FirstBank prime plus .50%, with the principal due on April 16, 2010. The 1st Modification provided that in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 5.00% per annum until paid in full.

19. On or about May 24, 2010, Plaintiff and Defendant Atlantic Private Equity Group, LLC, entered into a Loan Modification Agreement (the "2nd Modification"), which was a Modification of the Note referenced in Paragraph 11, wherein Atlantic Private Equity Group, LLC acknowledged it was indebted to Plaintiff in the sum of \$2,000,000.00. The 1st Modification changed the interest rate to a variable rate of Community FirstBank prime plus 1.50%, with the principal due on June 9, 2015. The 2nd Modification provided that in the event of default under any

of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 5.00% per annum until paid in full.

20. Pursuant to the terms of the Note if Atlantic Private Equity Group, LLC did not pay the full amount of any monthly payment on the date it was due, it would be in default.

21. Atlantic Private Equity Group, LLC has failed to make monthly payments for the full amount on the dates due, and therefore is in default.

22. Pursuant to the terms of the Note, upon default the Bank may demand immediate payment of all the full amount of principal that has not been paid and all the interest owed on the account.

23. The Bank has made a demand to Atlantic Private Equity Group, LLC for immediate payment of all amounts due and owing and it has not made payment.

24. Pursuant to the terms of the Note, Atlantic Private Equity Group, LLC agreed that upon default it would pay all costs of collection, including reasonable attorneys' fees.

25. There is due on said Note and Mortgage as of April 15, 2011, the principal sum of \$1,980,734.28, together with interest at the rate of 11.00% per annum from December 9, 2010, late charges and also for the costs and disbursements of this action, including attorney's fees.

26. Pursuant to Section 37-3-105, South Carolina Code of Laws (1976, as Amended), the mortgage lien which is the subject of this action, is not a "consumer loan" for the purposes of the South Carolina Consumer Protection Code. All notices required under applicable law have been given.

27. Plaintiff specifically demands a deficiency judgment against Atlantic Private Equity Group, LLC, pursuant to S.C. Code Ann. Section 29-3-660 (1976) for any deficiency in this action

remaining after sale of the mortgaged premises. *Plaintiff reserves its right to withdraw its demand for deficiency judgment at any time prior to the foreclosure sales herein.*

**AS AND FOR A SECOND CAUSE OF ACTION
(Breach of Guaranty)**

Plaintiff reasserts and realleges the previous allegations of this Complaint as fully and completely as if set forth herein verbatim.

28. On or about March 27, 2008, Defendants Terry L Rohlfig and Jerry T, Caldwell each executed and delivered to the Bank a Guaranty (hereinafter collectively referred to as the "Guaranty") whereby each guaranteed, jointly and severally, the payment and performance of each and every debt, liability and obligation of every type and description which Atlantic Private Equity Group, LLC owed Plaintiff up to a principal amount of \$350,000.00.

29. Plaintiff has demanded Defendants Defendants Terry L Rohlfig and Jerry T, Caldwell fulfill their duties pursuant to the Guaranty and cure the defaults of Atlantic Private Equity Group, LLC.

30. Defendants Terry L Rohlfig and Jerry T, Caldwell have failed and/or refused to honor their obligations under the above-referenced Guaranty and as a result is in breach of the above-referenced Guaranty.

WHEREFORE, having fully set forth its complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and:

1. Appoint a Receiver to collect the rents and manage the property titled in the name of Atlantic Private Equity Group, LLC, in which the Plaintiff holds a first mortgage and an assignment of rents and leases, and to apply the proceeds collected from those rents to pay the reasonable

operating costs of the subject property and to apply the balance to monies due and owing on the first mortgage of the Plaintiff herein.

2. The amount due on the obligation of Atlantic Private Equity Group, LLC and the Guarantors held by Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action; and

3. Plaintiff have immediate judgment against Defendants Atlantic Private Equity Group, LLC, Terry L Rohlfig and Jerry T, Caldwell , jointly and severally, in the amount found to be due; and

4. Plaintiff's Mortgage be declared a first lien on the subject property superior to all other liens or encumbrances other than unpaid real property taxes; and

5. Granting an Order of Foreclosure on the Mortgage, foreclosing and extinguishing all liens and encumbrances subordinate to that of Plaintiff, requiring the sale of the property subject to the Mortgage, barring the equity of redemption of Defendant Atlantic Private Equity Group, LLC or of anyone else claiming by, through or under Defendant Atlantic Private Equity Group, LLC , or claiming a lien or encumbrance against the property subject to the Mortgage subordinate to that of Plaintiff; and

6. Ordering a foreclosure sale of the property subject to the Mortgage, and a transfer of the property that is subject to the Mortgage after such sale to the purchaser by proper deed, free and clear of any and all liens or encumbrances.

7. The proceeds of the sales be applied as follows:

First, to the costs and expenses of the within action and sale.

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid, and

Third, the surplus, if any, be distributed according to law.

8. An Order be entered directing and empowering the Sheriff of Beaufort County, to place the successful purchasers at said foreclosure sales in possession of the property hereinabove described should the same become necessary.

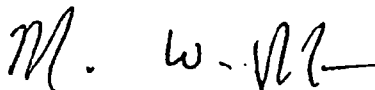
9. An Order be entered for the ejectment of the Defendants in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by the Plaintiff or its agents from the subject properties by placing said personal property on the public street or highway or by any other means.

10. An Order be entered granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed with authority to take possession thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt.

11. An Order be entered for reimbursement of all costs for inspecting and securing the properties incurred by the Plaintiff as a result of the delinquency.

12. For such other and further relief as the Court may deem just and proper.

ALTMAN & COKER, LLC



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843-853-9838 Facsimile
Attorneys for the Plaintiff

April 21, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

COMMUNITY FIRST BANK,)

Plaintiff,

vs.

ATLANTIC PRIVATE EQUITY
GROUP, LLC, TERRY L.
ROHLFING, JERRY T.
CALDWELL AND BLUFFTON
VILLAGE TOWN CENTER
PROPERTY OWNERS'
ASSOCIATION, INC.

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-07-1933

DEFENDANTS ATLANTIC PRIVATE
EQUITY GROUP, LLC, TERRY L.
ROHLFING AND JERRY T. CALDWELL'S
ANSWER TO PLAINTIFF'S COMPLAINT

(JURY TRIAL DEMANDED)

Defendants, Atlantic Private Equity Group, LLC, Terry L. Rohlfig, and Jerry T. Caldwell, answering the Complaint of the Plaintiff herein, would respectfully allege and show as follows:

1. Each and every allegation of Plaintiff's Complaint which is not hereinafter specifically admitted is denied and strict proof demanded thereof.
2. They admit, upon information and belief, the allegations of Paragraph 1.
3. They admit so much of Paragraph 2 as alleges the described real property is located in Beaufort County. As to the remainder, they lack knowledge or information sufficient to truthfully admit or deny, therefore they deny the same and demand strict proof thereof.
4. They admit the allegations of Paragraph 3.
5. They admit the allegations of Paragraph 4 except that Defendant Caldwell currently resides in Ohio.
6. They admit the allegations of Paragraphs 5 and 6, upon information and belief.
7. They lack knowledge or information sufficient to truthfully admit or deny the

allegations of Paragraph 7, therefore they deny the same and demand strict proof thereof.

8. The allegations of Paragraphs 8, 9, and 10 constitute conclusions of law to which they make no response. To the extent these paragraphs include any allegations of fact, the same are denied.

AS TO THE FIRST CAUSE OF ACTION

9. Answering the allegations of Paragraphs 11 and 12, they admit only that Plaintiff made a loan to Defendant Atlantic Private Equity Group, LLC that was secured by a mortgage on real property owned by it. They crave reference to the original loan documents and deny any allegations of these paragraphs inconsistent therewith.

10. They lack knowledge or information sufficient to truthfully admit or deny the allegations of Paragraph 13, therefore they deny the same and demand strict proof thereof.

11. The allegations of Paragraph 14 constitute conclusions of law to which they make no response. To the extent these paragraphs include any allegations of fact, the same are denied.

12. Answering the allegations of Paragraphs 15, 16, 17, 18, 19, and 20, they crave reference to the original loan documents and deny any allegations inconsistent therewith.

13. Answering the allegations of Paragraph 21, they admit only that not all monthly payments have been timely made. The remaining allegations of this paragraph constitute legal conclusions to which they make no response but refer to the defenses asserted herein.

14. Answering the allegations of Paragraph 22, they crave reference to the original loan documents and deny any allegations inconsistent therewith.

15. They admit the allegations of Paragraph 23.

16. Answering the allegations of Paragraph 24, they crave reference to the original loan documents and deny any allegations inconsistent therewith.

17. They lack knowledge or information sufficient to truthfully admit or deny the

allegations of Paragraph 25, therefore they deny the same and demand strict proof thereof.

18. The allegations of Paragraph 26 constitute conclusions of law to which they make no response. To the extent this paragraph includes any allegations of fact, the same are denied.

19. The allegations of Paragraph 27 require no response.

AS TO THE SECOND CAUSE OF ACTION

20. Answering the allegations of Paragraph 28, they admit only that various forms were executed in connection with the subject loan, crave reference to the original loan documents and deny any allegations of this paragraph inconsistent therewith.

21. Answering the allegations of Paragraphs 29 and 30, they admit only Plaintiff's demand and Defendants' non-payment. The remaining allegations of these paragraphs constitute legal conclusions to which they make no response but refer to the defenses asserted herein.

FOR A SECOND DEFENSE

22. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff has failed to join indispensable parties and/or all real parties in interest.

FOR A THIRD DEFENSE

23. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff is not the true holder and owner of the subject notes and mortgages.

FOR A FOURTH DEFENSE

24. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff has failed to meet conditions precedent to maintaining this action.

FOR A FIFTH DEFENSE

25. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff has failed to mitigate damages and any recovery should be barred or reduced thereby.

FOR A SIXTH DEFENSE

26. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff's claims are barred by waiver and/or estoppel.

FOR A SEVENTH DEFENSE

27. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff's claims are barred by the doctrine of unclean hands.

WHEREFORE, Defendants pray for a jury trial on all issues so triable and that the Complaint be dismissed, with costs.



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ATTORNEYS FOR DEFENDANTS
ATLANTIC PRIVATE EQUITY GROUP,
LLC, TERRY L. ROHLFING, JERRY T.
CALDWELL

Charleston, SC
June 15, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2011-CP-07-01933
	)	
DEEP KEEL, LLC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	HEARING
	)	
ATLANTIC PRIVATE EQUITY	)	MOTION FOR
GROUP, LLC, TERRY L.	)	SUMMARY JUDGEMENT
ROHLFING, JERRY T.	)	
CALDWELL, AND BLUFFTON	)	
VILLAGE TOWN CENTER	)	
PROPERTY OWNERS'	)	
ASSOCIATION, INC.,	)	
	)	
Defendants.	)	
-----	)	

Given before Sabre Bridgers, Court Reporter and
Notary Public, in the Beaufort County Courthouse, 102
Ribaut Road, Beaufort, South Carolina on Wednesday,
August 3, 2016 commencing at 2:30 o'clock p.m.

1 APPEARANCES

2 FOR PLAINTIFFS

3 Altman & Coker, LLC
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12 ALSO PRESENT: Jordan Miller
 13 Scott Bynum

14
 15
 16

17 INDEX TO EXAMINATIONS

18 Opening Statement by Mr. Altman 3
 19 Opening Statement by Mr. Simons 6

20 INDEX TO EXHIBITS

21 Defendant's Exhibits Marked For Identification:

22 1. Defendants Answers to Plaintiff's First
 Set of Requests For Admission (3pgs) 8

23 2. Plaintiff's First Set of Requests
 24 For Admission (4pgs) 8

25 (ALL ORIGINAL EXHIBITS RETAINED BY CLERK OF COURT)

1 THE COURT: Okay. Good afternoon.
2 We're here in 11-CP-07-1933. This is Deep
3 Keel versus Atlantic Private Equity Group,
4 LLC, et al. This is Plaintiff's Motion for
5 Summary Judgement, I'm happy to hear from
6 you, sir.

7 MR. ALTMAN: Your, Honor. Where we are
8 at this point, this really deals the
9 guarantees of Mr. Rohlfing and Mr. Caldwell.
10 The underlying foreclosure case has been
11 completed; the property has been sold several
12 years ago. What we have is, a loan was made
13 by with at the time was Community First Bank
14 that was sold to Deep Keel, LLC. Deep Keel,
15 LLC, the sole member is Mr. Scott Bynum, who
16 is present today. When the loan was made by
17 Community First Bank, and Community First
18 Bank is now Crescom Bank, the loans were
19 guaranteed with limit guarantees by Mr.
20 Rohlfing and Mr. Caldwell. The limitation
21 was \$350,000.00 of principal each. The
22 Answer that was filed by the Defendants
23 simply state that the documents speak for
24 themselves. There's no specific denial of
25 the execution of the guarantees. And the law

1 is very clear, and I am looking at South
2 Carolina Code Section 363308A. In a action
3 with respect to an instrument the
4 authenticity of and the authority to make
5 each signature on the instrument is admitted
6 unless specifically denied in the pleadings
7 and that does not happen in the pleadings.
8 And the affidavits that you have, both have
9 copies of the guarantees attached. I have
10 the original documents with me if the Court
11 wishes to see those. In Request for
12 Admission when asked if the attached
13 documents were copies of the guarantees
14 signed by Mr. Rohlfing and Mr. Caldwell the
15 answer was "denied subject to reviewing the
16 original documents". We, of course, made
17 those available to Mr. Simons and they were
18 here when we were in court several years ago
19 on the foreclosure part of this case. And he
20 had the opportunity to see them then and
21 they've been in my office ever since
22 available for him to review. So there has
23 been no denial of the guarantees. In the
24 review of the affidavits of Mr. Hujik (that's
25 H-U-J-I-K) and Mr. Bynum it sets forth the

1 amounts that were due at the time of the sale
2 of the loan to Deep Keel. And it sets forth
3 the balance that would be due now after the
4 sale, the foreclosure sale with the credit
5 being given for the proceeds from that sale
6 or was in fact a credit bid because Deep Keel
7 purchased the property at that time. We have
8 had no affidavits to contest any of the
9 statements made in those affidavits. So our
10 position is they would be deemed admitted.
11 There's been no attempt to take depositions
12 to find out if the amounts were accurate.
13 And our position is that we have met our
14 burden of proof that the amounts that we show
15 are the full amount that we show, and the
16 only thing that would be, that is accurate
17 and the only question that would be left is
18 how to calculate the amount which based on
19 the guarantees, which again \$350,000.00 in
20 principal plus interest and cost that would
21 be attributable to that. And I do have some
22 calculations I can discuss on that, that are
23 not reflected in the affidavits, but that
24 would show what would be due. So, our
25 position is that there is no basis for

1 denying the summary judgement in this matter.

2 THE COURT: And the guarantee is limited
3 to a cap of 350.

4 MR. ALTMAN: 350 principal, yes.

5 THE COURT: Principal. So 350 plus
6 interest plus fees or?

7 MR. ALTMAN: Fees and costs.

8 THE COURT: So, the interest would be on
9 350 then; right? Or not? That you would
10 seek?

11 MR. ALTMAN: Yeah. You can calculate it
12 in several different ways, but that would be
13 when you look at the 350 of on the or the
14 interest on the 350. And there could be
15 some, you know, division on costs. But I
16 think the way the guarantees read they would
17 each be responsible for the full cost.

18 THE COURT: Okay. Anything else?

19 MR. ALTMAN: That's it at this point,
20 Your Honor.

21 THE COURT: All right. Thank you so
22 much. Happy to hear from you, sir.

23 MR. SIMONS: Thank you, sir. You may
24 remember -- well, I know you remember, you
25 mentioned it off the record that this case

1 has already been to the Court of Appeals
2 once. At the Foreclosure Hearing you
3 determined that the loan was made, that the
4 mortgage was valid. You made a determination
5 of the amount of the debt. You ordered the
6 sale of the property. We appealed on two
7 points. The question of the amount of the
8 debt and also the fact that your foreclosure
9 judgement made a finding to the effect that
10 Masters Caldwell and Rohlfing had signed the
11 guarantees. The Court of Appeals ruled that
12 the latter issue was not properly before you
13 because of the limitations in the Order of
14 Reference. And so, they vacated the finding
15 with respect to the alleged execution of the
16 guarantees by the individuals involved and
17 remanded for further proceedings. On the
18 subject of the amount of the debt, you
19 reached your conclusion based on evidence
20 presented by Mr. Bynum as to -- he calculated
21 the amount of the debt due as of the time of
22 the foreclosure hearing, but that in turn was
23 dependent upon the amount of the debt
24 allegedly due at the time he bought the loan
25 from the bank. And I objected on the grounds

1 that that was hearsay and you overruled me,
2 and the Court of Appeals agreed with me and
3 reversed on the question of the amount of the
4 debt. And so, where we are today is, can the
5 Plaintiff prove the amount of the debt and
6 can they establish the liability of Masters
7 Caldwell and Rohlfing on the guarantees.
8 Now, when Mr. Altman began his remarks he
9 said something to the affect of \$350,000.00
10 each. As I read the guarantees and based
11 upon the pleadings in the case and everything
12 else that has come from the Plaintiffs until
13 those words a little while ago from Mr.
14 Altman, it was joint and several liability
15 for \$350,000.00. So, I don't see \$350,000.00
16 each for a total of 700. I see 350 joint and
17 several. I don't think we'll reach that
18 issue, but I point it out because I just made
19 notes in the order of Mr. Altman's comments.
20 Next, he referred to Requests to Admit and
21 our Responses, and I'd ask the court reporter
22 to mark the Plaintiffs' Request and our
23 Responses as Defendant's Exhibits One and
24 Two.
25 (Whereupon, Defendant's Exhibits No. 1 and

1 No. 2 were marked for identification.)

2 MR. SIMONS: And it looks like the
3 Requests have been marked as Exhibit Two and
4 the Responses have been marked as Exhibit
5 One. I just would ask that they be included
6 in the record and they show as Mr. Altman
7 pointed out that we were asked to admit that
8 we executed the guarantees and we denied
9 pending presentation and examination of the
10 originals. He is correct that the originals
11 were here in the courtroom at the time of the
12 foreclosure hearing. There's no way for me
13 as a lawyer to attest to the genuineness of
14 my clients' signature. My clients have still
15 not been presented with nor had the
16 opportunity to examine the original
17 documents. He could have taken a deposition
18 of them and presented them to them but he did
19 not. He asked us to admit them in Request to
20 Admit and we did not. He asked us to admit
21 them in the pleadings and we did not. The
22 Court of Appeals did refer in its opinion in
23 this case to the obligation on the part of
24 the Defendant to specifically deny to the
25 signature if they intended to put it in

1 issue. The purpose of that of course being
2 to provide notice to the Plaintiff that it is
3 in fact an issue. My argument is that the
4 combined effect of the denial in the
5 pleadings and the denial in the Responses to
6 the Request to Admit suffices to put the
7 Plaintiff on notice that they need to prove
8 the signatures. I may be wrong on that. The
9 Court of Appeals may tell me I'm wrong, but
10 that's my argument. So I still think that
11 they need to prove the documents. I would
12 also note that the Court of Appeals held and
13 they arrived at this conclusion in a variety
14 of different ways, but they held that you
15 correctly admitted into evidence the loan
16 documents, the note, the mortgage, some
17 modification agreements, and then there were
18 a couple of other loan documents. And the
19 Court held that you acted within your
20 discretion and properly admitted those
21 documents. And then they noted that the
22 documents were internally consistent. They
23 referred to loan, the amount of the loan, the
24 date of the loan, and Terry Rohlfing signed
25 all of the loan documents. And so, they were

1 self-authenticating in the sense that they
2 formed part of a whole and you could look at
3 the documents and see that and so that it
4 wasn't necessary to require the Plaintiff to
5 come in with a witness who could swear that
6 they saw Rohlfing sign the loan documents.
7 But I would suggest to you that that analysis
8 doesn't apply with respect to the guarantee
9 signed by, allegedly signed by Mr. Caldwell.
10 Just for your -- it's in the motion and in
11 the record somewhere, but just for your
12 convenience I'll hand you the two guarantees.

13 THE COURT: Thank you.

14 MR. SIMONS: And you'll see one is
15 signed by or bears a signature purporting to
16 be that of Mr. Rohlfing. And then the other
17 you can see if you look closely the prepared
18 name for Mr. Caldwell has been x-ed out.
19 Somebody else has typed in his name. And
20 then it appears that Mr. Rohlfing signed Mr.
21 Caldwell's name. So, Mr. Caldwell, in the
22 guarantee says that the undersigned
23 guarantees the obligation et cetera, et
24 cetera. Mr. Caldwell didn't sign that
25 document on it's face. And there's no

1 evidence here of a power of attorney or
2 whatever authority may have been granted by
3 that power of authority. I heard the statute
4 that Mr. Altman referred to earlier in his
5 comments, but I still submit that that is a
6 hole in his case. So, I don't think that
7 document is self-authenticating is part of
8 the loan documents because of the oddities of
9 the signature. Mr. Caldwell's name is not
10 otherwise in the file. There's no evidence
11 of what connection, if any, he had to this
12 property or to Atlantic Private Equity Group,
13 the obligor on the note and mortgage. So, I
14 think there's a serious question as to
15 whether Plaintiff has been able to establish
16 on summary judgement that they're entitled to
17 judgement on that guarantee against Mr.
18 Caldwell. Now, as to the amount due, the
19 evidence of the amount due before you today
20 is in two different affidavits. One of Mr.
21 Bynum and one of Mr. Hujik. Is that the way
22 you say it?

23 MR. ALTMAN: Hujik, yes.

24 MR. SIMONS: Hujik. Those affidavits
25 suffer from the same fatal flaw as did Mr.

1 Bynum's testimony the first go around, that
2 the Court of Appeals ruled was insufficient
3 to establish the amount of the debt. Under
4 Rule 56 affidavits have to show facts that
5 are admissible in evidence. The -- it has to
6 be made to appear that the witness is
7 affirmatively or it has to be affirmatively
8 shown that the witness is competent to offer
9 the testimony. And these affidavits don't
10 meet that standard. Mr. Bynum's, if you look
11 at Mr. Bynum's affidavit, there are four
12 facts in this affidavit of which he has
13 personal knowledge. If you've got a copy of
14 the affidavit in front of you?

15 THE COURT: I do.

16 MR. SIMONS: All right. Item 1, he's
17 the sole member of Deep Keel, LLC. He's
18 certainly qualified and competent to say
19 that. Item 3, he discusses having obtained
20 the assignment from the bank. He certainly
21 has knowledge and is competent to testify to
22 that. Item 8, he testifies he was the high
23 bidder at the public auction. He was
24 certainly competent and has knowledge to
25 testify to that. Item 10, that the documents

1 referenced in this affidavit have been
2 maintained by him as official records. He
3 can certainly say that, yes, by all means,
4 he's kept copies of the documents. There are
5 no other facts in this affidavit that are
6 constituted admissible evidence. The item
7 number 9, in which he says that at the time
8 of the assignment the amount due and owing on
9 the note was -- you can see the figure there
10 a million five. That's again, hearsay. He
11 has no basis for it and the Court of Appeals
12 has already ruled that he doesn't have --
13 he's not competent to offer that testimony or
14 evidence in this proceeding. And therefore
15 the item 11, as of the date of the affidavit,
16 the amount due, which was necessarily based
17 on the previously stated amount, it likewise
18 is incompetent, lacks foundation. So, his
19 affidavit does not establish the amount of
20 the debt. Mr. Hujik's affidavit is, suffers
21 from the same problems. I can go through it,
22 but the bottom line is on the question of the
23 amount all he states is a conclusion as to
24 the amount due. There is -- it's just, it's
25 hearsay as to him. There is no effort in

1 this affidavit to affirmatively establish his
2 competence or knowledge to testify about that
3 matter. There is no foundation whatsoever
4 for the statement of the vice president of
5 the bank to the effect that so and so owed
6 them so much money at a certain date and
7 time. There's a specific case in South
8 Carolina in which it was held that the
9 affiant's status as a vice president was not
10 a substitute for personal knowledge of the
11 matter at issue in that case. And so, that
12 his conclusory affidavit was simply not
13 enough. And so, as I see it in this case
14 with respect to the amount owed Mr. Hujik's
15 affidavit is incompetent and insufficient,
16 lacks foundation, fails to meet the
17 requirements of Rule 56. Furthermore, in the
18 South Carolina National Bank versus Jones
19 case, the bank in a collections action sought
20 to collect credit card debt based upon
21 summaries of debt, not the actual business
22 records pertaining to the transactions and
23 the monthly account statements and so forth.
24 And the Court held that the summaries
25 prepared by the bank were inadequate. And

1 the conclusory statement here in this
2 affidavit is functionally no different from
3 the summaries that the Court -- and I can't
4 remember whether it was the Supreme Court or
5 the Court of Appeals, sorry. But that
6 Appellate Court specifically held that the
7 summaries were insufficient and inadmissible.
8 And so, again, in my judgment the Plaintiffs
9 has failed to prove the amount of the debt
10 due. And I suppose for the record I need to
11 respond to some of the other aspects of the
12 Hujik affidavit. Items 2 and 3, 5, 6, 7, 8,
13 and 11 all relate to loan documents. Now,
14 the loan documents themselves may be
15 admissible on the grounds that the Court of
16 Appeals has previously upheld your ruling
17 admitting same. However in these paragraphs
18 that I mentioned the witness purports to
19 testify without any factual basis, or
20 foundation, or indication of personal
21 knowledge as to the execution and delivery of
22 these document. And so, I object to the
23 consideration of the affidavit to that
24 extent. And item 12, of course, Mr. Hujik
25 testifies that the bank assigned the debt to

1 Deep Keel, LLC. I have no objection to that
2 fact. His name is on the assignment, so it's
3 pretty clear he does have personal knowledge
4 as to that. But otherwise, under the
5 documents itself, the affidavit, there's no
6 indication of personal knowledge of anything
7 on his part other than the fact of item 1
8 that recites his position as Executive Vice
9 President of Crescom Bank, successor by
10 merger to Community First Bank. So, in sum,
11 I don't believe that the affidavits meet the
12 requirement or requirements of Rule 56. I
13 acknowledge that in a summary judgement
14 motion once it's properly supported the
15 burden sort of shifts to the other side to
16 come forward with affidavits, but Rule 56
17 says that burden only is triggered once a
18 motion is made and properly supported in
19 accordance with the rule. And because the
20 affidavits do not comply with the rule, I am
21 under no obligation to provide any
22 affidavits.

23 THE COURT: All right. Thanks. Happy
24 to hear from you.

25 MR. ALTMAN: Your Honor, I think what

1 may be the most interesting thing about this
2 Mr. Keating's argument unsupported be
3 anything other than his argument. There's no
4 affidavits denying the documents, no
5 affidavit denying the guarantee. No
6 statement in the pleadings denying the
7 guarantee. No specific statement is required
8 by the Code Section 363308, which again says
9 "unless specifically denied in the pleadings"
10 that's 363308 Sub A, first sentence. There
11 is no basis for any consideration of anything
12 other than the fact that the execution of the
13 guarantees by Mr. Caldwell and Mr. Rohlfing
14 are genuine documents executed by or on their
15 behalf and I think that's what the Court has
16 to accept. There's no basis for anything
17 other than that. Mr. Simons can argue all he
18 wants to that there's nothing to show that
19 Mr. Caldwell's signature is literally affixed
20 to it with his power of attorney. Closing
21 attorney closed it, it was done like that and
22 there's no denial that Mr. Caldwell is bound
23 by it. No affidavit, and the reason he
24 hasn't given us an affidavit that he isn't
25 bound by it or didn't authorize the execution

1 of it is because candidly I think it would be
2 perjury for him to do so, so we don't have
3 that. Mr. Hujik, Executive Vice President of
4 the bank: "All of the above reference
5 documents relating to the debt of Atlantic
6 Private Equity Group and the attached -- and
7 attached hereto Exhibits A through H were
8 maintained in the official records of the
9 bank until the assignment to Deep Keel, LLC.
10 He is stating that everything that he has
11 said is official, and official records, and
12 the official records of the bank showed that
13 at the time of the assignment 1,586,396.36
14 was due. We don't have anything other than
15 bald argument with unsupported, that says
16 anything other than that was due. Mr. Bynum
17 has taken from that point, he goes through
18 the same documents. He goes through his
19 review of the bank documents and he comes up
20 with the amount that's due. Again, nothing
21 that say that these numbers are inaccurate.
22 They have got to be taken as accurate. They
23 are what is before the Court. At the time
24 immediately after the sale, the amount due
25 was \$794,818.39. No question about that.

1 That's after Your Honor conducted the
2 foreclosure sale, which was on October 3,
3 2013. We then have interest accruing at 11
4 percent for what I calculate it's not on here
5 specifically, but it's 998 days, I believe
6 through this time that it's listed here and
7 it gives a per diem interest. There's
8 nothing here to contradict that. We've got a
9 -- well, I'm not going to get to that, but
10 these are the cost, these are the amounts,
11 and these are what's due. What we're doing
12 is we're trying to cover up something that
13 Mr. Caldwell and Mr. Rohlfing know. And the
14 joint and several means that you owe all of
15 it. You all owe it separately and you owe it
16 together. So, if we, what we want to do is
17 say it's joint and several liability of
18 \$350,000.00 then Mr. Rohlfing not only owes
19 his \$350,000.00 he owes Mr. Caldwell's and
20 vice versa, so they each owe \$700,000.00. But
21 we're saying is they owe \$350,000.00 of
22 principal, plus the interest and cost that
23 would have accrued against that amount. And
24 I believe it's clear and I think a summary
25 judgement is totally appropriate at this

1 point.

2 THE COURT: Okay. And I was looking at,
3 and I want to make sure I'm not dealing with,
4 I don't -- I hadn't seen an amended answer or
5 an amended complaint. I mean, as I look back
6 and of course it's been years, but the
7 pertinent part of the Complaint to today's
8 action is the second cause of action, breach
9 of guarantee, I think.

10 MR. ALTMAN: Correct. Correct.

11 THE COURT: And that's Paragraphs 28
12 where it alleges that Rohlfing and Caldwell
13 executed and delivered, 29 the Plaintiff
14 demanded, and 30 that the Defendants failed
15 and refused. So it's those three paragraphs,
16 28, 29, and 30. With regard to the Answer,
17 that would be Paragraph 20 from the Answer on
18 Page 3 of 4 it admits only that various forms
19 were executed in connection with the subject
20 loan, creditor has referenced the original
21 loan documents, denies any allegations of
22 this paragraph inconsistent therewith.
23 Paragraph 22, Page 3 of 4, second cause of
24 action Defendants' answer admits with regard
25 to 29 and 30 of the Complaint, admits only

1 Plaintiff's demand and Defendants'
2 non-payment. Remaining allegations
3 constitute legal conclusions to which they
4 make no response or further defense as
5 asserted herein. So, that doesn't seem to be
6 the specific denial of execution or anything.
7 It looks sort of general denial like. As a
8 matter of fact, not all of it's even denied
9 with regard to that Answer. Now, Mr. Simons,
10 you're saying in the Request to Admit, that I
11 know you put up here a second ago or you did
12 something with it. I'm looking at the
13 Complaints.

14 MR. SIMONS: I think it's, it's back
15 over here, Judge.

16 THE COURT: Okay.

17 MR. ALTMAN: Your Honor, if I may
18 interrupt for one moment, one thing I forgot
19 to mention.

20 THE COURT: Sure go ahead.

21 MR. ALTMAN: Mr. Simons suggests that
22 the documents were not available for
23 examination and that we didn't try to take
24 his client's deposition. The documents have
25 been available since he asked to see them, or

1 didn't officially ask to see them since he
2 indicated he wanted to see them. There was
3 not attempt to examine them. Number two,
4 with regard to deposition, we sent Mr. Simons
5 a Notice of taking the depositions of both of
6 his clients. They were sent on June 8th.
7 Shortly, a couple of days before that Mr.
8 Simons informed me that his clients weren't
9 going to appear and they didn't. I wasn't
10 surprised by that. They had every
11 opportunity to examine these documents and
12 they have had every opportunity to deny
13 specifically deny in the pleadings. And I
14 think the rules say the pleadings consist of
15 the Complaint and the Answer and not the
16 Request for Admission, not the discovery.
17 They had every opportunity to examine the
18 documents to determine if they weren't
19 properly executed or their signatures didn't
20 appear. They didn't do that. They made no
21 attempt and they said, "you know, if we
22 ignore this maybe it'll go away". So, Your
23 Honor, I just wanted to point out that we did
24 attempt to take their deposition, they
25 refused to appear, and they've had every

1 opportunity to examine the documents. We
2 certainly weren't going to give the documents
3 to Mr. Simons to send to his clients who are
4 now out of state.

5 MR. SIMONS: Well, which is precisely
6 the point. He noticed the depositions in
7 Charleston; Mr. Rohlfing resides in North
8 Carolina, Mr. Caldwell resides in Ohio.
9 They're not obligated to appear for a
10 deposition in Mr. Altman's office at his
11 convenience. I told him they were
12 non-residents who would not voluntarily
13 appear. He could have noticed the
14 depositions in Ohio and in North Carolina; he
15 chose not to take them. The burden is not on
16 us to show up to look at documents to
17 eliminate an element of his case. The burden
18 is on him to present those documents to us to
19 let us examine them. That's what other
20 lawyers have done in similar cases. They
21 take my client's deposition, they put the
22 original in front of them and say, "is this
23 your signature?" And when it is my clients
24 say it is. And for whatever reason Mr.
25 Altman chose not to do that. I was not

1 obligated to bring my clients from Ohio and
2 North Carolina to Charleston.

3 MR. ALTMAN: Your Honor, it was not my
4 obligation because I had self-authenticating
5 documents. They did not deny the documents
6 in the pleadings. And that's not an absolute
7 denial in the Request for Admissions.

8 THE COURT: Well, this is kind of what I
9 was just looking at, it's artfully written.

10 MR. ALTMAN: Yeah.

11 THE COURT: It's denied pending
12 production and examination of the original,
13 and that's a really great way to write it
14 from a defense perspective, I like that. But
15 tell me something though about the Court of
16 Appeals case. To grossly oversimplify the
17 reversal part of it, the testimony that I
18 accepted did not reach back far enough into
19 the previous note holder's record. Is that a
20 more or less accurate oversimplification of a
21 fairly complicated matter?

22 MR. ALTMAN: I think so.

23 THE COURT: What is different about
24 today?

25 MR. ALTMAN: Different today is that we

1 have an affidavit from somebody at the bank
2 who would have knowledge from the official
3 records of the bank to advise the Court, to
4 state to the Court, which he has done in his
5 affidavit, the amount that was due at the
6 time of the assignment. The figures, the
7 amounts that are given in his affidavit are
8 specific. It gives charges for the full
9 principal amount that was due. It talks
10 about the interest that was due. It talks
11 about the credit because of the rent that was
12 in this building, it was a commercial
13 building, it was being sent to the bank based
14 on a demand under the assignment of leases
15 and rents. There were two pieces of property
16 that initially secured the loan. One was
17 sold by agreement. The proceeds from that
18 sale were received by the bank and credited
19 to the amount that was due. And that is all
20 set forth in Mr. Hujik's affidavit. Give me
21 a moment to go back to that. It shows that
22 the principal amount on September 18, 2012
23 was \$1,980,734.28. Credit given for the rent
24 collected was about \$746,600.00. Interest
25 had accrued through June 4, 2012, which was

1 the sale of the first piece of property. The
2 credit for the sale, the interest from then,
3 the date of the sale to the date of the
4 assignment, late charges, fees that were
5 charged show a balance of \$1,586,396.36 at
6 that point in time. That gives you what the
7 Court of Appeals required. That gives you
8 the testimony of someone who was at the bank.
9 And candidly, there's some case law that I
10 think the Court of Appeals overlooked. I'm
11 not going to, you know I don't think we can
12 argue with that right now. But this is what
13 the Court of Appeals said we have to have and
14 this is what you've got. You've got the
15 amount that was due. You then go to the
16 testimony, the affidavit testimony from Mr.
17 Bynum who takes it from that point, shows the
18 interest applications, the costs, the rent
19 applications, you know, the interest that was
20 charged, the credit that was given for the
21 proceeds from the sale. And gives you a
22 balance that was due after the sale and then
23 talks about costs and interest that would
24 accrue after that date. So, I think we have
25 the specifics of what the Court of Appeals

1 has asked for.

2 THE COURT: Any thoughts on that?

3 MR. SIMONS: Yeah, I do, as a matter of
4 fact.

5 THE COURT: Well, I knew you did. I
6 thought I'd just ask.

7 MR. SIMONS: And I foolishly forgot my
8 reading glasses so I may make some errors. I
9 am looking at Rule 56 C, Form of Affidavits:
10 "Supporting and opposing affidavits shall be
11 made on personal knowledge. Shall set forth
12 such facts as would be admissible in
13 evidence. And shall show affirmatively that
14 the affiant is competent to testify to the
15 matters stated therein". We no nothing about
16 Mr. Hujik, other than the fact he is the
17 executive vice president. We don't know how
18 long he's been with the bank. We don't know
19 whether he was with Community First at the
20 time the loan was made, at the time the
21 payments were made, at the time the property,
22 the short sale property was sold. Mr. Altman
23 says that these numbers were based on bank
24 records. It doesn't even say that. It
25 doesn't say anything about the factual basis

1 for where these numbers came from. It is
2 simply a conclusion offered by Mr. Hujik and
3 they purport to say -- not purport to say.
4 Mr. Altman asserts that the fact that this
5 gentleman is with the bank as opposed to with
6 Deep Keel entitles him to get this alleged
7 fact into evidence. And what the Court of
8 Appeals said was that that Mr. Bynum, his
9 testimony that was the amount owed on the
10 date of the assignment, was based on records
11 he had seen at the bank. And the records
12 were not here and were not in evidence and it
13 was purely hearsay. Mr. Hujik is in no
14 different position. Presumably, he is giving
15 us a conclusion based on a study of records,
16 but we don't have the records. We don't even
17 have a description of the records. We no
18 nothing about the methodology by which they
19 were prepared, maintained, updated and so
20 forth. And so, Mr. Hujik's testimony is just
21 as much inadmissible hearsay as that of Mr.
22 Bynum was in the Court of Appeals and is
23 today in the form of his affidavit.

24 MR. ALTMAN: Your Honor, I don't think
25 the affidavit has to provide Mr. Hujik or any

1 other affiant's life history and work history
2 to be acceptable and to provide the
3 information that the Court needs to make a
4 determination, which is what Mr. Simons is
5 suggesting needs to happen. Mr. Hujik's
6 stated that he is an executive vice president
7 of the bank. He's not somebody who got in
8 that position yesterday. But he has, based
9 on his knowledge of the records of the bank
10 provided this affidavit, which states
11 specific information which is what the Court
12 of Appeals required.

13 THE COURT: And I guess what maybe what
14 you're getting at as in a perfect world it
15 would have had a paragraph that said, here's
16 his name, he's executive vice president of
17 Crescom, and in that capacity is familiar
18 with the records hereafter described?

19 MR. SIMONS: I think substantively the
20 affidavit would still be flawed because of
21 the SCN v. Jones case where the bank wants to
22 come in and say we have looked at our
23 records. We've prepared a summary. This is
24 what the debtor owes. The Court said that is
25 not good enough and that's all this is. So,

1 putting in the type of boiler plate that
2 you're suggesting that I'm cynically saying
3 should have been there, which I'm not saying,
4 but that would not solve the problem.

5 THE COURT: What in the Jones, tell me
6 about the Jones case because I apologize for
7 not knowing it. What, was that a summary
8 judgement on a situation like this?

9 MR. SIMONS: I believe it was a summary
10 judgement case. Then they got summary
11 judgement or it may have been affidavits on a
12 default hearing. I honestly don't remember.
13 What was important, was from my point of
14 view, was that the Court said that the
15 summaries were inadequate and that the
16 creditor needed to come in with the monthly
17 statements and which knowledge from somebody
18 about the creation of those records. And
19 remember, the whole thing is about
20 trustworthiness and the ability to make sure
21 that the records were properly maintained,
22 properly kept, and so forth. It isn't just
23 some game. And there is nothing we know from
24 the prior hearing and prior discussions that
25 we had prior examination of Mr. Bynum that

1 rents were collected, property was sold,
2 charges were allegedly posted to the loan,
3 and there's been no accounting of that. And
4 I suggest that the Plaintiff is obligated to
5 provide that accounting and not simply a
6 summary conclusory statement that on such and
7 such on a date X was owed. And under --
8 under Mr. Altman's theory, a bank teller
9 simply by virtue of being an employee of the
10 bank would have just as much standing to make
11 an affidavit as a VP. There'd be no
12 difference between I, Hujik, VP versus I,
13 John Doe, teller and then go on with the
14 affidavit. There's nothing in there to show
15 personal knowledge of Mr. Hujik about the
16 accounts owed, about the accounting of the
17 loan, no foundation. And again, looking at
18 Rule 56, there is no attempt to meet the
19 requirement that the affidavit affirmatively
20 show the competence of the witness to testify
21 to the matters asserted. There's just no
22 effort whatsoever to do that.

23 THE COURT: Well, anything?

24 MR. ALTMAN: Mr. Simons used a term when
25 he began speaking a few moments ago, it's a

1 "game". I see the game differently, I think
2 I see what this is, is Mr. Caldwell and Mr.
3 Rohlfing owe this money. The facts that have
4 been presented to the Court as part of this
5 motion are competent. They're clear.
6 There's no -- there's nothing that has been
7 shown that is in opposition to what has been
8 presented to the Court, except some argument
9 from the attorney. If Mr. Caldwell and Mr.
10 Jennings -- not Mr. Caldwell and Mr. Jennings
11 -- Mr. Caldwell and Mr. Rohlfing found some
12 error in A whether or not the guarantees were
13 their guarantees, we would have an affidavit
14 or we would have had an answer, something in
15 the pleading that said, "oh, no, we didn't
16 sign that". Your Honor pointed out in the
17 Request, the Answers to the Request for
18 Admission was artful. That's all it was.
19 The fact is that they executed the guarantees
20 and they don't want to pay the money they
21 owe. As far as the calculations of the
22 amounts, the facts and the figures are here
23 and there is no basis to discredit them,
24 other than, again using Mr. Simons' term, the
25 game that's being played to argue that it's

1 not accurate. I think they're, the
2 affidavits are succinct. I think they
3 support the motion and that the summary
4 judgement should be granted.

5 MR. SIMONS: Your Honor, I did not say
6 it's a game. I said it is not a game. To
7 the extent there is a game being played, it's
8 being played on the other side of the case.
9 Deep Keel, LLC bought the property, sold it
10 already for an amount likely to be
11 substantially in excess of what they paid for
12 this loan. Not only that, now they want to
13 double the 350 that was supposed to joint and
14 several among the guarantors, now they want
15 to make that 700.

16 THE COURT: Now, show me that on the --
17 because when I saw the guarantee a minute ago
18 it looked like individual guarantees,
19 liability of the undersigned hereunder, and
20 each case that's one individual, shall be
21 limited to a principal amount of 350. Is the
22 joint and several in the -- what do you mean?
23 Where's the joint and several part?

24 MR. SIMONS: Well, it's been in the
25 pleading from the beginning. And again, I

1 don't have my reading glasses but there is a
2 provision. Could I borrow yours or
3 somebody's?

4 THE COURT: There you go.

5 MR. SIMONS: In item 13, "if there be
6 more than one signor all agreements and
7 promises herein shall be construed to be and
8 are hereby declared to be joint and several
9 in each of every particular and shall be
10 fully binding upon and enforceable against
11 either, any, or all of the undersigned".

12 THE COURT: But only one person signed
13 it?

14 MR. SIMONS: Again, look back at Mr.
15 Rohlfing's -- excuse me -- Mr. Caldwell's
16 alleged signature. You can see if you look
17 closely that --

18 THE COURT: Right. I see where Terry
19 Rohlfing signed it with a power of attorney.

20 MR. SIMONS: No, but the point I would
21 make about it is that Rohlfing's name is on
22 the document that bears his signature
23 allegedly on behalf of Caldwell and it's been
24 x-ed out. My point is, is that it was the
25 same document, only one was sent and somebody

1 photocopied it remembering that Rohlfing is
2 in North Carolina and Caldwell in Ohio.
3 Rohlfing may have been in South Carolina at
4 the time but it's like having multiple
5 signatures, multiple signature pages for the
6 same document. Those are not separate
7 guarantees. That was one guarantee and then
8 somehow it's photocopied and somebody has
9 typed in Caldwell's name and affixed a
10 signature there.

11 THE COURT: But, I mean, if that were
12 the intent, shouldn't they have had a very
13 short affidavit saying this is the way it ws
14 supposed to be. This is the way it was
15 represented to us, and why aren't both names
16 typed into one document. I mean, wouldn't
17 it, if what you're saying is -- was the
18 intent wouldn't we have Terry Rohlfing on one
19 line and Mr. Caldwell's name by POA on
20 another line? And then maybe there are two
21 of them where one signed one and one signed
22 the other, but I mean wouldn't that make more
23 sense?

24 MR. SIMONS: We can speculate also that
25 for reasons we don't know Mr. Caldwell had no

1 knowledge of or never even saw that; all
2 right?

3 THE COURT: Well, he had plenty of
4 opportunity to say that though in the
5 response of pleadings; right?

6 MR. SIMONS: But my point is it's not my
7 burden, it's the Plaintiff's burden. And on
8 the question of the joint and several there
9 are other provisions in there. There's some
10 language I believe below the signatures. I
11 mean, I'll -- I'll have to brief that for you
12 but I believe in the pleadings in this case
13 have sought to impose joint and several
14 liability on Rohlfing and Caldwell for the
15 \$350,000.00 cap.

16 THE COURT: And I understand the
17 argument, I just have to -- we have to agree
18 to disagree I think on this because I mean I
19 see this as two separate pieces of paper and
20 two separated guarantees, each limited to a
21 principal of 350. That, I mean, if they were
22 on one piece of paper, if the undersigned was
23 plural and included both of them on the same
24 document, I think I would agree with you, but
25 that's just not the way these are presented,

1 nor has that argument been made either by
2 affidavit or by pleadings as far as I can
3 tell. But anyway, I am happy to continue.

4 MR. ALTMAN: Your Honor, I was going to,
5 you know, if the document had said that Mr.
6 Rohlfing and Mr. Caldwell were jointly liable
7 even though they were separate guarantees,
8 then I believe Mr. Simons would have a point.
9 Jointly and severally means, if you want to
10 get right down to it, you could argue that
11 they are each responsible individually for
12 their own 350,000 and for the other's
13 350,000. And I think your Honor was quite
14 right in pointing out that we don't have the
15 affidavit. We don't have a specific denial.
16 Mr. Caldwell, if he wants to say that this
17 wasn't properly executed, he didn't give
18 authorization, all he had to do was say it in
19 the pleadings. He not only didn't say it in
20 the pleadings, he didn't say it in their
21 Answers to the Request for Admission. These
22 guarantees are admissible and these people
23 are each responsible for \$350,000.00 plus
24 interest and costs that was accruable to
25 them.

1 THE COURT: Have you got the Jones case
2 on you or is that?

3 MR. SIMONS: I do not.

4 THE COURT: Okay. What was that site?

5 MR. SIMONS: It was South Carolina
6 National Bank v. Jones and I don't have the
7 site.

8 THE COURT: That's all right. I can
9 look it up. That's all right. Is it a
10 recent case or an older case?

11 MR. SIMONS: No, sir.

12 THE COURT: Older case?

13 MR. SIMONS: Well, it's -- let's put it
14 this way, it featured prominently in my brief
15 in this case.

16 THE COURT: All right. Okay.

17 MR. SIMONS: So, it's at least older
18 than that.

19 THE COURT: All right. Jones is a
20 pretty common name and South Carolina
21 National is pretty common, so --

22 MR. SIMONS: Yes.

23 THE COURT: All right. But I'm sure I
24 can find it. I think I'll take a look at
25 that. But no recollection as to whether or

1 not that was a summary judgement motion that
2 someone ended up, I'm guessing if they were
3 -- well, who knows. I guess I'll have to
4 read it and figure out what the heck it was
5 about. So, but I want to take a look at that
6 before I rule. Anything else?

7 MR. ALTMAN: Not with regard to this
8 Your Honor.

9 THE COURT: Anything else we can do?
10 No?

11 MR. SIMONS: I've been pretty long
12 winded. I don't know if there's anything
13 else I --

14 THE COURT: I think I scheduled all kind
15 of time for y'all. I think we've got until
16 5:00.

17 MR. ALTMAN: Your Honor, we were
18 prepared if you did not rule to try the case.
19 But candidly, we have a witness from the bank
20 who will testify that he has reviewed the
21 records of the bank and that the amounts as
22 of the date of the assignment are accurate.
23 I don't think we need, based on the arguments
24 here and again, the code section we've sited,
25 363308A, I don't think we need to get into

1 the authenticity of the guarantee. I think
2 it's self-authenticating pursuant to that.

3 THE COURT: Anything?

4 MR. SIMONS: No, sir.

5 THE COURT: All right. I'm going to
6 read SCN versus Jones and if y'all haven't
7 heard from me in about five days shoot me an
8 e-mail and say get to work on this thing and
9 I will see what I can do. Anything else for
10 this record?

11 MR. ALTMAN: I don't believe so.

12 THE COURT: All right. That will
13 conclude the record then.

14 (Hearing concluded at 3:26 p.m.)
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STATE OF SOUTH CAROLINA)
: C-E-R-T-I-F-I-C-A-T-E
COUNTY OF BEAUFORT)

I, Sabre Bridgers, Court Reporter and Notary Public,
certify that I did have the aforementioned parties to
appear before me at 2:30 o'clock p.m. on Wednesday,
August 3, 2016, at the Beaufort County Courthouse,
Master-in-Equity for Beaufort County, Beaufort, South
Carolina; that the pages constitute a true and
accurate transcript of the proceedings at that time
and place.

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

IN WITNESS WHEREOF, I have hereunto set my hand and
seal this the 25th day of August, 2016.

Sabre Bridgers
Notary Public for South Carolina
My Commission Expires: February 2, 2020

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

DEEP KEEL, LLC,)
Plaintiff,)
vs.)
ATLANTIC PRIVATE EQUITY GROUP,)
LLC, TERRY L. ROHLFING, JERRY T.)
CALDWELL, and BLUFFTON VILLAGE)
TOWN CENTER PROPERTY OWNERS')
ASSOCIATION, INC.,)
Defendants.)

CIVIL ACTION NO. 2011-CP-07-01933

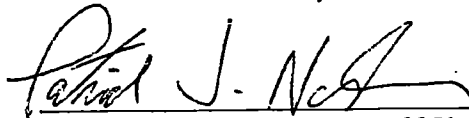
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PLAINTIFF DEEP KEEL, LLC'S MOTION FOR SUMMARY JUDGMENT

TO KEATING L. SIMMONS III, ESQUIRE, ATTORNEY FOR DEFENDANTS:

Plaintiff Deep Keel, LLC, by and through undersigned counsel and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, moves this Court for an Order granting Plaintiff summary judgment against Defendants Terry L. Rohlfing and Jerry T. Caldwell. In support of its Motion, Plaintiff relies upon the pleadings of record, its Memorandum in Support and any affidavits filed subsequently hereto.

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July 5, 2016

Page 1 of 1

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Appendix 086

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

DEEP KEEL, LLC,)
)
Plaintiff,)
)
vs.)

CIVIL ACTION NO. 2011-CP-07-01933

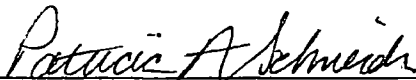
ATLANTIC PRIVATE EQUITY GROUP,)
LLC, TERRY L. ROHLFING, JERRY T.)
CALDWELL, and BLUFFTON VILLAGE)
TOWN CENTER PROPERTY OWNERS')
ASSOCIATION, INC.,)
)
Defendants.)

CERTIFICATE OF SERVICE

2016 JUL -6 AM 9:55
CLERK OF COURT
JULY 6 2016

I HEREBY CERTIFY that on this 5th day of June, 2016, a copy of Plaintiff Deep Keel, LLC's Motion for Summary Judgment, Motion and Order Information Form and Coversheet, and Plaintiff's Memorandum in Support of Its Motion for Summary Judgment was sent via United States Postal Service, with sufficient postage affixed thereto, and addressed as follows:

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

DEEP KEEL, LLC,)
Plaintiff,)
vs.)
ATLANTIC PRIVATE EQUITY GROUP,)
LLC, TERRY L. ROHLFING, JERRY T.)
CALDWELL, and BLUFFTON VILLAGE)
TOWN CENTER PROPERTY OWNERS')
ASSOCIATION, INC.,)
Defendants.)

CIVIL ACTION NO. 2011-CP-07-01933

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**PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

In support of its Motion for Summary Judgment, Plaintiff Deep Keel, LLC (hereinafter "Plaintiff"), by and through undersigned counsel, states as follows:

I. Introduction

Plaintiff is the owner and holder of a promissory note (the "Note") and Guaranties, which are the subject of this action. On or about March 27, 2008, Defendant Atlantic Private Equity Group, LLC (hereinafter "Atlantic"), issued to Community FirstBank n/k/a CresCom Bank (the "Bank") the Note, establishing a revolving line of credit in the principal amount of \$2,000,000.00 with a variable interest rate at an initial rate of 6.50% and a maturity date of March 25, 2009. See Exhibit A. The Note provided, in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 3.00% per annum until paid in full. On or about March 27, 2008, to better secure payment of the Note, Atlantic executed and delivered a mortgage (the "Mortgage") to the Bank, granting a security interest in two properties in Beaufort

County, South Carolina, which was recorded on March 28, 2008 in Book 02701 at Page 0632 in the Beaufort County ROD Office. *See Exhibit B.* On or about March 27, 2008, Defendants Terry L. Rohlring and Jerry T. Caldwell each executed and delivered to the Bank a Guaranty, jointly and severally guaranteeing the payment and performance of each and every debt, liability and obligation of every type of under the Note and any extensions, renewals or modifications thereto. *See Exhibit C.* The Guaranties made Terry L. Rohlring and Jerry T. Caldwell each liable for a limited principal amount of \$350,000.00 plus accrued interest thereon and all attorney's fees, collection costs and enforcement expenses.

On or about April 23, 2009, the Bank and Atlantic entered into a Loan Modification Agreement (the "1st Modification") wherein Atlantic acknowledged it was indebted to the Bank in the sum of \$1,550,000.00. The 1st Modification changed the initial interest rate to 5.50%, the variable rate to remain the same at 0.50% over the Bank's Prime rate, the principal due on April 16, 2010, and provided, in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 5.00% per annum until paid in full. *See Exhibit D.* On or about May 24, 2010, the Bank and Atlantic entered into a Loan Modification Agreement (the "2nd Modification"), wherein Atlantic acknowledged it was indebted to the Bank in the sum of \$2,000,000.00. The 2nd Modification changed the initial interest rate to 6.00%, the variable rate to remain the same at 0.50% over the Bank's Prime rate, the principal due on June 9, 2015, and provided, in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 5.00% per annum until paid in full. *See Exhibit E.* After Atlantic failed to perform its obligations under the Note and Loan Modification Agreements, the Bank made demands to Defendants Terry L. Rohlring and Jerry T. Caldwell for payment in accord with their obligations of the Guaranties. Defendants Terry L. Rohlring and Jerry

T. Caldwell failed and/or refused to honor their obligations under the Guaranties. On April 25, 2011, the Bank commenced the captioned action for foreclosure of the Mortgage with deficiency demanded and Breach of the Guaranties.

On or about August 30, 2012, the Bank executed and delivered to the Atlantic a Partial Release of Mortgage and Assignment of Leases, Rents and Profits ("Partial Release") for the property labeled as "Parcel 2" in Exhibit A of the Mortgage, known as Lot 117, Hampton Lake, Beaufort County, South Carolina. The Partial Release was recorded on September 24, 2012 in the Beaufort County ROD Office in Book 3176 at Page 2243. The Partial Release resulted from the sale of Parcel 2, and Atlantic was credited with net proceeds from the sale in the amount of \$540,375.61. See Exhibit F.

On or about September 28, 2012, the Bank executed and delivered to Plaintiff an Assignment of Debt and Lien (the "Assignment") of the remaining property, labeled as "Parcel 1" in Exhibit A of the Mortgage (the "Property"), which includes the Note, Mortgage, Guaranties and additional loan documents. The Assignment was recorded on October 9, 2012 in the Beaufort County ROD Office in Book 3181 at Page 257. See Exhibit G. On or about April 15, 2013, this Court issued an Order substituting Plaintiff for the Bank in this matter. On or about April 15, 2013, the captioned matter was referred to Marvin H. Dukes, III, Master in Equity for Beaufort County, South Carolina to direct entry of final judgment on the foreclosure action. The Master in Equity issued a Master's Report and Judgment of Foreclosure and Sale on July 18, 2013 and an Amended Master's Report and Judgment of Foreclosure and Sale on August 27, 2013, ordering the sale of the Property. Pursuant to the Amended Master's Report and Judgment of Foreclosure and Sale, the amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage was \$1,655,025.52 with per

diem interest of \$468.1395. On or about September 3, 2013, a public auction of the Property was held, where Plaintiff was the high bidder with a bid of \$900,000.00, and remained the successful bidder on October 3, 2013 after the thirty (30) day deficiency period.

The Master in Equity for Beaufort County issued a Release and Cancellation of Mortgage by Foreclosure on November 14, 2013 and an Amended Release and Cancellation of Mortgage by Foreclosure on August 12, 2014, releasing and cancelling the Mortgage pursuant to the above-referenced foreclosure sale. On or about November 5, 2013, the Master in Equity for Beaufort County executed and delivered a Master's Deed to the Property to Plaintiff, which was filed in the Beaufort County ROD Office on November 14, 2013 in Book 03286 at Page 1649. There is due on the Note as of July 18, 2016, the principal sum of \$794,818.39, together with interest in the amount of \$247,232.59 at the rate of 11.00% *per annum* and \$242.8612 *per diem* from October 4, 2013. Pursuant to the terms of the Note and the respective Guaranties, Defendants are also liable for all costs of collection, including attorneys' fees to be shown in the affidavit of attorneys' fees filed subsequently hereto.

II. Summary Judgment Standard

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct.App.2004). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct.App.2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to

the nonmoving party. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct.App.2005). Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005); *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (Ct.App.2005). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct.App.2003). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife*, 363 S.C. at 214, 609 S.E.2d at 568. When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct.App.2004).

III. Summary Judgment is appropriate as to Defendants Rohlfig and Caldwell

In order to recover for a breach of contract, the Plaintiff must prove (1) the existence of a binding contract; (2) breach of or failure to perform the obligations of the contract; and, (3) damage as a direct and proximate cause of the breach. See, e.g., *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E. 2d 602 (1962). Pursuant to the Defendants' Answer to Plaintiff's Complaint, attached hereto as Exhibit H, the Defendants collectively admit to executing forms in connection with the Note. See Defendants' Answer at ¶ 20. There is no dispute that Defendants Rohlfig and Caldwell executed the Guaranties, attached hereto as Exhibit C, and at no point have Defendants Rohlfig and Caldwell specifically denied executing the Guaranties. Furthermore, the

Defendants collectively have admitted to Plaintiff's demand for payment and Defendants' nonpayment thereof. *See* Defendants' Answer at ¶ 21. Each Guaranty formed a binding contract between Defendants Terry L. Rohlfig and Jerry T. Caldwell and the Bank, which were then assigned to Plaintiff. Defendants Terry L. Rohlfig and Jerry T. Caldwell are in breach of their respective duties to pay the outstanding debt, and Plaintiff has been damaged as a result of the breaches in an amount to be proven at trial, accrued interest and the costs of this action, to include attorneys' fees.

WHEREFORE, for the reasons stated herein, Plaintiff respectfully requests that this Court issue an Order granting summary judgment as against Defendants Terry L. Rohlfig and Jerry T. Caldwell, and for any other and further relief and this Court deems just and proper.

Respectfully Submitted,

ALTMAN & COKER, LLC



Charles S. Altman, SC Bar No. 0351

caltman@altmancoker.com

Meredith L. Coker, SC Bar No. 71103

mcoker@altmancoker.com

Patrick J. Norton, SC Bar No. 102554

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575 King Street, Suite A

Charleston, SC 29403

Tel: 843-853-9907

Fax: 843-722-5702

Attorneys for Plaintiff

July 5, 2016

EXHIBIT A

ATLANTIC PRIVATE EQUITY GROUP, LLC 1000 WILLIAM HILTON PKW, STE F13 HILTON HEAD, SC 29938	Community FirstBank 884 Orleans Rd Charleston, SC 29407	Loan Number <u>8145003387</u> Date <u>03/27/2008</u> Maturity Date <u>03/25/2009</u> Loan Amount <u>\$ 2,000,000.00</u> Renewal Of _____
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.		
LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.		

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of Two Million and 00/100 Dollars \$ 2,000,000.00

☐ **Single Advance:** I will receive all of this principal sum on _____. No additional advances are contemplated under this note.

☒ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On 03/27/2008

I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☒ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on 03/25/2009

☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 03/27/2008 at the rate of 5.50% per year until **FIRST CHARGE DATE**

☒ **Variable Rate:** This rate may then change as stated below.

☒ **Index Rate:** The future rate will be 0.00000000 the following index rate: COMMUNITY FIRSTBANK PRIME RATE

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ **Frequency and Timing:** The rate on this note may change as often as daily

A change in the interest rate will take effect on the same day

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ % each _____

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☒ The amount of each scheduled payment will change.

☐ The amount of the final payment will change.

ACCURAL METHOD: Interest will be calculated on a 365/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is not made within 10 DAYS days after it is due, I agree to pay a late charge of 5.00% OF THE LATE PAYMENT

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: ORIGINATION FEE \$5,000.00/APPRaisal FEE \$500.00/FLOOD CERT FEE \$30.00/COURTIER FEE \$25.00

PAYMENTS: I agree to pay this note as follows:

☒ **Interest:** I agree to pay accrued interest Beginning 04/25/2008 and on the same day Monthly thereafter

☒ **Principal:** I agree to pay the principal 03/25/2009

☐ **Installments:** I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____ and will be due _____. A payment of \$ _____ will be due _____ thereafter. The final payment of the entire unpaid balance of principal and interest will be due _____

ADDITIONAL TERMS:

DEFAULT RATE OF INTEREST: IN THE EVENT OF DEFAULT UNDER ANY OF THE LOAN DOCUMENTS, INTEREST SHALL BEGIN ACCRUING AT THE RATE STATED ABOVE PLUS THREE PERCENT (3.00%) PER ANNUM.

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date): MORTGAGE/ASSIGNMENT LHA/PUCC

1) SECURITY AGREEMENT/GUARANTOR AGREEMENTS

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

DAVID L. MORROW

PURPOSE: The purpose of this loan is ESTABLISH RLOC

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 21). I have received a copy on today's date.

ATLANTIC PRIVATE EQUITY GROUP, LLC

By: New Colony Holdings Corporation, Manager

By: Terry L. Morrow
TERRY L. MORROW President

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default

Appendix 096

ATLANTIC PRIVATE EQUITY GROUP, LLC
1000 WILLIAM HILTON PKW, STE F13
HILTON HEAD, SC 29938

Community FirstBank
884 Orleans Rd
Charleston, SC 29407

Line of Credit No. 0145003387
Date 03/27/2008
Max. Credit Amt. 2,000,000.00
Loan Ref. No. 145003387

BORROWER'S NAME AND ADDRESS

"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS

"You" means the lender, its successors and assigns.

You have extended to me a line of credit in the

AMOUNT of Two Million and 00/100

\$ 2,000,000.00

You will make loans to me from time to time until 5:00 PM, on 03/25/2008. Although the line of credit expires on that date, I will remain obligated to perform all my duties under this agreement so long as I owe you any money advanced according to the terms of this agreement, as evidenced by any note or notes I have signed promising to repay these amounts.

This line of credit is an agreement between you and me. It is not intended that any third party receive any benefit from this agreement, whether by direct payment, reliance for future payment or in any other manner. This agreement is not a letter of credit.

1. AMOUNT: This line of credit is:

- ☒ **OBIGATORY:** You may not refuse to make a loan to me under this line of credit unless one of the following occurs:
- a. I have borrowed the maximum amount available to me;
 - b. This line of credit has expired;
 - c. I have defaulted on the note (or notes) which show my indebtedness under this line of credit;
 - d. I have violated any term of this line of credit or any note or other agreement entered into in connection with this line of credit;
 - e. I have defaulted under any other obligations to the bank and the bank in good faith deems itself insecure.

- ☐ **DISCRETIONARY:** You may refuse to make a loan to me under this line of credit once the aggregate outstanding advances equal or exceed \$ _____.

Subject to the obligatory or discretionary limitations above, this line of credit is:

- ☒ **OPEN-END (Business or Agricultural only):** I may borrow up to the maximum amount of principal more than one time.
- ☐ **CLOSED-END:** I may borrow up to the maximum only one time.

2. PROMISSORY NOTE: I will repay any advances made according to this line of credit agreement as set out in the promissory note, I signed on 03/27/2008 or any note(s) I sign at a later time which represent advances under this agreement. The note(s) set(s) out the terms relating to maturity, interest rate, repayment and advances. If indicated on the promissory note, the advances will be made as follows:

3. RELATED DOCUMENTS: I have signed the following documents in connection with this line of credit and note(s) entered into in accordance with this line of credit:

- ☒ security agreement dated 03/27/2008 ☒ **ASSIGNMENT (RAP)**
☒ mortgage dated 03/27/2008 ☒ **UCC-1 (STATE OF SC FILING)**
☒ guaranty dated 03/27/2008 ☐

4. REMEDIES: If I am in default on the note(s) you may:

- a. take any action as provided in the related documents;
- b. without notice to me, terminate this line of credit.

By selecting any of these remedies you do not give up your right to later use any other remedy. By deciding not to use any remedy should I default, you do not waive your right to later consider the event a default, if it happens again.

5. COSTS AND FEES: If you hire an attorney to enforce this agreement I will pay your reasonable attorney's fees, where permitted by law. I will also pay your court costs and costs of collection, where permitted by law.

6. COVENANTS: For as long as this line of credit is in effect or I owe you money for advances made in accordance with the line of credit, I will do the following:

- a. maintain books and records of my operations relating to the need for this line of credit;
- b. permit you or any of your representatives to inspect and/or copy these records;
- c. provide to you any documentation requested by you which support the reason for making any advance under this line of credit;
- d. permit you to make any advance payable to the seller (or seller and me) of any items being purchased with that advance;

e. _____

7. NOTICES: All notices or other correspondence with me should be sent to my address stated above. The notice or correspondence shall be effective when deposited in the mail, first class, or delivered to me in person.

8. MISCELLANEOUS: This line of credit may not be changed except by a written agreement signed by you and me. The law of the state in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation.

FOR THE LENDER

DAVID L. MORROW

Title _____

SIGNATURES: I AGREE TO THE TERMS OF THIS LINE OF CREDIT. I HAVE RECEIVED A COPY ON TODAY'S DATE.

Atlantic Private Equity Group, LLC

By: Terry L. Robinson New Colony Holdings Corporation, Manager

By: Terry L. Robinson

President

Community FirstBank

ATLANTIC PRIVATE EQUITY GROUP, LLC

03/25/2008

Loan Calculation Summary

Total Principal	2,000,000.00
Amount Financed	1,995,000.00
Finance Charge	136,083.33
Annual Percentage Rate (APR)	6.859
Total Payments	2,131,083.33
Additional Interest	
Note Maturity Date	03/25/2009

Number of Payments	Amount
1	2,000,000.00

This is for information purposes only and should not be used as the basis in establishing a loan.

EXHIBIT B

9/15/11
MCNALLY
3447

MLF/PP

BEAUFORT COUNTY SC - ROD
BK 02701 PGS 0832-0840
FILE NUM 2008018581
03/28/2008 10:46:44 AM
REC'D BY J COORE RCPT# 538945
RECORDING FEES 15.00

This document was prepared by (name, address, phone): MCNALLY LAW FIRM
238 SHELTER COVE LANE STE 400
MILTON HEAD ISLAND, SC 29928

State of South Carolina Space Above This Line For Recording Data

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. DATE AND PARTIES. The date of this Mortgage is 03/27/2008 and the parties and their addresses are as follows:

MORTGAGOR: ATLANTIC PRIVATE EQUITY GROUP, LLC
1000 WILLIAM HILTON PARKWAY STE F13
MILTON HEAD ISLAND, SC 29928

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: Community First Bank
684 Orleans Rd
Charleston, SC 29402

2. MORTGAGE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
REFER TO EXHIBIT A WHICH IS ATTACHED HERETO AND MADE A PART HEREOF

The property is located in BEAUFORT (County) at SEE ATTACHED EXHIBIT
BLUFFTON (City) South Carolina 29910 (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT NOT FOR FIRM, STATE POLICE USE, AND NOT FOR CONSUMER PURPOSES (page 1 of 4)
© 1994, 2007 Computer Systems, Inc., St. Cloud, MN Form AGCO-RES-SC 1/21/2003

[Signature]

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$2,000,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgages shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date);
INCLUDING BUT NOT LIMITED TO NOTE AND LOAN NUMBER 145003387 MATURING 03/26/08.

B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.

C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect from time to time as provided in the Evidence of Debt.

E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.

6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.

7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, loan payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.

8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property of at least equal value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time, according to the terms of the Evidence of Debt.

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property):

- A. Existing or future leases, subleases, licenses, guarantees and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, turnover area, maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of status" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases, and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

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HSC
Aug 10 1994

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debt, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Lease so requires) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional tort. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. DEFAULT. Mortgagor will be in default if any of the following occur:

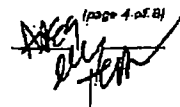
- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guaranteeing, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1240, Subpart G, Exhibit B.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgage is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has

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characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

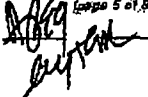
- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, stored, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals; if Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

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Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

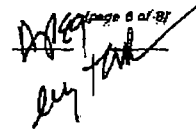
26. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- ☐ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☒ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☒ **Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

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PROBATE: STATE OF SC COUNTY OF Beaufort) ss:

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 27th day March, 2008

at Equi W. Buchanan
Notary Public for South Carolina

My commission expires: 4/5/11

EXHIBIT "A"

Parcel 1:

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

The property intended to be mortgaged herein is the same property conveyed to the within Mortgagor by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

Parcel 2:

ALL that certain piece, parcel or lot of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase 1 Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

The property intended to be mortgaged herein is the same property conveyed to the within Mortgagor by Deed recorded in Book 2559 at Page 376, Beaufort County Records.

This Mortgage was prepared in the Law Offices of McNair Law Firm, P.A., Post Office Drawer 3, Hilton Head Island, South Carolina 29938, by Cary S. Griffin.

EXHIBIT C

GUARANTY

Charleston

(City)

SC

(State)

March 27, 2009

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Community First Bank, 884 Orleans Rd, Charleston, SC 29407 (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of ATLANTIC PRIVATE EQUITY GROUP, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: LOAN AND NOTE NUMBER 145093387 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 350,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____;
☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

TERRY L. ROHLFES

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness; or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

Page 2 of 21

GUARANTY

Charleston

(City)

SC

(State)

March 27, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Community FirstBank, 884 Adams Rd. Charleston, SC 29407

(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of ATLANTIC PRIVATE EQUITY GROUP, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: LOAN AND NOTE NUMBER 145003387 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 350,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____
☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

Jerry T. Caldwell

Jerry T. Caldwell

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

EXHIBIT D



LOAN MODIFICATION AGREEMENT

WHEREAS, COMMUNITY FIRSTBANK loaned Two Million Dollars and no/100 (\$2,000,000.00) to ATLANTIC PRIVATE EQUITY GROUP LLC, evidenced by its Loan No. 145003387 and the original note executed and delivered dated March 27, 2008, including but not limited to any modifications, substitutions and/or renewals, which note hereby referred to as a part of this instrument, and

WHEREAS, the undersigned parties agree to modify the original note as follows (change only applies if block is checked):

PAYMENT SCHEDULE: Principal and interest hereon will be paid as follows:

☐ **TIME** The principal amount of the Note is payable in full on _____, with interest thereon payable beginning _____.

☐ **INSTALLMENT** In _____ consecutive payments of _____ ☐ including interest ☐ plus interest, beginning _____, All principal and interest if not sooner paid shall be due and payable on _____.

☒ **LINE OF CREDIT** The principal amount outstanding under this ☒ Revolving ☐ Non-Revolving Line of Credit is due on April 16, 2010, with interest thereon payable Monthly beginning May 16, 2009. The line of credit shall not exceed \$2,000,000.00.

☐ **OTHER**

☒ **MONETARY** ☒ Renewal/Modification fee in the amount of \$1,000.00 due at signing.
☒ Current interest in the amount of \$5,930.89 due at signing.
☐ _____ in the amount of _____ due at signing.

☒ **RATE** Interest accrual on the unpaid balance will be calculated at
☐ a fixed rate of _____ % per annum.
☒ a variable rate of Community FirstBank Prime plus .50%, the rate to be adjusted from time to time. The change in the Variable Rate will become effective on the day that the prime rate changes. The new interest rate floor will be 5.50%. The new interest rate ceiling will be N/A%.

☒ **LATE CHARGES** If Payment is 10 days or more late, Borrower will be charged 5.00% of the unpaid portion of the the payment amount or \$25.00, whichever is greater.

☒ **DEFAULT RATE OF INTEREST:** In the event of default under any of the loan documents, interest shall begin accruing at the current note rate plus five percent (5%) per annum.

EXCEPT as specifically modified herein, the provisions of all loan documents on Loan Number 145003387 shall remain the same.

THEREFORE, it is hereby agreed that the unpaid balance of said indebtedness upon the date of this Agreement is One Million Five Hundred Fifty Thousand Dollars AND 00/100 (\$1,550,000.00).

THE terms of all Loan Documents on Loan Number 145003387 as herein modified are binding on the Parties, their heirs, successors, and assigns. It is specifically agreed and understood by the Parties hereto that this Modification is not intended to be and is not a novation and that any attempt to so construe the Modification as such would be contrary to the express intent of the Parties.

SIGNED, SEALED AND DELIVERED this 23rd day of April, 2009.

Witness

Witness

Witness

Atlantic Private Equity Group LLC
By New Colony Holdings Corporation - Member

BY:
Terry L. Rollins, President

BY: _____

COMMUNITY FIRSTBANK

BY:
David Morrow, Chief Policy Officer

EXHIBIT E



LOAN MODIFICATION AGREEMENT

WHEREAS, COMMUNITY FIRSTBANK loaned Two Million Dollars and no/100 (\$2,000,000.00) to ATLANTIC PRIVATE EQUITY GROUP LLC, evidenced by its Loan No. 145003387 and the original note executed and delivered dated March 27, 2008, including but not limited to any modifications, substitutions and/or renewals, which note hereby referred to as a part of this instrument, and

WHEREAS, the undersigned parties agree to modify the original note as follows (change only applies if block is checked):

PAYMENT SCHEDULE: Principal and interest hereon will be paid as follows:

- ☐ **TIME** The principal amount of the Note is payable in full on _____ with interest thereon payable beginning _____
- ☒ **INSTALLMENT** In 59 consecutive Monthly payments of \$14,468.86 ☒ including interest ☐ plus interest, beginning July 09, 2010. All principal and interest if not sooner paid shall be due and payable on June 09, 2015.
- ☐ **LINE OF CREDIT** The principal amount outstanding under this ☐ Revolving ☐ Non-Revolving Line of Credit is due on _____ with interest thereon payable beginning _____. The line of credit shall not exceed _____.
- ☐ **OTHER**
- ☒ **MONETARY** ☒ Renewal/Modification fee in the amount of \$1,000.00 due at signing.
☒ Current interest in the amount of \$8,246.72 due at signing.
☐ _____ in the amount of _____ due at signing.
- ☒ **RATE** Interest accrual on the unpaid balance will be calculated at
☐ a fixed rate of _____ % per annum.
☒ a variable rate of Community FirstBank Prime plus .50%, the rate to be adjusted from time to time. The change in the Variable Rate will become effective on the day that the prime rate changes. The new interest rate floor will be 6.00%. The new interest rate ceiling will be N/A%.

☒ **LATE CHARGES** If Payment is 10 days or more late, Borrower will be charged 5.00% of the unpaid portion of the the payment amount or \$25.00, whichever is greater.

☒ **DEFAULT RATE OF INTEREST:** In the event of default under any of the loan documents, interest shall begin accruing at the current note rate plus five percent (5%) per annum.

EXCEPT as specifically modified herein, the provisions of all loan documents on Loan Number 145003387 shall remain the same.

THEREFORE, it is hereby agreed that the unpaid balance of said indebtedness upon the date of this Agreement is Two Million Dollars AND 00/100 (\$2,000,000.00).

THE terms of all Loan Documents on Loan Number 145003387 as herein modified are binding on the Parties, their heirs, successors, and assigns. It is specifically agreed and understood by the Parties hereto that this Modification is not intended to be and is not a novation and that any attempt to so construe the Modification as such would be contrary to the express intent of the Parties.

SIGNED, SEALED AND DELIVERED this 24th day of May, 2010.

Robert L Tennyson
Witness

Witness

John A. O'Leary
Witness

Atlantic Private Equity Group LLC
By New Colony Holdings Corporation - Member

BY: Terry L Rohlfing
Terry L Rohlfing, President

BY: _____

COMMUNITY FIRSTBANK

BY: Robert Tennyson
Robert Tennyson, Vice President

EXHIBIT F

2 PB
Bird
14205

S. Bird 0,
STATE OF SOUTH CARLINA)
COUNTY OF BEAUFORT)

BEAUFORT COUNTY SC - ROD
BK 03176 PGS 2243-2244
FILE NUM 2012055076
09/24/2012 12:16:19 PM
REC'D BY P BAXLEY RCPT# 689277
RECORDING FEES 7.00

**PARTIAL RELEASE
OF MORTGAGE and ASSIGNMENT OF LEASES, RENTS & PROFITS**

KNOW ALL MEN that CresCom Bank, successor by merger to Community First Bank, owner of the Mortgage and Assignment of Leases, Rents and Profits hereinafter referred to, for and in consideration of good and valuable consideration, receipt of which is hereby acknowledged, does forever discharge and release that certain tract of land described as follows, to wit:

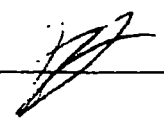
All that certain piece, parcel or lot of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase 1 Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

from all claims and liens under that certain Mortgage dated 3/27/08, from Atlantic Private Equity Group, LLC, as Mortgagor, to CresCom Bank, successor by merger to Community First Bank, as Mortgagee, and recorded in the Office of the Clerk of Court for Beaufort County in Mortgage Book 2701 at Page 632 and Assignment of Leases, Rents and Profits recorded in Book 2701 at Page 641, Beaufort County Records.

IN ALL OTHER RESPECTS, the aforesaid Mortgage shall remain in full force and effect.

IN WITNESS WHEREOF, CresCom Bank, successor by merger to Community First Bank has caused these presents to be executed this 30 day of August, 2012.

CresCom Bank, successor by merger to Community First Bank

By: 

2 Rachel Wiley
Witness
3 Laura L. Loeber
Witness

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that JAMIN M. HUJIK, as the duly authorized officer of CresCom Bank, successor by merger to Community First Bank by and on behalf of the Bank, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 30 day of August, 2012.

4 Rachel Hisey
Notary Public for SOUTH CAROLINA

My commission expires: 01-18-2021

EXHIBIT G

Handwritten: Hsu 9/16/12 Altman

BEAUFORT COUNTY SC - ROD
BK 03181 PGS 0257-0260
FILE NUM 2012058622
10/09/2012 12:34:11 PM
REC'D BY S WASHINGTON RCPT# 698858
RECORDING FEES 9.00

Upon Recording Return To:
Altman & Coker, LLC
575 King Street, Suite A
Charleston, South Carolina 29403

ASSIGNMENT OF DEBT AND LIEN

STATE OF SOUTH CAROLINA

§

COUNTY OF BEAUFORT

§

§

Holder of Debt and Lien ("Holder"): CRESCOM BANK, successor by merger to
Community FirstBank
884 Orleans Road
Charleston, South Carolina 29407

Assignee: Deep Keel, LLC

Lien: That certain Mortgage dated March 27, 2008, given by Atlantic Private Equity Group, LLC, ("**Mortgagor**"), as Mortgagor, to Community FirstBank, n/ka CresCom Bank ("**Holder**") as lender, filed of record on March 28, 2008, in the office of the Register of Deeds for Beaufort County, South Carolina (the "**Official Records**") in Book 02701, Page 0640, in respect of certain indebtedness of Borrower described therein (the "**Debt**") and currently held by Holder; and,

That certain Assignment of Leases, Rents and Profits dated March 27, 2008, given by Atlantic Private Equity Group, LLC, ("**Mortgagor**"), as Mortgagor, to Community FirstBank, n/ka CresCom Bank ("**Holder**") as lender, filed of record on March 28, 2008, in the office of the Register of Deeds for Beaufort County, South Carolina (the "**Official Records**") in Book 02701, Page 0641, in respect of certain indebtedness of Borrower described therein (the "**Debt**") and currently held by Holder.

The property subject to Lien (the "**Property**") is described in Exhibit A attached hereto and incorporated herein for all purposes.

As used herein, Lien shall include all liens relating to the Debt held by Holder against the Property, as renewed, extended and/or modified.

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Holder hereby transfers and assigns the Debt and Lien to Assignee as of September 28, 2012; and, such assignment is made **WITHOUT RECOURSE, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED.**

This document confirms the assignment that was made as of September 28, 2012. This documents is dated September 28, 2012.

CresCom Bank, successor by merger to
Community FirstBank

Witness:

Rachel A. Over
Jamin M. Hujik

By: Jamin M. Hujik
Jamin M. Hujik
Its: Executive Vice President

STATE OF SOUTH CAROLINA

§
§
§

COUNTY OF CHARLESTON

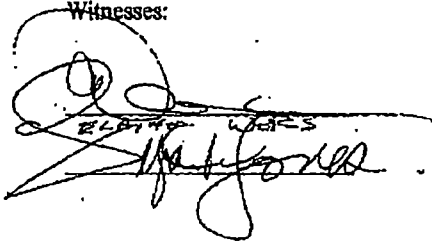
This instrument was acknowledged before me on this 4 day of October, 2012, by Jamin M. Hujik, well known to be the Executive Vice President of CresCom Bank, successor by merger to Community FirstBank, and who executed the foregoing instrument, and he acknowledge to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

Rachel A. Over
Notary Public State of South Carolina
Print Name Rachel A. Over
My Commission Expires: 9-18-2021

Page 2 of 4

THE WITHIN ASSIGNMENT IS ACCEPTED WITHOUT RECOURSE,
REPRESENTATIONS, WARRANTIES, EXPRESSED OR IMPLIED.

Witnesses:


ELITE WITNESSES

ASSIGNEE

Deep Keel, LLC

By: 
Scott Bynum, its Sole Member, Member

STATE OF NEW YORK)

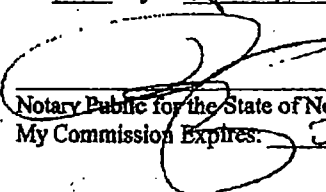
COUNTY OF Kings)

ACKNOWLEDGMENT

BEFORE me personally appeared Scott Bynum, well known to be the Sole Member of Deep Keel, LLC, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 28th day of September, 2012.

JENNIFER L. WERTZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NASSAU COUNTY
NO. 011168202893
COMMISSION EXPIRES 01/30/13


Notary Public for the State of New York
My Commission Expires: 9/30/13

Page 3 of 4

Exhibit A

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

This being the same property conveyed to Atlantic Private Equity Group, LLC by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

Page 4 of 4

ASSIGNMENT OF MORTGAGE AND PROMISSORY NOTE WITHOUT RECOURSE

Prepared By: Altman & Coker, LLC
575 King Street, Suite A
Charleston, South Carolina 29403

CresCom Bank, successor by merger to Community FirstBank a South Carolina state-chartered savings bank, ("Assignor") and Deep Keel, LLC, a South Carolina limited liability company, ("Assignee") are parties to an Agreement providing for the sale by Assignor and the purchase by Assignee of a certain loan by Atlantic Private Equity Group, LLC, (the "Borrower") made on March 27, 2008, as modified on April 23, 2009, and May 24, 2010, and related loan documents.

ASSIGNOR, as contemplated by such Agreement and for consideration as set forth therein, the sufficiency and receipt of which are hereby acknowledged, does hereby bargain, sell, give, grant, convey, transfer, set over and assign unto Assignee, and its successors and assigns, all of Assignor's right, title and interest in and to the following: (a) that certain Mortgage from Atlantic Private Equity Group, LLC, ("Mortgagor") dated March 27, 2008, to Community FirstBank, n/k/a CresCom Bank, and recorded on March 28, 2008 in Book 02701 at Page 0632, in the Beaufort County ROD Office ("Mortgage"), exclusive of that security interest released by a Partial Release of Mortgage and Assignment of Leases, Rents & Profits recorded on September 24, 2012, in Book 03176 at Page 2243 Beaufort County ROD Office; (b) that certain Assignment of Leases, Rents and Profits from Atlantic Private Equity Group, LLC, ("Mortgagor") dated March 27, 2008, to Community FirstBank, n/k/a CresCom Bank, and recorded on March 28, 2008 in Book 02701 at Page 0641, in the Beaufort County ROD Office ("Mortgage"), exclusive of that security interest released by a Partial Release of Mortgage and Assignment of Leases, Rents & Profits recorded on September 24, 2012, in Book 03176 at Page 2243 Beaufort County ROD Office; (c) the guaranties of Terry L. Rohlfling and Jerry T. Caldwell, dated March 27, 2008; dated January 19, 2006; and (d) the obligations secured by the Mortgage, including, but not limited to, that promissory note issued by Borrower to Assignor dated March 27, 2008, and in the original maximum principal amount of \$ 2,000,000.00 (the "Note"), as modified by that note modification dated April 23, 2009, and that certain note modification dated May 24, 2010, and the money due and to become due with respect to such obligations and Note (collectively, the "Obligations").

TO HAVE AND TO HOLD the same, together with all rights, titles, interests, privileges, claims, demands and equities existing and to exist in connection therewith unto Assignee, its successors and assigns forever. Assignor expressly waives and releases in favor of Assignee any and all rights that Assignor may now have or hereinafter has to establish or enforce any lien or security interest securing payment of any of the Obligations under the Mortgage or any of the loan documents relating to any of the Obligations. Assignor directs that all payments hereafter due with regard to any of the Obligations be made directly to Assignee.

ASSIGNEE hereby assumes, and agrees to the terms, and agrees to perform, in accordance with the terms thereof, any and all of Assignor's obligations under the above Obligations or

Mortgage arising on or after the date hereof. The undersigned, on behalf of the Assignee, hereby declares that he has the authority accept the terms of the Agreement and this Assignment on behalf of the Assignee.

This Assignment of Mortgage and Promissory Note is made, executed and delivered **WITHOUT RECOURSE, REPRESENTATIONS, WARRANTIES, EXPRESSED OR IMPLIED**, pursuant to the Agreement, and is subject to all of the terms, provisions and conditions thereof. This Assignment may be executed in a number of multiple, identical counterparts which, when taken together, shall constitute collectively one Assignment, but in making proof of this Assignment, it shall not be necessary to produce or account for more than one such counterpart as executed by the party to be charged.

IN WITNESS WHEREOF, said Assignor and Assignee have signed, sealed and delivered this instrument on this 28 day of September, 2012.

ASSIGNOR

CresCom Bank, successor by merger to
Community FirstBank

By: [Signature]
Its: Executive Vice President
Print Name: Jamin M. Hujik

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

BEFORE me personally appeared Jamin M. Hujik well known to be the Executive Vice President of CresCom Bank, successor by merger to Community FirstBank, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 28 day of September, 2012.

[Signature]
Notary Public for South Carolina
My Commission Expires: 01-18-2021

THE WITHIN ASSIGNMENT IS ACCEPTED WITHOUT RECOURSE,
REPRESENTATIONS, WARRANTIES, EXPRESSED OR IMPLIED.

ASSIGNEE

Deep Keel, LLC

By: [Signature]
Scott Bynum, Its Sole Member

STATE OF NEW YORK)

COUNTY OF Kings)

ACKNOWLEDGMENT

BEFORE me personally appeared Scott Bynum, well known to be the sole member of Deep Keel, LLC, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 28th day of September, 2012.

[Signature]
Notary Public for the State of New York
My Commission Expires: 01/30/13

JENNIFER L. WERTZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NASSAU COUNTY
NO. 01WES202633
MY COMMISSION EXPIRES 01-30-2013

EXHIBIT H

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-07-1933

COMMUNITY FIRST BANK,)
Plaintiff,)

vs.)

ATLANTIC PRIVATE EQUITY)
GROUP, LLC, TERRY L.)
ROHLFING, JERRY T.)
CALDWELL AND BLUFFTON)
VILLAGE TOWN CENTER)
PROPERTY OWNERS')
ASSOCIATION, INC.,)
Defendants.)

DEFENDANTS ATLANTIC PRIVATE
EQUITY GROUP, LLC, TERRY L.
ROHLFING AND JERRY T. CALDWELL'S
ANSWER TO PLAINTIFF'S COMPLAINT

(JURY TRIAL DEMANDED)

Defendants, Atlantic Private Equity Group, LLC, Terry L. Rohlfing, and Jerry T. Caldwell, answering the Complaint of the Plaintiff herein, would respectfully allege and show as follows:

1. Each and every allegation of Plaintiff's Complaint which is not hereinafter specifically admitted is denied and strict proof demanded thereof.
2. They admit, upon information and belief, the allegations of Paragraph 1.
3. They admit so much of Paragraph 2 as alleges the described real property is located in Beaufort County. As to the remainder, they lack knowledge or information sufficient to truthfully admit or deny, therefore they deny the same and demand strict proof thereof.
4. They admit the allegations of Paragraph 3.
5. They admit the allegations of Paragraph 4 except that Defendant Caldwell currently resides in Ohio.
6. They admit the allegations of Paragraphs 5 and 6, upon information and belief.
7. They lack knowledge or information sufficient to truthfully admit or deny the

allegations of Paragraph 7, therefore they deny the same and demand strict proof thereof.

8. The allegations of Paragraphs 8, 9, and 10 constitute conclusions of law to which they make no response. To the extent these paragraphs include any allegations of fact, the same are denied.

AS TO THE FIRST CAUSE OF ACTION

9. Answering the allegations of Paragraphs 11 and 12, they admit only that Plaintiff made a loan to Defendant Atlantic Private Equity Group, LLC that was secured by a mortgage on real property owned by it. They crave reference to the original loan documents and deny any allegations of these paragraphs inconsistent therewith.

10. They lack knowledge or information sufficient to truthfully admit or deny the allegations of Paragraph 13, therefore they deny the same and demand strict proof thereof.

11. The allegations of Paragraph 14 constitute conclusions of law to which they make no response. To the extent these paragraphs include any allegations of fact, the same are denied.

12. Answering the allegations of Paragraphs 15, 16, 17, 18, 19, and 20, they crave reference to the original loan documents and deny any allegations inconsistent therewith.

13. Answering the allegations of Paragraph 21, they admit only that not all monthly payments have been timely made. The remaining allegations of this paragraph constitute legal conclusions to which they make no response but refer to the defenses asserted herein.

14. Answering the allegations of Paragraph 22, they crave reference to the original loan documents and deny any allegations inconsistent therewith.

15. They admit the allegations of Paragraph 23.

16. Answering the allegations of Paragraph 24, they crave reference to the original loan documents and deny any allegations inconsistent therewith.

17. They lack knowledge or information sufficient to truthfully admit or deny the

allegations of Paragraph 25, therefore they deny the same and demand strict proof thereof.

18. The allegations of Paragraph 26 constitute conclusions of law to which they make no response. To the extent this paragraph includes any allegations of fact, the same are denied.

19. The allegations of Paragraph 27 require no response.

AS TO THE SECOND CAUSE OF ACTION

20. Answering the allegations of Paragraph 28, they admit only that various forms were executed in connection with the subject loan, crave reference to the original loan documents and deny any allegations of this paragraph inconsistent therewith.

21. Answering the allegations of Paragraphs 29 and 30, they admit only Plaintiff's demand and Defendants' non-payment. The remaining allegations of these paragraphs constitute legal conclusions to which they make no response but refer to the defenses asserted herein.

FOR A SECOND DEFENSE

22. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff has failed to join indispensable parties and/or all real parties in interest.

FOR A THIRD DEFENSE

23. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff is not the true holder and owner of the subject notes and mortgages.

FOR A FOURTH DEFENSE

24. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff has failed to meet conditions precedent to maintaining this action.

FOR A FIFTH DEFENSE

25. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff has failed to mitigate damages and any recovery should be barred or reduced thereby.

FOR A SIXTH DEFENSE

26. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff's claims are barred by waiver and/or estoppel.

FOR A SEVENTH DEFENSE

27. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff's claims are barred by the doctrine of unclean hands.

WHEREFORE, Defendants pray for a jury trial on all issues so triable and that the Complaint be dismissed, with costs.



Keating L. Simons, III
Derek F. Dean
Law Offices of Simons & Dean
147 Wappoo Creek Drive, Suite 604
Charleston, SC 29412
843-762-9132

**ATTORNEYS FOR DEFENDANTS
ATLANTIC PRIVATE EQUITY GROUP,
LLC, TERRY L. ROHLFING, JERRY T.
CALDWELL**

Charleston, SC
June 15, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

DEEP KEEL, LLC,)
Plaintiff,)
vs.)

CIVIL ACTION NO. 2011-CP-07-01933

ATLANTIC PRIVATE EQUITY GROUP,)
LLC, TERRY L. ROHLFING, JERRY T.)
CALDWELL, and BLUFFTON VILLAGE)
TOWN CENTER PROPERTY OWNERS')
ASSOCIATION, INC.,)
Defendants.)

2016 JUL 12 1:11:56
CLERK OF COURT
JUL 12 2016

AFFIDAVIT OF SCOTT BYNUM

PERSONALLY APPEARED BEFORE ME, Scott Bynum, who first being duly sworn, under oath, deposes and says:

1. He is the sole member of Deep Keel, LLC.
2. On April 25, 2011, CresCom Bank, successor by merger to Community FirstBank (the "Bank"), retained counsel and commenced the captioned action for foreclosure of the Mortgage with deficiency demanded and Breach of the Guaranties.
3. On September 28, 2012, the Bank executed and delivered to Deep Keel, LLC an Assignment of Debt and Lien (the "Assignment"), by which the Bank assigned to Deep Keel, LLC a Promissory Note, Mortgage, Guaranties and other loan documents executed by and between the Bank, Atlantic Private Equity Group, LLC and Defendants Terry L. Rohlfing and Jerry T. Caldwell. The Assignment was recorded on October 9, 2012 in the Beaufort County ROD Office in Book 3181 at Page 257. A copy of the Assignment is attached hereto as Exhibit A.

4. The Promissory Note, Mortgage, Guaranties and other loan documents are further described in, and attached to, the Affidavit of Jamin M. Hujik, Executive Vice President of CresCom Bank, attached hereto as **Exhibit B**.
5. On April 15, 2013, after the Assignment, this Court issued an Order substituting Deep Keel, LLC as the Plaintiff in the above-captioned matter.
6. Pursuant to the April 15, 2013 Order for Reference, the above-captioned matter was referred Marvin H. Dukes, III, Master in Equity for Beaufort County, South Carolina to direct entry of final judgment on the foreclosure action and, upon resolution or disposition of the foreclosure action, the above-captioned matter was to be returned to the Circuit Court for final hearing and disposition as to the claims against Defendants Terry L. Rohlfig and Jerry T. Caldwell.
7. At the foreclosure hearing, held on July 10, 2013, the Master in Equity Ordered foreclosure of the Mortgage and sale of the Property.
8. On September 3, 2013, Deep Keel, LLC was the high bidder at the public auction of the Property with a bid of \$900,000.00. Deep Keel, LLC remained the successful bidder on October 3, 2013 after the thirty (30) day deficiency period.
9. At the time of the Assignment to Deep Keel, LLC, the amount due and owing on the Note, including interest, late charges and fees was \$ 1,586,396.36. *See Exhibit B*.
10. All of the above-referenced documents relating to the Debt of Atlantic Private Equity Group, LLC, Terry L. Rohlfig and Jerry T. Caldwell attached hereto have been maintained in the official records of the Deep Keel, LLC since the Assignment from the Bank.
11. As of July 18, 2016, the amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, secured by the Note and Guaranties is as follows:

Amount Due (9/28/2012):	\$ 1,586,396.36
Fire, Flood, Hazard Insurance:	\$ 7,766.00
Rents Collected (7/2012 - 7/2013):	\$ (73,775.00)
Costs up to 7/10/2013 Foreclosure Hearing:	\$ 1,219.41
Interest (9/29/2012 - 10/3/2013):	\$ 173,211.62
Successful Bid - Foreclosure Sale (10/3/2013):	\$ (900,000.00)

Total (10/3/2013): \$ 794,818.39

Interest 11% (10/4/2013 - 7/18/2016): \$ 247,232.59

Per Diem: \$242.8612

Additional Costs:

(i) Postage - Certified/UPS:	\$ 57.47
(ii) Mileage:	\$ 77.14
(iii) Recording Fee - Deed:	\$ 15.00
(iv) Motion Filing Fees:	\$ 175.00
(v) Publication Fees:	\$ 632.55
(vi) Court Reporter:	\$ 225.00
(vii) Bidding Services:	\$ 45.00
(viii) Appeal Transcript:	\$ 206.01
(ix) Copies - Appeal Documents:	\$ 104.76

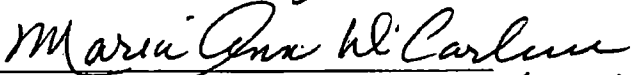
TOTAL COSTS: \$ 1,537.93

TOTAL: \$ 1,043,588.91

Per Diem: \$318.8744


 Scott Bynum
 Sole Member - Deep Keel, LLC

SWORN TO AND SUBSCRIBED
 before me on this 5th day of July, 2016.


 NOTARY PUBLIC FOR SOUTH CAROLINA NEW YORK
 My Commission Expires: 02/18/2019

MARIA ANN DICARLUCCI
 Notary Public, State of New York
 No. 01D15087294
 Qualified in Bronx County
 Commission Expires 2/18/2019

EXHIBIT A

4500
9/16/12
Alman

BEAUFORT COUNTY SC - ROD
BK 03181 PGS 0257-0260
FILE NUM 2012038622
10/09/2012 12:34:11 PM
REC'D BY S WASHINGTON RCPT# 690858
RECORDING FEES 9.00

Upon Recording Return To:
Alman & Coker, LLC
575 King Street, Suite A
Charleston, South Carolina 29403

ASSIGNMENT OF DEBT AND LIEN

STATE OF SOUTH CAROLINA

§
§
§

COUNTY OF BEAUFORT

Holder of Debt and Lien ("Holder"): CRESCOM BANK, successor by merger to
Community FirstBank
884 Orleans Road
Charleston, South Carolina 29407

Assignee: Deep Keel, LLC

Lien: That certain Mortgage dated March 27, 2008, given by Atlantic Private Equity Group, LLC, ("**Mortgagor**"), as Mortgagor, to Community FirstBank, n/ka CresCom Bank ("**Holder**") as lender, filed of record on March 28, 2008, in the office of the Register of Deeds for Beaufort County, South Carolina (the "**Official Records**") in Book 02701, Page 0640, in respect of certain indebtedness of Borrower described therein (the "**Debt**") and currently held by Holder; and,

That certain Assignment of Leases, Rents and Profits dated March 27, 2008, given by Atlantic Private Equity Group, LLC, ("**Mortgagor**"), as Mortgagor, to Community FirstBank, n/ka CresCom Bank ("**Holder**") as lender, filed of record on March 28, 2008, in the office of the Register of Deeds for Beaufort County, South Carolina (the "**Official Records**") in Book 02701, Page 0641, in respect of certain indebtedness of Borrower described therein (the "**Debt**") and currently held by Holder.

The property subject to Lien (the "**Property**") is described in Exhibit A attached hereto and incorporated herein for all purposes.

As used herein, Lien shall include all liens relating to the Debt held by Holder against the Property, as renewed, extended and/or modified.

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Holder hereby transfers and assigns the Debt and Lien to Assignee as of September 28, 2012; and, such assignment is made **WITHOUT RECOURSE, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED.**

This document confirms the assignment that was made as of September 28, 2012. This documents is dated September 28, 2012.

CresCom Bank, successor by merger to
Community FirstBank

Witness:

Rachael A. Overberg
Laura J. Doolittle

By: Jamin M. Hujik
Jamin M. Hujik
Its: Executive Vice President

STATE OF SOUTH CAROLINA

§
§
§

COUNTY OF CHARLESTON

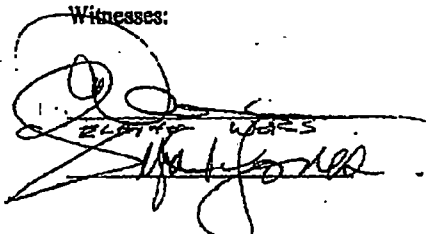
This instrument was acknowledged before me on this 4 day of October, 2012, by Jamin M. Hujik, well known to be the Executive Vice President of CresCom Bank, successor by merger to Community FirstBank, and who executed the foregoing instrument, and he acknowledge to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

Rachael A. Overberg
Notary Public State of South Carolina
Print Name Rachael A. Overberg
My Commission Expires: 01-18-2021

Page 2 of 4

THE WITHIN ASSIGNMENT IS ACCEPTED WITHOUT RECOURSE,
REPRESENTATIONS, WARRANTIES, EXPRESSED OR IMPLIED.

Witnesses:


ELLY WARS

ASSIGNEE

Deep Keel, LLC

By: 
Scott Bynum, its Sole Member, Member

STATE OF NEW YORK)

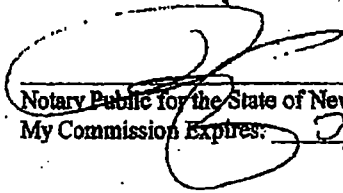
COUNTY OF W. 93)

ACKNOWLEDGMENT

BEFORE me personally appeared Scott Bynum, well known to be the Sole Member of Deep Keel, LLC, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 28th day of September, 2012.

JENNIFER L. WERTZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NASSAU COUNTY
NO. 01176202893
COMMISSION EXPIRES 07/30/13


Notary Public for the State of New York
My Commission Expires: 7/30/13

Page 3 of 4

Exhibit A

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

This being the same property conveyed to Atlantic Private Equity Group, LLC by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

Page 4 of 4

ASSIGNMENT OF MORTGAGE AND PROMISSORY NOTE WITHOUT RECOURSE

Prepared By: Altman & Coker, LLC
575 King Street, Suite A
Charleston, South Carolina 29403

CresCom Bank, successor by merger to Community FirstBank a South Carolina state-chartered savings bank, ("Assignor") and Deep Keel, LLC, a South Carolina limited liability company, ("Assignee") are parties to an Agreement providing for the sale by Assignor and the purchase by Assignee of a certain loan by Atlantic Private Equity Group, LLC, (the "Borrower") made on March 27, 2008, as modified on April 23, 2009, and May 24, 2010, and related loan documents.

ASSIGNOR, as contemplated by such Agreement and for consideration as set forth therein, the sufficiency and receipt of which are hereby acknowledged, does hereby bargain, sell, give, grant, convey, transfer, set over and assign unto Assignee, and its successors and assigns, all of Assignor's right, title and interest in and to the following: (a) that certain Mortgage from Atlantic Private Equity Group, LLC, ("Mortgagor") dated March 27, 2008, to Community FirstBank, n/k/a CresCom Bank, and recorded on March 28, 2008 in Book 02701 at Page 0632, in the Beaufort County ROD Office ("Mortgage"), exclusive of that security interest released by a Partial Release of Mortgage and Assignment of Leases, Rents & Profits recorded on September 24, 2012, in Book 03176 at Page 2243 Beaufort County ROD Office; (b) that certain Assignment of Leases, Rents and Profits from Atlantic Private Equity Group, LLC, ("Mortgagor") dated March 27, 2008, to Community FirstBank, n/k/a CresCom Bank, and recorded on March 28, 2008 in Book 02701 at Page 0641, in the Beaufort County ROD Office ("Mortgage"), exclusive of that security interest released by a Partial Release of Mortgage and Assignment of Leases, Rents & Profits recorded on September 24, 2012, in Book 03176 at Page 2243 Beaufort County ROD Office; (c) the guaranties of Terry L. Rohlfing and Jerry T. Caldwell, dated March 27, 2008; dated January 19, 2006; and (d) the obligations secured by the Mortgage, including, but not limited to, that promissory note issued by Borrower to Assignor dated March 27, 2008, and in the original maximum principal amount of \$ 2,000,000.00 (the "Note"), as modified by that note modification dated April 23, 2009, and that certain note modification dated May 24, 2010, and the money due and to become due with respect to such obligations and Note (collectively, the "Obligations").

TO HAVE AND TO HOLD the same, together with all rights, titles, interests, privileges, claims, demands and equities existing and to exist in connection therewith unto Assignee, its successors and assigns forever. Assignor expressly waives and releases in favor of Assignee any and all rights that Assignor may now have or hereinafter has to establish or enforce any lien or security interest securing payment of any of the Obligations under the Mortgage or any of the loan documents relating to any of the Obligations. Assignor directs that all payments hereafter due with regard to any of the Obligations be made directly to Assignee.

ASSIGNEE hereby assumes, and agrees to the terms, and agrees to perform, in accordance with the terms thereof, any and all of Assignor's obligations under the above Obligations or

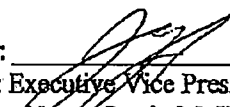
Mortgage arising on or after the date hereof. The undersigned, on behalf of the Assignee, hereby declares that he has the authority accept the terms of the Agreement and this Assignment on behalf of the Assignee.

This Assignment of Mortgage and Promissory Note is made, executed and delivered **WITHOUT RECOURSE, REPRESENTATIONS, WARRANTIES, EXPRESSED OR IMPLIED**, pursuant to the Agreement, and is subject to all of the terms, provisions and conditions thereof. This Assignment may be executed in a number of multiple, identical counterparts which, when taken together, shall constitute collectively one Assignment, but in making proof of this Assignment, it shall not be necessary to produce or account for more than one such counterpart as executed by the party to be charged.

IN WITNESS WHEREOF, said Assignor and Assignee have signed, sealed and delivered this instrument on this 28 day of September, 2012.

ASSIGNOR

CresCom Bank, successor by merger to
Community FirstBank

By: 
Its: Executive Vice President
Print Name: Jamin M. Hujik

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) **ACKNOWLEDGMENT**

BEFORE me personally appeared Jamin M. Hujik well known to be the Executive Vice President of CresCom Bank, successor by merger to Community FirstBank, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 28 day of September, 2012.


Notary Public for South Carolina
My Commission Expires: 01-18-2021

THE WITHIN ASSIGNMENT IS ACCEPTED WITHOUT RECOURSE,
REPRESENTATIONS, WARRANTIES, EXPRESSED OR IMPLIED.

ASSIGNEE

Deep Keel, LLC

By: [Signature]
Scott Bynum, Its Sole Member

STATE OF NEW YORK)

COUNTY OF Kings)

ACKNOWLEDGMENT

BEFORE me personally appeared Scott Bynum, well known to be the sole member of Deep Keel, LLC, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 28th day of September, 2012.

[Signature]
Notary Public for the State of New York
My Commission Expires: 03/30/13

JENNIFER L. WERTZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NASSAU COUNTY
NO. 01WES202633
MY COMMISSION EXPIRES 03-30-2013

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
DEEP KEEL, LLC,	)	CIVIL ACTION NO. 2011-CP-07-01933
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ATLANTIC PRIVATE EQUITY GROUP,	)	
LLC, TERRY L. ROHLFING, JERRY T.	)	
CALDWELL, and BLUFFTON VILLAGE	)	
TOWN CENTER PROPERTY OWNERS'	)	
ASSOCIATION, INC.,	)	
	)	
Defendants.	)	

AFFIDAVIT OF JAMIN M. HUJIK

PERSONALLY APPEARED BEFORE ME, Jamin M. Hujik, who first being duly sworn, under oath, deposes and says:

1. He is the Executive Vice President of CresCom Bank, successor by merger to Community FirstBank.
2. On March 27, 2008, Atlantic Private Equity Group, LLC issued to Community FirstBank n/k/a CresCom Bank (the "Bank") a promissory note (the "Note") establishing a revolving line of credit in the principal amount of \$2,000,000.00 with an initial variable interest rate of 6.50% and a maturity date of March 25, 2009. The Note provided that in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 3.00% per annum until paid in full. A copy of the Note is attached hereto as **Exhibit A**.
3. On March 27, 2008, to better secure payment of the Note, Atlantic Private Equity Group, LLC executed and delivered a mortgage (the "Mortgage") to the Bank, granting a security interest in

Page 1 of 4

two properties in Beaufort County, which was recorded on March 28, 2008 in Book 02701 at Page 0632 in the Beaufort County ROD Office. A copy of the Mortgage is attached hereto as **Exhibit B**.

4. Pursuant to the terms of the Mortgage, any sums paid by the Bank for inspecting and securing the subject property, for fire and other hazard insurance, taxes and assessments for the mortgaged premises, and any costs of collection, including a reasonable attorney's fee, are secured by the Mortgage.
5. On March 27, 2008, Atlantic Private Equity Group, LLC executed and delivered to the Bank an Assignment of Leases, Rents and Profits (the "ALRP"), which was recorded on March 28, 2008 in the Beaufort County ROD Office in Book 2701 at Page 641. A copy of the ALRP is attached hereto as **Exhibit C**.
6. On March 27, 2008, Terry L. Rohlfing and Jerry T. Caldwell each executed and delivered to the Bank personal Guaranties, individually guaranteeing payment of the Note. The Guaranties made Terry L. Rohlfing and Jerry T. Caldwell each liable for a limited principal amount of \$350,000.00 plus accrued interest thereon and all attorney's fees, collection costs and enforcement expenses. Copies of the Guaranties are attached hereto as **Exhibit D**.
7. On April 23, 2009, the Bank and Atlantic Private Equity Group, LLC entered into a Loan Modification Agreement (the "1st Modification") wherein Atlantic Private Equity Group, LLC acknowledged it was indebted to the Bank in the sum of \$1,550,000.00. The 1st Modification changed the initial interest rate to 5.50%, the variable rate to remain the same at 0.50% over the Bank's Prime rate, the principal due on April 16, 2010 and provided, in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 5.00% per annum until paid in full. A copy of the 1st Modification is attached hereto as **Exhibit E**.

8. On May 24, 2010, the Bank and Atlantic Private Equity Group, LLC entered into a Loan Modification Agreement (the "2nd Modification"), wherein Atlantic Private Equity Group, LLC acknowledged it was indebted to the Bank in the sum of \$2,000,000.00. The 2nd Modification changed the initial interest rate to 6.00%, the variable rate to remain the same at 0.50% over the Bank's Prime rate, the principal due on June 9, 2015 and provided, in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 5.00% per annum until paid in full. A copy of the 2nd Modification is attached hereto as **Exhibit F**.
9. After Atlantic Private Equity Group, LLC failed to perform its obligations under the Note and Loan Modifications Agreements, the Bank made demands to Defendants Terry L. Rohlfig and Jerry T. Caldwell for payment in accord with their obligations of the Guaranties. Defendants Terry L. Rohlfig and Jerry T. Caldwell failed and/or refused to honor their obligations under the Guaranties.
10. On April 25, 2011, the Bank retained counsel and commenced the captioned action for foreclosure of the Mortgage with deficiency demanded, and for Breach of the Guaranties.
11. On August 30, 2012, Atlantic Private Equity Group, LLC executed and delivered to the Bank a Partial Release of Mortgage and Assignment of Leases, Rents and Profits ("Partial Release") for the property labeled as "Parcel 2" in Exhibit A of the Mortgage, known as Lot 117, Hampton Lake, Beaufort County, South Carolina. The Partial Release was recorded on September 24, 2012 in the Beaufort County ROD Office in Book 3176 at Page 2243. The Partial Release resulted from the sale of Parcel 2, and Atlantic Private Equity Group, LLC was credited with net proceeds from the sale in the amount of \$540,375.61. A copy of the Partial Release is attached hereto as **Exhibit G**.

12. On September 28, 2012, the Bank executed and delivered to Deep Keel, LLC an Assignment of Debt and Lien (the "Assignment") of the remaining piece of property, labeled as "Parcel 1" in Exhibit A of the Mortgage, secured by the Note, Mortgage, Guaranties and additional loan documents. The Assignment was recorded on October 9, 2012 in the Beaufort County ROD Office in Book 3181 at Page 257. A copy of the Assignment is attached hereto as **Exhibit H**.
13. All of the above-referenced documents relating to the Debt of Atlantic Private Equity Group, LLC and attached hereto as Exhibits A-H were maintained in the official records of the Bank until the Assignment to Deep Keel, LLC.
14. The amount due and owing on the Note on September 28, 2012 was as follows:

Principal:	\$ 1,980,734.28
Rents Collected:	\$ (74,646.00)
Interest to 6/4/2012:	\$ 152,628.54
Sale of Parcel 2 (6/4/2012):	\$ (540,375.61)
Interest (6/4/2012 - 9/28/2012):	\$ 54,304.18
Late Charges:	\$ 10,850.97
Fees:	\$ 2,900.00

TOTAL: \$ 1,586,396.36


Jamin M. Hark
Executive Vice President - CresCom Bank

SWORN TO AND SUBSCRIBED
before me on this 6th day of July, 2016.

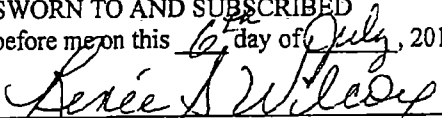

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3-10-2020

EXHIBIT A

ATLANTIC PRIVATE EQUITY GROUP, LLC 1000 WILLIAM HILTON PKW, STE F13 HILTON HEAD, SC 29938	Community FirstBank 884 Orleans Rd Charleston, SC 29407	Loan Number 0145003387 Date 03/27/2008 Maturity Date 03/25/2019 Loan Amount \$ 2,000,000.00 Renewal Of _____
BORROWER'S NAME AND ADDRESS ("You" means each borrower shown, jointly and separately.)	LENDER'S NAME AND ADDRESS ("You" means the lender, its successors and assigns.)	

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Two Million and 00/100
 Dollars \$ 2,000,000.00

☐ Single Advance: I will receive all of this principal sum on _____, No additional advances are contemplated under this note.

☒ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On 03/27/2008

I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☒ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on 03/25/2009

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 03/27/2008 at the rate of 6.500% per year until FIRST CHANGE DATE

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 0.00000000 the following index rate: COMMUNITY FIRSTBANK PRIME RATE

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as daily

A change in the interest rate will take effect on the same day

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.

Effect of Variable Rates: A change in the interest rate will have the following effect on the payments:

☒ The amount of each scheduled payment will change.

☐ The amount of the final payment will change.

☐

ACCRUAL METHOD: Interest will be calculated on a 365/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 10 DAYS days after it is due, I agree to pay a late charge of 5.00% OF THE LATE PAYMENT

☒ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: ORIGINATION FEE \$5,000.00 APPRAISAL FEE \$500.00 FLOOD CERT FEE \$30.00 COURIER FEE \$25.00

PAYMENTS: I agree to pay this note as follows:

☒ Interest: I agree to pay accrued interest Beginning 04/25/2008 and on the same day Monthly thereafter

☒ Principal: I agree to pay the principal 03/25/2009

☐ Installments: I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____ and will be due _____ . A payment of \$ _____ will be due _____ thereafter. The final payment of the entire unpaid balance of principal and interest will be due _____

ADDITIONAL TERMS:

DEFAULT RATE OF INTEREST: IN THE EVENT OF DEFAULT UNDER ANY OF THE LOAN DOCUMENTS, INTEREST SHALL BEGIN ACCRUING AT THE RATE STATED ABOVE PLUS THREE PERCENT (3.00%) PER ANNUM.

☒ SECURITY: This note is separately secured by (describe separate document by type and date): MORTGAGE/ASSIGNMENT LHA/PUC
1/SECURITY AGREEMENT/GUARANTOR AGREEMENTS

(This notation is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

DAVID L. MORROW

PURPOSE: The purpose of this loan is ESTABLISH MLOC

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

ATLANTIC PRIVATE EQUITY GROUP, LLC

By: New Colony Holdings Corporation, Manager

By: Terry L. Rohlfing
 TERRY L. ROHLFING President

ATLANTIC PRIVATE EQUITY GROUP, LLC 1000 WILLIAM HILTON PKW, STE F13 HILTON HEAD, SC 29928	Community FirstBank 834 Orleans Rd Charleston, SC 29407	Line of Credit No. <u>0145003387</u> Date <u>03/27/2008</u> Max. Credit Amt. <u>2,000,000.00</u> Loan Ref. No. <u>145003387</u>
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

You have extended to me a line of credit in the
 AMOUNT of Two Million and 00/100 \$ 2,000,000.00

You will make loans to me from time to time until 5:00 PM on 03/25/2008. Although the line of credit expires on that date, I will remain obligated to perform all my duties under this agreement so long as I owe you any money advanced according to the terms of this agreement, as evidenced by my note or notes I have signed promising to repay these amounts.

This line of credit is an agreement between you and me. It is not intended that any third party receive any benefit from this agreement, whether by direct payment, reference for future payment or in any other manner. This agreement is not a letter of credit.

1. AMOUNT: This line of credit is:

- ☐ **OBLIGATORY:** You may not refuse to make a loan to me under this line of credit unless one of the following occurs:
- a. I have borrowed the maximum amount available to me;
 - b. This line of credit has expired;
 - c. I have defaulted on the note (or notes) which show my indebtedness under this line of credit;
 - d. I have violated any term of this line of credit or any note or other agreement entered into in connection with this line of credit;
 - e. I have defaulted under any other obligations to the bank and the bank, in good faith, deems itself insecure.

- ☐ **DISCRETIONARY:** You may refuse to make a loan to me under this line of credit once the aggregate outstanding advances equal or exceed \$ _____.

Subject to the obligatory or discretionary limitations above, this line of credit is:

- ☐ **OPEN-END (Business or Agricultural only):** I may borrow up to the maximum amount of principal more than one time.
☐ **CLOSED-END:** I may borrow up to the maximum only one time.

2. PROMISSORY NOTE: I will repay any advances made according to this line of credit agreement as set out in the promissory note, I signed on 03/27/2008 or any note(s) I sign at a later time which represent advances under this agreement. The note(s) set(s) out the terms relating to maturity, interest rate, repayment and advances. If indicated on the promissory note, the advances will be made as follows:

3. RELATED DOCUMENTS: I have signed the following documents in connection with this line of credit and note(s) entered into in accordance with this line of credit:

- ☒ security agreement dated 03/27/2008 ☐ ASSIGNMENT IRAP
☒ mortgage dated 03/27/2008 ☐ UCC-1 (STATE OF SC FILING)
☒ guaranty dated 03/27/2008 ☐

4. REMEDIES: If I am in default on the note(s) you may:

- a. take any action as provided in the related documents;
 - b. without notice to me, terminate this line of credit.
- By selecting any of these remedies you do not give up your right to later use any other remedy. By deciding not to use any remedy should I default, you do not waive your right to later consider the event a default, if it happens again.

5. COSTS AND FEES: If you hire an attorney to enforce this agreement I will pay your reasonable attorney's fees, where permitted by law. I will also pay your court costs and costs of collection, where permitted by law.

6. COVENANTS: For as long as this line of credit is in effect or I owe you money for advances made in accordance with the line of credit, I will do the following:

- a. maintain books and records of my operations relating to the need for this line of credit;
- b. permit you or any of your representatives to inspect and/or copy these records;
- c. provide to you any documentation requested by you which support the reason for making any advance under this line of credit;
- d. permit you to make any advance payable to the seller (or seller and me) of any items being purchased with that advance;

e. _____

7. NOTICES: All notices or other correspondence with me should be sent to my address stated above. The notice or correspondence shall be effective when deposited in the mail, first class, or delivered to me in person.

8. MISCELLANEOUS: This line of credit may not be changed except by a written agreement signed by you and me. The law of the state in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation.

FOR THE LENDER

DAVID L. MORROW

Title _____

SIGNATURES: I AGREE TO THE TERMS OF THIS LINE OF CREDIT. I HAVE RECEIVED A COPY ON TODAY'S DATE.

Atlantic Private Equity Group, LLC
 By: Terri L. Robinson New Colony Holdings Corporation, Manager

By: Terri L. Robinson
 President

Community FirstBank

ATLANTIC PRIVATE EQUITY GROUP, LLC

03/25/2008

Loan Calculation Summary

Total Frincipal	2,000,000.00
Amount Financed	1,995,000.00
Finance Charge	136,083.33
Annual Percentage Rate (APR)	6.859
Total Payments	2,131,083.33
Additional Interest	
Note Maturity Date	03/25/2009

Number of Payments	Amount
1	2,000,000.00

This is for information purposes only and should not be used as the basis in establishing a loan.

EXHIBIT B

9/15/08
MCNAUL
3447

MLE/PP

BEAUFORT COUNTY SC - ROD
BK 02701 PGS 0632-0640
FILE NUM 2008018591
03/28/2008 10:46:44 AM
REC'D BY J COORE RCPT# 538945
RECORDING FEES 15.00

This document was prepared by (name, address, phone): MCNAUL LAW FIRM
238 SHELTER COVE LANE STE 400
HILTON HEAD ISLAND, SC 29928

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 03/27/2008 and the parties and their addresses are as follows:

MORTGAGOR: ATLANTIC PRIVATE EQUIT GROUP, LLC
1000 WILLIAM HILTON PARKWAY STE F13
HILTON HEAD ISLAND, SC 29928

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagees.

LENDER: Community First Bank
884 Driggs Rd
Charleston, SC 29402

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
REFER TO EXHIBIT A WHICH IS ATTACHED HERETO AND MADE A PART HEREOF

The property is located in BEAUFORT (County) at SEE ATTACHED EXHIBIT
BLUFFTON (City), South Carolina 29910 (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, oil diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT AND MORTGAGE, BEAUFORT COUNTY, PUBLIC RECORDS DEPARTMENT (page 1 of 1)
© 1994, 2007 Bankable Systems, Inc., St. Cloud, MN Form AGC0-825-SC 1/11/2008

[Signature]

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 2,000,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorney's fees and other charges validly made pursuant to this Mortgage and does not apply to advances for interest accrued on such advanced monies under the terms of this Mortgage to protect Lender's security, and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagor shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.
4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:
- The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt (a.g., borrower's name, note amount, interest rate, maturity date);
 - INCLUDING BUT NOT LIMITED TO NOTE AND LOAN NUMBER 145023367 MATURING 03/25/08.
- All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
 - All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
 - All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
 - Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.
- If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagors, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.
5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, loan payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
- To make all payments when due and to perform or comply with all covenants.
 - To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law [12 C.F.R. 601], as applicable. For the purposes of this section, the term "Property" also includes any interest in all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

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10. TRANSFER OF AN INTEREST IN THE MORTGAGE. If Mortgagee is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagee is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. ENTITY WARRANTIES AND REPRESENTATIONS. If Mortgagee is an entity other than a natural person (such as a corporation or other organization), Mortgagee makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagee is an entity which is duly organized and validly existing in the Mortgagee's state of incorporation (or organization). Mortgagee is in good standing in all states in which Mortgagee transacts business. Mortgagee has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagee operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagee and the obligations evidenced by the Evidence of Debt are within the power of Mortgagee, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagee has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent Mortgagee does not and will not use any other name and will preserve its existing name, trade names and trademarks until the Secured Debt is satisfied.

12. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagee will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagee will give Lender prompt notice of any loss or damage to the Property. Mortgagee will keep the Property free of noxious weeds and grasses. Mortgagee will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagee will notify Lender of all demands, proceedings, claims, and actions against Mortgagee or any other owner made under law or regulation regarding use, ownership, and occupancy of the Property. Mortgagee will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagee also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagee has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property of like or equal value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagee shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagee will in no way rely on Lender's inspection.

13. AUTHORITY TO PERFORM. If Mortgagee fails to perform any of Mortgagee's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagee appoints Lender as attorney in fact to sign Mortgagee's name or pay any amount necessary for performance, if any construction on the Property is discontinued or not carried on in a reasonable manner. Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagee shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. ASSIGNMENT OF LEASES AND RENTS. Mortgagee assigns, grants, bargains, conveys and mortgages to Lender as additional security of the right, title and interest in the following (Property):

- A. Existing or future leases, subleases, licenses, guarantees and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, toppings area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagee may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagee will promptly provide Lender with copies of the Lease and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagee may collect, receive, enjoy and use the Rents so long as Mortgagee is not in default. Mortgagee will not collect in advance any Rents due in future lease periods, unless Mortgagee first obtains Lender's written consent. Upon default, Mortgagee will receive.

Page 3 of 4
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any Rents in trust for Lender and Mortgagee will not commingle the Rents with any other funds. When Lender so directs, Mortgagee will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debt, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagee agrees that this Security Instrument is immediately effective between Mortgagee and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagee warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagee, at its sole cost and expense, will keep, observe and perform, and receive all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagee or any party to the Lease defaults or fails to observe any applicable law, Mortgagee will promptly notify Lender. If Mortgagee neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagee will not sublet, modify, extend, cancel, or otherwise alter the Leases, or except the surrender of the Property covered by the Leases (unless this Lease so requires) without Lender's consent. Mortgagee will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagee will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagee will perform all of Mortgagee's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. DEFAULT. Mortgagee will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage; any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guaranteeing, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagee or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagee or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagee's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1240, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagee with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgage is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidence of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagee's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagee agrees to pay all of Lender's expenses if Mortgagee breaches any covenant in this Mortgage. Mortgagee will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagee agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagee agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. §601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has

(page 4 of 5)
[Handwritten signature]

characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "hazardous waste," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

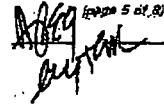
- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, stored, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties, and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. **CONDEMNATION.** Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. **INSURANCE.** Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Page 5 of 80


Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not advise within 30 days of notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All parties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- ☐ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☒ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☒ **Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender's security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of these including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

Exhibit B 1234, 3001 Banknote Systems, Inc., St. Cloud, MN Form AGC045R-02 1/81/2003

Handwritten signature and initials

29. OTHER TERMS. Attached, the following are applicable to this Mortgage:

- SIGNATURES:** By signing below, Mortgagee agrees to the terms and conditions contained in this document and in any attachments. Mortgagee also acknowledges receipt of a copy of the Mortgage on the date stated above on Page 1.

உணர்வு-பொருள் இயல்

PROBATE: STATE OF SC COUNTY OF Beaufort) ss:

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 27th day March, 2008

of Ernie W. Buchanan
Notary Public for South Carolina

My commission expires: 4/5/11

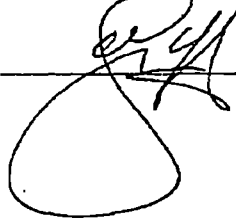


EXHIBIT "A"

Parcel 1:

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

The property intended to be mortgaged herein is the same property conveyed to the within Mortgagor by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

Parcel 2:

ALL that certain piece, parcel or lot of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase 1 Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

The property intended to be mortgaged herein is the same property conveyed to the within Mortgagor by Deed recorded in Book 2559 at Page 376, Beaufort County Records.

This Mortgage was prepared in the Law Offices of McNair Law Firm, P.A., Post Office Drawer 3, Hilton Head Island, South Carolina 29938, by Cary S. Griffin.

EXHIBIT C

5/10/08
MCF/PP
3447

COMMUNITY FIRSTBANK
884 ORLEANS ROAD
CHARLESTON, SC 29407

BEAUFORT COUNTY SC - ROD
BK 02701 PGS 0641-0845
FILE NUM 2008018592
03/28/2008 10:46:44 AM
REC'D BY J COORE RCPT# 538945
RECORDING FEES 10.00

06

MCF/PP

145003387

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ASSIGNMENT OF LEASES,
RENTS AND PROFITS

THIS ASSIGNMENT made and entered into this 27th day of March, 2008 by and between ATLANTIC PRIVATE EQUITY GROUP, LLC (hereinafter referred to as the "Assignor"), and COMMUNITY FIRSTBANK, Charleston, South Carolina (hereinafter referred to as the "Assignee").

WITNESSETH:

FOR VALUE RECEIVED and as security for the loan hereinafter mentioned, the Assignor hereby sells, transfers, assigns and grants a security interest unto the Assignee, its successors and assigns, all the right, title and interest of the Assignor, whether as Lessor or Lessee, in and to the rents, issues, profits, revenues, royalties, rights and benefits, from the property described on Exhibit A attached hereto and made a part hereof and any buildings and improvements now or hereafter placed on such property.

And to that end Assignor hereby assigns and sets over unto Assignee, its successors and assigns, all leases of said premises now made, executed or delivered, whether written or verbal, or to be hereafter made, be the same written or verbal.

And Assignor does hereby authorize and empower Assignee, its successors and assigns, to collect the said rents, issues, profits, revenues, royalties, rights and benefits, as they shall become due, and does hereby direct each and all of tenants of the aforesaid premises to pay such rents as may now be due or shall hereafter become due to the said Assignee, its successors and assigns, upon demand for payment hereof by said Assignee, its successors and assigns. It is understood and agreed, however, that no such demand shall be made unless and until there has been a default in the payment of the Note hereinafter described or a default under the Loan Agreement of even date herewith or any of the loan documents, and until such demand is made the Assignor is authorized to collect, or continue collecting, said rent, issues, profits, revenues, royalties, rights and benefits; but that such privilege to collect, or continue collecting, as aforesaid by Assignor shall not operate to permit the collection by said Assignor, its successors or assigns, of any installment of rent in advance of the date prescribed in said lease or leases for the payment thereof.

The term of this Assignment shall be until that certain Note in the original principal amount of not to exceed **TWO MILLION DOLLARS AND NO/100 (\$2,000,000.00)** and all other indebtedness secured by the Mortgage, all of even date herewith, made, executed and delivered by Assignor to the Assignee, covering the above described property, shall have been fully paid and satisfied, and at the end of such term, this Assignment is to be canceled and released, and the satisfaction of said Mortgage shall constitute a release hereof.

It is expressly covenanted and agreed by the undersigned Assignor, that at the time of the execution and delivery of this Assignment there has been no anticipation or prepayment of any rents.

It is further covenanted and agreed that Assignor, and its successors or assigns, shall have no right, power or authority to alter, modify or amend the terms, or any of them, of any of the leases pertaining to the property described on Exhibit A attached hereto in any particular whatsoever without first obtaining the consent in writing of the Assignee to such alteration modification or amendment.

Nothing herein contained shall be construed as making the Assignee, or its successors and assigns, Mortgagee in possession, nor shall it or its successors, and assigns, be liable for laches for failure to collect said rents, issues, profits, revenues, royalties, rights and benefits, and it is understood that said Assignee is to account only for such sums as are actually collected.

IT IS UNDERSTOOD AND AGREED that neither the existence of this Assignment nor the exercise of its privilege to collect said rents, issues, profits, revenues, royalties, rights and benefits hereunder shall be construed as a waiver by the Assignee, or its successors and assigns, of the right to enforce payment of the debt hereinabove mentioned, in strict accordance with the terms and provisions of the Note and Mortgage and all other Loan Documents for which this Assignment is given as additional security and by any means provided in said Mortgage, and the rights hereby given are in addition to and cumulative of all rights given by said Mortgage.

The covenants and obligations herein undertaken by the Assignor shall be binding upon its successors and assigns, and the rights and benefits herein conferred upon the Assignee shall inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed under Seal as of the day and year first hereinabove written.

WITNESSES:

ATLANTIC PRIVATE EQUITY GROUP,
LLC

By: New Colony Holdings Corporation, Manager

By: Terry L. Rohlifing
Terry L. Rohlifing, President

By: _____

As to Assignor

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF ~~CHARLESTON~~
BEAUFORT)

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s) he saw the within named ATLANTIC PRIVATE EQUITY GROUP, LLC by Terry L. Rohlifing, President of New Colony Holdings Corporation, Manager authorized signers, sign, seal, and as its act and deed, deliver the within written Assignment of Leases, Rents and Profits, and that (s) he with the other above-subscribed witness witnessed the execution thereof.

WITNESS

SWORN TO before me this
27th Day of March, 2008.

Egon W. Buchman
Notary Public of South Carolina
My Commission Expires: 6/5/11

EXHIBIT "A"

Parcel 1:

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

Parcel 2:

ALL that certain piece, parcel or lot of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase 1 Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

SCHEDULE A

Any and all goods, chattels, furniture, fixtures, equipment, inventory and tangible or intangible personal property of any kind, nature or description (including without limitation, any and all accounts, contract rights, franchises, licenses, permits, now owned or hereafter acquired, or in which Debtor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, other title retention document or otherwise) which is, are or shall be located upon and used in the Debtor's project and Improvements, or other operations or enterprises of Debtor carried out upon the real property more particularly described in Exhibit A attached hereto, together with any and all replacements or substitutions thereof or therefore as well as the proceeds thereof or therefrom regardless of form.

EXHIBIT D

GUARANTY

Charleston

(City)

SC

(State)

March 27, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Community First Bank, 894 Orleans Rd. Charleston, SC, 29407 (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of ATLANTIC PRIVATE EQUITY GROUP, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: LOAN AND NOTE NUMBER 145003387 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): _____

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 350,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____
☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

TERRY L. ROHLFUS

"Undersigned" shall refer to all persons who sign this guaranty, jointly and jointly

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all indebtedness; (ii) any one or more extensions or renewals of indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any indebtedness; (v) any discharge of any evidence of indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for indebtedness; or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing indebtedness; whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay indebtedness even though any other person obligated to pay indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing indebtedness. Lender shall not be required first to resort for payment of the indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

(page 2 of 2)

GUARANTY

Charleston, SC
(City) (State)

March 27, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Community FirstBank, 884 Orange Rd. Charleston, SC 29407 (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of ATLANTIC PRIVATE EQUITY GROUP, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: LOAN AND NOTE NUMBER 145003387 and any extensions,

renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 750,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____
☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

Jerry T. Caldwell

Jerry T. Caldwell

"Undersigned" shall refer to all persons who sign the guaranty, severally and jointly

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all indebtedness; (ii) any one or more extensions or renewals of indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any indebtedness; (v) any discharge of any evidence of indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay indebtedness even though any other person obligated to pay indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing indebtedness. Lender shall not be required first to resort for payment of the indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

EXHIBIT E



LOAN MODIFICATION AGREEMENT

WHEREAS, COMMUNITY FIRSTBANK loaned Two Million Dollars and no/100 (\$2,000,000.00) to ATLANTIC PRIVATE EQUITY GROUP LLC, evidenced by its Loan No. 145003387 and the original note executed and delivered dated March 27, 2008, including but not limited to any modifications, substitutions and/or renewals, which note hereby referred to as a part of this instrument, and

WHEREAS, the undersigned parties agree to modify the original note as follows (change only applies if block is checked):

PAYMENT SCHEDULE: Principal and interest hereon will be paid as follows:

- ☐ **TIME** The principal amount of the Note is payable in full on _____, with interest thereon payable _____ beginning _____.
- ☐ **INSTALLMENT** In _____ consecutive payments of _____ ☐ including interest ☐ plus interest, beginning _____ All principal and interest if not sooner paid shall be due and payable on _____.
- ☒ **LINE OF CREDIT** The principal amount outstanding under this ☒ Revolving ☐ Non-Revolving Line of Credit is due on April 16, 2010, with interest thereon payable Monthly beginning May 16, 2009. The line of credit shall not exceed \$2,000,000.00.
- ☐ **OTHER**
- ☒ **MONETARY** ☒ Renewal/Modification fee in the amount of \$1,000.00 due at signing.
☒ Current interest in the amount of \$5,930.89 due at signing.
☐ _____ in the amount of _____ due at signing.
- ☒ **RATE** Interest accrual on the unpaid balance will be calculated at
☐ a fixed rate of _____ % per annum.
☒ a variable rate of Community FirstBank Prime plus .50%, the rate to be adjusted from time to time. The change in the Variable Rate will become effective on the day that the prime rate changes. The new interest rate floor will be .50%. The new interest rate ceiling will be N/A%.

☒ **LATE CHARGES** If Payment is 10 days or more late, Borrower will be charged 5.00% of the unpaid portion of the the payment amount or \$25.00, whichever is greater.

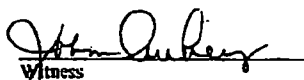
☒ **DEFAULT RATE OF INTEREST:** In the event of default under any of the loan documents, interest shall begin accruing at the current note rate plus five percent (5%) per annum.

EXCEPT as specifically modified herein, the provisions of all loan documents on Loan Number 145003387 shall remain the same.

THEREFORE, it is hereby agreed that the unpaid balance of said indebtedness upon the date of this Agreement is One Million Five Hundred Fifty Thousand Dollars AND 00/100 (\$1,550,000.00).

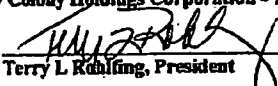
THE terms of all Loan Documents on Loan Number 145003387 as herein modified are binding on the Parties, their heirs, successors, and assigns. It is specifically agreed and understood by the Parties hereto that this Modification is not intended to be and is not a novation and that any attempt to so construe the Modification as such would be contrary to the express intent of the Parties.

SIGNED, SEALED AND DELIVERED this 23rd day of April, 2009.


Witness

Witness

Atlantic Private Equity Group LLC
By New Colony Holdings Corporation - Member

BY: 
Terry L. Ruffing, President

BY: _____

COMMUNITY FIRSTBANK

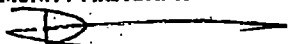
BY: 
David Morrow, Chief Policy Officer

EXHIBIT F



LOAN MODIFICATION AGREEMENT

WHEREAS, COMMUNITY FIRSTBANK loaned Two Million Dollars and no/100 (\$2,000,000.00) to ATLANTIC PRIVATE EQUITY GROUP LLC, evidenced by its Loan No. 145003387 and the original note executed and delivered dated March 27, 2008, including but not limited to any modifications, substitutions and/or renewals, which note hereby referred to as a part of this instrument, and

WHEREAS, the undersigned parties agree to modify the original note as follows (change only applies if block is checked):

PAYMENT SCHEDULE: Principal and interest hereon will be paid as follows:

- ☐ **TIME** The principal amount of the Note is payable in full on _____ with interest thereon payable beginning _____
- ☒ **INSTALLMENT** In 59 consecutive Monthly payments of \$14,468.86 ☒ including interest ☐ plus interest, beginning July 09, 2010. All principal and interest if not sooner paid shall be due and payable on June 09, 2015.
- ☐ **LINE OF CREDIT** The principal amount outstanding under this ☐ Revolving ☐ Non-Revolving Line of Credit is due on _____ with interest thereon payable beginning _____. The line of credit shall not exceed _____.
- ☐ **OTHER**
- ☒ **MONETARY** ☒ Renewal/Modification fee in the amount of \$1,000.00 due at signing.
☒ Current interest in the amount of \$8,246.72 due at signing.
☐ _____ in the amount of _____ due at signing.
- ☒ **RATE** Interest accrual on the unpaid balance will be calculated at
☐ a fixed rate of _____ % per annum.
☒ a variable rate of Community FirstBank Prime plus .50%, the rate to be adjusted from time to time. The change in the Variable Rate will become effective on the day that the prime rate changes. The new interest rate floor will be 6.00%. The new interest rate ceiling will be N/A%.

☒ **LATE CHARGES** If Payment is 10 days or more late, Borrower will be charged 5.00% of the unpaid portion of the the payment amount or \$25.00, whichever is greater.

☒ **DEFAULT RATE OF INTEREST:** In the event of default under any of the loan documents, interest shall begin accruing at the current note rate plus five percent (5%) per annum.

EXCEPT as specifically modified herein, the provisions of all loan documents on Loan Number 145003387 shall remain the same.

THEREFORE, it is hereby agreed that the unpaid balance of said indebtedness upon the date of this Agreement is Two Million Dollars AND 00/100 (\$2,000,000.00).

THE terms of all Loan Documents on Loan Number 145003387 as herein modified are binding on the Parties, their heirs, successors, and assigns. It is specifically agreed and understood by the Parties hereto that this Modification is not intended to be and is not a novation and that any attempt to so construe the Modification as such would be contrary to the express intent of the Parties.

SIGNED, SEALED AND DELIVERED this 24th day of May, 2010.

Atlantic Private Equity Group LLC
By New Colony Holdings Corporation - Member

BY: Terry L. Röhlfing
Terry L. Röhlfing, President

BY: _____

Robert L. Tennyson
Witness

Witness

COMMUNITY FIRSTBANK

BY: Robert Tennyson
Robert Tennyson, Vice President

John Duly
Witness

EXHIBIT G

2 PB
Bird
14205

S. Bird
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BEAUFORT COUNTY SC - ROD
BK 03176 PGS 2243-2244
FILE NUM 2012055076
09/24/2012 12:16:19 PM
REC'D BY P BAXLEY RCPT# 689277
RECORDING FEES 7.00

**PARTIAL RELEASE
OF MORTGAGE and ASSIGNMENT OF LEASES, RENTS & PROFITS**

KNOW ALL MEN that CresCom Bank, successor by merger to Community First Bank, owner of the Mortgage and Assignment of Leases, Rents and Profits hereinafter referred to, for and in consideration of good and valuable consideration, receipt of which is hereby acknowledged, does forever discharge and release that certain tract of land described as follows, to wit:

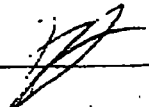
All that certain piece, parcel or lot of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase 1 Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

from all claims and liens under that certain Mortgage dated 3/27/08, from Atlantic Private Equity Group, LLC, as Mortgagor, to CresCom Bank, successor by merger to Community First Bank, as Mortgagee, and recorded in the Office of the Clerk of Court for Beaufort County in Mortgage Book 2701 at Page 632 and Assignment of Leases, Rents and Profits recorded in Book 2701 at Page 641, Beaufort County Records.

IN ALL OTHER RESPECTS, the aforesaid Mortgage shall remain in full force and effect.

IN WITNESS WHEREOF, CresCom Bank, successor by merger to Community First Bank has caused these presents to be executed this 30 day of August, 2012.

CresCom Bank, successor by merger to Community First Bank

By: 

2 Rachel Hively
Witness
3 Laura L. Dooly
Witness

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that JAMIN M. HUJIK, as the duly authorized officer of CresCom Bank, successor by merger to Community First Bank by and on behalf of the Bank, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 30 day of August, 2012.

4 Rachel Hisey
Notary Public for SOUTH CAROLINA

My commission expires: 01-18-2021

EXHIBIT H

45W
9/16/12
Alman

BEAUFORT COUNTY SC - ROD
BK 03181 PGS 0257-0260
FILE NUM 2012058622
10/09/2012 12:34:11 PM
REC'D BY S WASHINGTON RCPT# 690858
RECORDING FEE\$ 9.00

Upon Recording Return To:
Altman & Coker, LLC
575 King Street, Suite A
Charleston, South Carolina 29403

ASSIGNMENT OF DEBT AND LIEN

STATE OF SOUTH CAROLINA

§

COUNTY OF BEAUFORT

§

§

Holder of Debt and Lien ("Holder"): CRESCOM BANK, successor by merger to
Community FirstBank
884 Orleans Road
Charleston, South Carolina 29407

Assignee: Deep Keel, LLC

Lien: That certain Mortgage dated March 27, 2008, given by Atlantic Private Equity Group, LLC, ("**Mortgagor**"), as Mortgagor, to Community FirstBank, n/ka CresCom Bank ("**Holder**") as lender, filed of record on March 28, 2008, in the office of the Register of Deeds for Beaufort County, South Carolina (the "**Official Records**") in Book 02701, Page 0640, in respect of certain in indebtedness of Borrower described therein (the "**Debt**") and currently held by Holder; and,

That certain Assignment of Leases, Rents and Profits dated March 27, 2008, given by Atlantic Private Equity Group, LLC, ("**Mortgagor**"), as Mortgagor, to Community FirstBank, n/ka CresCom Bank ("**Holder**") as lender, filed of record on March 28, 2008, in the office of the Register of Deeds for Beaufort County, South Carolina (the "**Official Records**") in Book 02701, Page 0641, in respect of certain in indebtedness of Borrower described therein (the "**Debt**") and currently held by Holder.

The property subject to Lien (the "**Property**") is described in Exhibit A attached hereto and incorporated herein for all purposes.

As used herein, Lien shall include all liens relating to the Debt held by Holder against the Property, as renewed, extended and/or modified.

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Holder hereby transfers and assigns the Debt and Lien to Assignee as of September 28, 2012; and, such assignment is made **WITHOUT RECOURSE, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED.**

This document confirms the assignment that was made as of September 28, 2012. This documents is dated September 28, 2012.

CresCom Bank, successor by merger to
Community FirstBank

Witness:

Rachael Hujik
Laura J. Hujik

By: Jamin M. Hujik
Jamin M. Hujik
Its: Executive Vice President

STATE OF SOUTH CAROLINA

§
§
§

COUNTY OF CHARLESTON

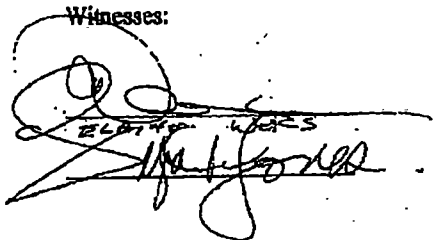
This instrument was acknowledged before me on this 4 day of October, 2012, by Jamin M. Hujik, well known to be the Executive Vice President of CresCom Bank, successor by merger to Community FirstBank, and who executed the foregoing instrument, and he acknowledge to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

Rachael Hujik
Notary Public State of South Carolina
Print Name Rachael A. Hujik
My Commission Expires: 01-18-2021

Page 2 of 4

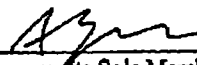
THE WITHIN ASSIGNMENT IS ACCEPTED WITHOUT RECOURSE,
REPRESENTATIONS, WARRANTIES, EXPRESSED OR IMPLIED.

Witnesses:



ASSIGNEE

Deep Keel, LLC

By: 

Scott Bynum, Its Sole Member, Member

STATE OF NEW YORK)

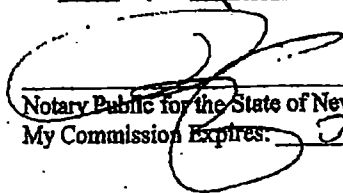
COUNTY OF W. 43)

ACKNOWLEDGMENT

BEFORE me personally appeared Scott Bynum, well known to be the Sole Member of Deep Keel, LLC, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 28th day of September, 2012.

JENNIFER L. WERTZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NASSAU COUNTY
NO. 0186202893
NON EXPIRES 01/31/13


Notary Public for the State of New York
My Commission Expires: 2/30/13

Page 3 of 4

Exhibit A

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

This being the same property conveyed to Atlantic Private Equity Group, LLC by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

Page 4 of 4

ASSIGNMENT OF MORTGAGE AND PROMISSORY NOTE WITHOUT RECOURSE

Prepared By: Altman & Coker, LLC
575 King Street, Suite A
Charleston, South Carolina 29403

CresCom Bank, successor by merger to Community FirstBank a South Carolina state-chartered savings bank, ("Assignor") and Deep Keel, LLC, a South Carolina limited liability company, ("Assignee") are parties to an Agreement providing for the sale by Assignor and the purchase by Assignee of a certain loan by Atlantic Private Equity Group, LLC, (the "Borrower") made on March 27, 2008, as modified on April 23, 2009, and May 24, 2010, and related loan documents.

ASSIGNOR, as contemplated by such Agreement and for consideration as set forth therein, the sufficiency and receipt of which are hereby acknowledged, does hereby bargain, sell, give, grant, convey, transfer, set over and assign unto Assignee, and its successors and assigns, all of Assignor's right, title and interest in and to the following: (a) that certain Mortgage from Atlantic Private Equity Group, LLC, ("Mortgagor") dated March 27, 2008, to Community FirstBank, n/k/a CresCom Bank, and recorded on March 28, 2008 in Book 02701 at Page 0632, in the Beaufort County ROD Office ("Mortgage"), exclusive of that security interest released by a Partial Release of Mortgage and Assignment of Leases, Rents & Profits recorded on September 24, 2012, in Book 03176 at Page 2243 Beaufort County ROD Office; (b) that certain Assignment of Leases, Rents and Profits from Atlantic Private Equity Group, LLC, ("Mortgagor") dated March 27, 2008, to Community FirstBank, n/k/a CresCom Bank, and recorded on March 28, 2008 in Book 02701 at Page 0641, in the Beaufort County ROD Office ("Mortgage"), exclusive of that security interest released by a Partial Release of Mortgage and Assignment of Leases, Rents & Profits recorded on September 24, 2012, in Book 03176 at Page 2243 Beaufort County ROD Office; (c) the guaranties of Terry L. Rohlfing and Jerry T. Caldwell, dated March 27, 2008; dated January 19, 2006; and (d) the obligations secured by the Mortgage, including, but not limited to, that promissory note issued by Borrower to Assignor dated March 27, 2008, and in the original maximum principal amount of \$ 2,000,000.00 (the "Note"), as modified by that note modification dated April 23, 2009, and that certain note modification dated May 24, 2010, and the money due and to become due with respect to such obligations and Note (collectively, the "Obligations").

TO HAVE AND TO HOLD the same, together with all rights, titles, interests, privileges, claims, demands and equities existing and to exist in connection therewith unto Assignee, its successors and assigns forever. Assignor expressly waives and releases in favor of Assignee any and all rights that Assignor may now have or hereinafter has to establish or enforce any lien or security interest securing payment of any of the Obligations under the Mortgage or any of the loan documents relating to any of the Obligations. Assignor directs that all payments hereafter due with regard to any of the Obligations be made directly to Assignee.

ASSIGNEE hereby assumes, and agrees to the terms, and agrees to perform, in accordance with the terms thereof, any and all of Assignor's obligations under the above Obligations or

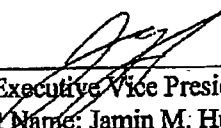
Mortgage arising on or after the date hereof. The undersigned, on behalf of the Assignee, hereby declares that he has the authority accept the terms of the Agreement and this Assignment on behalf of the Assignee.

This Assignment of Mortgage and Promissory Note is made, executed and delivered **WITHOUT RECOURSE, REPRESENTATIONS, WARRANTIES, EXPRESSED OR IMPLIED**, pursuant to the Agreement, and is subject to all of the terms, provisions and conditions thereof. This Assignment may be executed in a number of multiple, identical counterparts which, when taken together, shall constitute collectively one Assignment, but in making proof of this Assignment, it shall not be necessary to produce or account for more than one such counterpart as executed by the party to be charged.

IN WITNESS WHEREOF, said Assignor and Assignee have signed, sealed and delivered this instrument on this 28 day of September, 2012.

ASSIGNOR

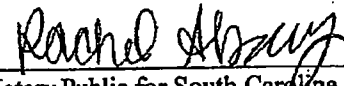
CresCom Bank, successor by merger to
Community FirstBank

By: 
Its: Executive Vice President
Print Name: Jamin M. Hujik

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) **ACKNOWLEDGMENT**

BEFORE me personally appeared Jamin M. Hujik well known to be the Executive Vice President of CresCom Bank, successor by merger to Community FirstBank, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 28 day of September, 2012.


Notary Public for South Carolina
My Commission Expires: 01-18-2021

THE WITHIN ASSIGNMENT IS ACCEPTED WITHOUT RECOURSE,
REPRESENTATIONS, WARRANTIES, EXPRESSED OR IMPLIED.

ASSIGNEE

Deep Keel, LLC

By: [Signature]
Scott Bynum, Its Sole Member

STATE OF NEW YORK)

COUNTY OF Kings)

ACKNOWLEDGMENT

BEFORE me personally appeared Scott Bynum, well known to be the sole member of Deep Keel, LLC, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 28th day of September, 2012.

[Signature]
Notary Public for the State of New York
My Commission Expires: 01/30/13

JENNIFER L. WERTZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NASSAU COUNTY
NO. 01W6202633
MY COMMISSION EXPIRES 01-30-2013



ATTORNEYS & COUNSELORS at LAW

Patricia Schneider
pschneider@altmancoker.com

July 11, 2016

BY UPS DELIVERY TO:

The Honorable Jerri Roseneau
Beaufort County Clerk of Court
102 Ribaut Road, Room 208
Beaufort, SC 29901

Re: Deep Keel, LLC v. Atlantic Private Equity Group, LLC, et al.
C/A No.: 2011-CP-07-01933
Our File No.: 01354.

Dear Ms. Roseneau:

In connection with the above-referenced matter, enclosed please find an original and one copy of an Affidavit of Scott Bynum and an Affidavit of James M. Hujik. Please have these documents filed with your office, and return file-stamped copies to us in the enclosed self-addressed, stamped envelope.

Thank you for your assistance with this matter, and please feel free to contact us if you have any questions or concerns.

Very truly yours,

Patricia Schneider
Paralegal

/pas
Enclosures
c (w/encls.): Keating L. Simons, III, Esq. (by email)

2016 JUL 12 11 29 55
CLERK OF COURT
BEAUFORT COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

DEEP KEEL, LLC,)

Plaintiff,)

vs.)

ATLANTIC PRIVATE EQUITY GROUP,)
LLC, TERRY L. ROHLFING, JERRY T.)
CALDWELL, and BLUFFTON VILLAGE)
TOWN CENTER PROPERTY OWNERS')
ASSOCIATION, INC.,)

Defendants.)

CIVIL ACTION NO. 2011-CP-07-01933

AFFIDAVIT OF JAMIN M. HUJIK

PERSONALLY APPEARED BEFORE ME, Jamin M. Hujik, who first being duly sworn, under oath, deposes and says:

1. He is the Executive Vice President of CresCom Bank, successor by merger to Community FirstBank.
2. On March 27, 2008, Atlantic Private Equity Group, LLC issued to Community FirstBank n/k/a CresCom Bank (the "Bank") a promissory note (the "Note") establishing a revolving line of credit in the principal amount of \$2,000,000.00 with an initial variable interest rate of 6.50% and a maturity date of March 25, 2009. The Note provided that in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 3.00% per annum until paid in full. A copy of the Note is attached hereto as **Exhibit A**.
3. On March 27, 2008, to better secure payment of the Note, Atlantic Private Equity Group, LLC executed and delivered a mortgage (the "Mortgage") to the Bank, granting a security interest in

Page 1 of 4

two properties in Beaufort County, which was recorded on March 28, 2008 in Book 02701 at Page 0632 in the Beaufort County ROD Office. A copy of the Mortgage is attached hereto as **Exhibit B**.

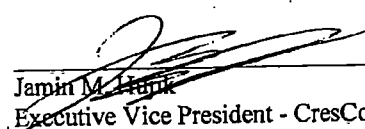
4. Pursuant to the terms of the Mortgage, any sums paid by the Bank for inspecting and securing the subject property, for fire and other hazard insurance, taxes and assessments for the mortgaged premises, and any costs of collection, including a reasonable attorney's fee, are secured by the Mortgage.
5. On March 27, 2008, Atlantic Private Equity Group, LLC executed and delivered to the Bank an Assignment of Leases, Rents and Profits (the "ALRP"), which was recorded on March 28, 2008 in the Beaufort County ROD Office in Book 2701 at Page 641. A copy of the ALRP is attached hereto as **Exhibit C**.
6. On March 27, 2008, Terry L. Rohlfing and Jerry T. Caldwell each executed and delivered to the Bank personal Guaranties, individually guaranteeing payment of the Note. The Guaranties made Terry L. Rohlfing and Jerry T. Caldwell each liable for a limited principal amount of \$350,000.00 plus accrued interest thereon and all attorney's fees, collection costs and enforcement expenses. Copies of the Guaranties are attached hereto as **Exhibit D**.
7. On April 23, 2009, the Bank and Atlantic Private Equity Group, LLC entered into a Loan Modification Agreement (the "1st Modification") wherein Atlantic Private Equity Group, LLC acknowledged it was indebted to the Bank in the sum of \$1,550,000.00. The 1st Modification changed the initial interest rate to 5.50%, the variable rate to remain the same at 0.50% over the Bank's Prime rate, the principal due on April 16, 2010 and provided, in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 5.00% per annum until paid in full. A copy of the 1st Modification is attached hereto as **Exhibit E**.

8. On May 24, 2010, the Bank and Atlantic Private Equity Group, LLC entered into a Loan Modification Agreement (the "2nd Modification"), wherein Atlantic Private Equity Group, LLC acknowledged it was indebted to the Bank in the sum of \$2,000,000.00. The 2nd Modification changed the initial interest rate to 6.00%, the variable rate to remain the same at 0.50% over the Bank's Prime rate, the principal due on June 9, 2015 and provided, in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 5.00% per annum until paid in full. A copy of the 2nd Modification is attached hereto as **Exhibit F**.
9. After Atlantic Private Equity Group, LLC failed to perform its obligations under the Note and Loan Modifications Agreements, the Bank made demands to Defendants Terry L. Rohlffing and Jerry T. Caldwell for payment in accord with their obligations of the Guaranties. Defendants Terry L. Rohlffing and Jerry T. Caldwell failed and/or refused to honor their obligations under the Guaranties.
10. On April 25, 2011, the Bank retained counsel and commenced the captioned action for foreclosure of the Mortgage with deficiency demanded, and for Breach of the Guaranties.
11. On August 30, 2012, Atlantic Private Equity Group, LLC executed and delivered to the Bank a Partial Release of Mortgage and Assignment of Leases, Rents and Profits ("Partial Release") for the property labeled as "Parcel 2" in Exhibit A of the Mortgage, known as Lot 117, Hampton Lake, Beaufort County, South Carolina. The Partial Release was recorded on September 24, 2012 in the Beaufort County ROD Office in Book 3176 at Page 2243. The Partial Release resulted from the sale of Parcel 2, and Atlantic Private Equity Group, LLC was credited with net proceeds from the sale in the amount of \$540,375.61. A copy of the Partial Release is attached hereto as **Exhibit G**.

12. On September 28, 2012, the Bank executed and delivered to Deep Keel, LLC an Assignment of Debt and Lien (the "Assignment") of the remaining piece of property, labeled as "Parcel 1" in Exhibit A of the Mortgage, secured by the Note, Mortgage, Guaranties and additional loan documents. The Assignment was recorded on October 9, 2012 in the Beaufort County ROD Office in Book 3181 at Page 257. A copy of the Assignment is attached hereto as **Exhibit H**.
13. All of the above-referenced documents relating to the Debt of Atlantic Private Equity Group, LLC and attached hereto as Exhibits A-H were maintained in the official records of the Bank until the Assignment to Deep Keel, LLC.
14. The amount due and owing on the Note on September 28, 2012 was as follows:

Principal:	\$ 1,980,734.28
Rents Collected:	\$ (74,646.00)
Interest to 6/4/2012:	\$ 152,628.54
Sale of Parcel 2 (6/4/2012):	\$ (540,375.61)
Interest (6/4/2012 - 9/28/2012):	\$ 54,304.18
Late Charges:	\$ 10,850.97
Fees:	\$ 2,900.00

TOTAL: \$ 1,586,396.36


Jamin M. Hark
Executive Vice President - CresCom Bank

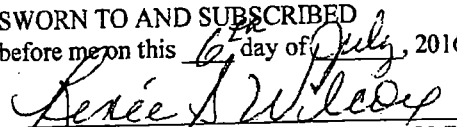
SWORN TO AND SUBSCRIBED
before me on this 6th day of July, 2016.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3-10-2020

EXHIBIT A

ATLANTIC PRIVATE EQUITY GROUP, LLC 1000 WILLIAM HILTON PKW, STE F13 HILTON HEAD, SC 29938	Community FirstBank 884 Orleans Rd Charleston, SC 29407	Loan Number <u>9145003387</u> Date <u>03/27/2008</u> Maturity Date <u>03/25/2009</u> Loan Amount \$ <u>2,000,000.00</u> Renewal Of _____
BORROWER'S NAME AND ADDRESS "You" means the borrower, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Two Million and 00/100

Dollars \$ 2,000,000.00

☐ Single Advance: I will receive all of this principal sum on _____, No additional advances are contemplated under this note.

☒ Multiple Advances: The principal sum shown above is the maximum amount of principal I can borrow under this note. On 03/27/2008

I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☒ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on 03/25/2009

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 03/27/2008 at the rate of 6.500%

per year until FIRST CHARGE DATE

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 0.50000000 the following index rate: COMMUNITY FIRSTBANK PRIME RATE

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as Daily

A change in the interest rate will take effect on the same day

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☒ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐

ACCURAL METHOD: Interest will be calculated on a 365/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 10 DAYS days after it is due, I agree to pay a late charge of 5.00% OF THE LATE PAYMENT

☒ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: ORIGINATION FEE \$5,000.00 APPRAISAL FEE \$500.00 FLOOD CERT FEE \$30.00 CLOSING FEE \$25.00

PAYMENTS: I agree to pay this note as follows:

☒ Interest: I agree to pay accrued interest beginning 04/25/2008 and on the same day Monthly thereafter

☒ Principal: I agree to pay the principal 03/25/2008

☐ Installments: I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____ and will be due _____ . A payment of \$ _____ will be due _____ thereafter. The final payment of the entire unpaid balance of principal and interest will be due _____

ADDITIONAL TERMS:

DEFAULT RATE OF INTEREST: IN THE EVENT OF DEFAULT UNDER ANY OF THE LOAN DOCUMENTS, INTEREST SHALL BEGIN ACCRUING AT THE RATE STATED ABOVE PLUS THREE PERCENT (3.00%) PER ANNUAL.

☒ SECURITY: This note is separately secured by (describe separate document by type and date): MORTGAGE/ASSIGNMENT LTR/PUCC-1/SECURITY AGREEMENT/GUARANTOR AGREEMENTS

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

DAVID L. MORROW

PURPOSE: The purpose of this loan is ESTABLISH FLOC

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

ATLANTIC PRIVATE EQUITY GROUP, LLC

By: New Colony Holdings Corporation, Manager

By: Terry L. Rohlfing
TERRY L. ROHLFING President

SOUTH CAROLINA - UNIVERSAL NOTE

Exempt 11/1984, 1991 Bankers Systems, Inc., St. Cloud, MN Form UN-SC 3/7/2003

(page 1 of 2)

ATLANTIC PRIVATE EQUITY GROUP, LLC 1000 WILLIAM HILTON PKW, STE F13 HILTON HEAD, SC 29928	Community FirstBank 884 Orleans Rd Charleston, SC 29407	Line of Credit No. 0145003387 Date 03/27/2008 Max. Credit Amt. 2,000,000.00 Loan Ref. No. 145003387
BORROWER'S NAME AND ADDRESS *I includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS *You means the lender, its successors and assigns.	

You have extended to me a line of credit in the

AMOUNT of Two Million and 00/100 \$ 2,000,000.00

You will make loans to me from time to time until 5:00 PM on 03/27/2008. Although the line of credit expires on that date, I will remain obligated to perform all my duties under this agreement so long as I owe you any money advanced according to the terms of this agreement, as evidenced by any note or notes I have signed promising to repay these amounts.

This line of credit is an agreement between you and me. It is not intended that any third party receive any benefit from this agreement, whether by direct payment, reliance for future payment or in any other manner. This agreement is not a letter of credit.

1. AMOUNT: This line of credit is:

- ☒ **OBLIGATORY:** You may not refuse to make a loan to me under this line of credit unless one of the following occurs:
- a. I have borrowed the maximum amount available to me;
 - b. This line of credit has expired;
 - c. I have defaulted on the note (or notes) which show my indebtedness under this line of credit;
 - d. I have violated any term of this line of credit or any note or other agreement entered into in connection with this line of credit;
 - e. I have defaulted under any other obligations to the bank and the bank, in good faith, deems itself insecure.

- ☐ **DISCRETIONARY:** You may refuse to make a loan to me under this line of credit once the aggregate outstanding advances equal or exceed \$ _____

Subject to the obligatory or discretionary limitations above, this line of credit is:

- ☒ **OPEN-END (Business or Agricultural only):** I may borrow up to the maximum amount of principal more than one time.
☐ **CLOSED-END:** I may borrow up to the maximum only one time.

2. PROMISSORY NOTE: I will repay any advances made according to this line of credit agreement as set out in the promissory note, I signed on 03/27/2008 or any note(s) I sign at a later time which represent advances under this agreement. The note(s) sets out the terms relating to maturity, interest rate, repayment and advances. If indicated on the promissory note, the advances will be made as follows:

3. RELATED DOCUMENTS: I have signed the following documents in connection with this line of credit and note(s) entered into in accordance with this line of credit:

☒ security agreement dated <u>03/27/2008</u>	☐ ASSIGNMENT IRAP
☒ mortgage dated <u>03/27/2008</u>	☐ UCC-1 STATE OF SC FILING
☒ guaranty dated <u>03/27/2008</u>	☐

4. REMEDIES: If I am in default on the note(s) you may:

- a. take any action as provided in the related documents;
 - b. without notice to me, terminate this line of credit.
- By selecting any of these remedies you do not give up your right to later use any other remedy. By deciding not to use any remedy should I default, you do not waive your right to later consider the event a default, if it happens again.

5. COSTS AND FEES: If you hire an attorney to enforce this agreement I will pay your reasonable attorney's fees, where permitted by law. I will also pay your court costs and costs of collection, where permitted by law.

6. COVENANTS: For as long as this line of credit is in effect or I owe you money for advances made in accordance with the line of credit, I will do the following:

- a. maintain books and records of my operations relating to the need for this line of credit;
- b. permit you or any of your representatives to inspect and/or copy these records;
- c. provide to you any documentation requested by you which support the reason for making any advance under this line of credit;
- d. permit you to make any advance payable to the seller (or seller and me) of any items being purchased with that advance;

e. _____

7. NOTICES: All notices or other correspondence with me should be sent to my address stated above. The notice or correspondence shall be effective when deposited in the mail, first class, or delivered to me in person.

8. MISCELLANEOUS: This line of credit may not be changed except by a written agreement signed by you and me. The law of the state in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation.

FOR THE LENDER

DAVID L. MORROW

Title _____

SIGNATURES: I AGREE TO THE TERMS OF THIS LINE OF CREDIT. I HAVE RECEIVED A COPY ON TODAY'S DATE.

Atlantic Private Equity Group, LLC
 By: New Colony Holdings Corporation, Manager

By: TERRY L. RICHMONG
 President

Community FirstBank

ATLANTIC PRIVATE EQUITY GROUP, LLC

03/25/2008

Loan Calculation Summary

Total Principal	2,000,000.00
Amount Financed	1,995,000.00
Finance Charge	136,083.33
Annual Percentage Rate (APR)	6.859
Total Payments	2,131,083.33
Additional Interest	
Note Maturity Date	03/25/2009

Number of Payments	Amount
1	2,000,000.00

This is for information purposes only and should not be used as the basis in establishing a loan.

EXHIBIT B

9/15/08
MCNair
3447

MLF/PP

BEAUFORT COUNTY SC - ROD
BK 02701 PGS 0632-0840
FILE NUM 2008018501
03/28/2008 10:46:44 AM
REC'D BY J COORE RCPT# 536945
RECORDING FEES 15.00

This document was prepared by (name, address, phone): MICHAEL LAW FIRM
738 SHELTER COVE LANE STE 400
HILTON HEAD ISLAND, SC 29928

State of South Carolina _____ Space Above This Line For Recording Data _____

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. DATE AND PARTIES. The date of this Mortgage is 03/27/2008 and the parties and their addresses are as follows:

MORTGAGOR: ATLANTIC PRIVATE EQUITY GROUP, LLC
1008 WILLIAM HILTON PARKWAY STE F13
HILTON HEAD ISLAND, SC 29930

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: Community FirstBank
684 Orange Rd
Charleston, SC 29407

2. MORTGAGE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
REFER TO EXHIBIT A WHICH IS ATTACHED HERETO AND MADE A PART HEREOF

The property is located in BEAUFORT (County) at SEE ATTACHED EXHIBIT
_____, South Carolina 29910
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). This term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - A GENERAL REAL COMMERCIAL REAL ESTATE SECURITY INSTRUMENT AND RETURN, BEING: P.A. 02-11-01, SUBJECT FOR CONSUMER PURPOSES
EX-104 1994; 2007 Bankrate Systems, Inc., St. Cloud, MN Form AGCO-BES-SC 1/21/2007

(page 1 of 4)
[Signature]

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 2,000,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances for interest accrued on such advances made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgages shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.
4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:
- A. The promissory note(s), contract(s), guaranty(ies) or other evidence(s) of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt (e.g., borrower's name, note amount, interest rate, maturity date).
 - INCLUDING BUT NOT LIMITED TO NOTE AND LOAN NUMBER 145003367 MATURING 03/25/08.
 - B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
 - C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
 - D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
 - E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.
- If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.
5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, loan payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
- A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 581), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

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10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligations evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership, and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property of equal or greater value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit, and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

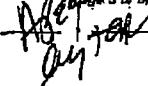
Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property):

- A. Existing or future leases, subleases, licenses, guarantees and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, options area, maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Lease or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive.

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any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debt, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landings and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage; any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guaranteeing, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1840, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anything thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has

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characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "hazardous waste," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

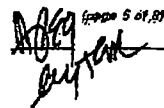
- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. **CONDEMNATION.** Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above-described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. **INSURANCE.** Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of this Secured Debt. This insurance carries providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

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Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits, if agreed to separately in writing, under a form of policy acceptable to Lender.

22. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All debts under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variation by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notices to one mortgagor will be deemed to be notice to all mortgagors.

27. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- ☐ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☒ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☒ **Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

EX-104 11/24/04 2001 Eastern Systems, Inc. St. Cloud, MN Form AGCO-RES-SC 1/81/2003

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[Signature]
[Signature]

☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. The security interest includes all furniture, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property. Mortgagee with notice or in the future and that are used or useful in the construction, operation, management or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" defined in connection with a "consumer" loan as those items are defined in applicable federal regulations governing unfair and deceptive credit practices.

☐ **Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also serves as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photograph, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

☒ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.

☒ **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. 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 BEST REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

☒ **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.

☐ **Additional Terms.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

☒ Actual authority was granted to the parties signing below by resolution signed and dated 1/8/08.

Borrower Name: _____

Entity Name: Atlantic Private Equity Group, LLC
By: New Colony Holdings Corporation, Manager

Signature: _____ Date: _____

By: Terry L. Rohlifing Date: 3/27/08
Representative: _____ Title: _____

Terry L. Rohlifing, President

Signed, Sealed and Delivered in the presence of:

[Signature]
(Witness)

[Signature]
(Witness)

☐ Refer to the Addendum, which is attached and incorporated herein for additional Mortgages, signatures and acknowledgments.

FORM 101 (04/04) 2007 Market Version, Inc. 54, 0001, 001 Form ACCORDS 40 1004/2006

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PROBATE: STATE OF SC, COUNTY OF Beaufort) ss:

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 27th day March, 2008

of

Ernie W. Buchanan
Notary Public for South Carolina

My commission expires: 4/5/11



EXHIBIT "A"

Parcel 1:

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

The property intended to be mortgaged herein is the same property conveyed to the within Mortgagor by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

Parcel 2:

ALL that certain piece, parcel or lot of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase 1 Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

The property intended to be mortgaged herein is the same property conveyed to the within Mortgagor by Deed recorded in Book 2559 at Page 376, Beaufort County Records.

This Mortgage was prepared in the Law Offices of McNair Law Firm, P.A., Post Office Drawer 3, Hilton Head Island, South Carolina 29938, by Cary S. Griffin.

EXHIBIT C

BEAUFORT COUNTY SC - ROD
BK 02701 PGS 0841-0845
FILE NUM 2008018582
03/28/2008 10:46:44 AM
REC'D BY J COORE RCPT# 538845
RECORDING FEES 10.00

COMMUNITY FIRSTBANK
884 ORLEANS ROAD
CHARLESTON, SC 29407

145003387

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) **ASSIGNMENT OF LEASES,
RENTS AND PROFITS**

THIS ASSIGNMENT made and entered into this 27th day of March, 2008 by and between ATLANTIC PRIVATE EQUITY GROUP, LLC (hereinafter referred to as the "Assignor"), and COMMUNITY FIRSTBANK, Charleston, South Carolina (hereinafter referred to as the "Assignee").

WITNESSETH:

FOR VALUE RECEIVED and as security for the loan hereinafter mentioned, the Assignor hereby sells, transfers, assigns and grants a security interest unto the Assignee, its successors and assigns, all the right, title and interest of the Assignor, whether as Lessor or Lessee, in and to the rents, issues, profits, revenues, royalties, rights and benefits, from the property described on Exhibit A attached hereto and made a part hereof and any buildings and improvements now or hereafter placed on such property.

And to that end Assignor hereby assigns and sets over unto Assignee, its successors and assigns, all leases of said premises now made, executed or delivered, whether written or verbal, or to be hereafter made, be the same written or verbal.

And Assignor does hereby authorize and empower Assignee, its successors and assigns, to collect the said rents, issues, profits, revenues, royalties, rights and benefits, as they shall become due, and does hereby direct each and all of tenants of the aforesaid premises to pay such rents as may now be due or shall hereafter become due to the said Assignee, its successors and assigns, upon demand for payment hereof by said Assignee, its successors and assigns. It is understood and agreed, however, that no such demand shall be made unless and until there has been a default in the payment of the Note hereinafter described or a default under the Loan Agreement of even date herewith or any of the loan documents, and until such demand is made the Assignor is authorized to collect, or continue collecting, said rent, issues, profits, revenues, royalties, rights and benefits; but that such privilege to collect, or continue collecting, as aforesaid by Assignor shall not operate to permit the collection by said Assignor, its successors or assigns, of any installment of rent in advance of the date prescribed in said lease or leases for the payment thereof.

The term of this Assignment shall be until that certain Note in the original principal amount of not to exceed **TWO MILLION DOLLARS AND NO/100 (\$2,000,000.00)** and all other indebtedness secured by the Mortgage, all of even date herewith, made, executed and delivered by Assignor to the Assignee, covering the above described property, shall have been fully paid and satisfied, and at the end of such term, this Assignment is to be canceled and released, and the satisfaction of said Mortgage shall constitute a release hereof.

It is expressly covenanted and agreed by the undersigned Assignor, that at the time of the execution and delivery of this Assignment there has been no anticipation or prepayment of any rents.

It is further covenanted and agreed that Assignor, and its successors or assigns, shall have no right, power or authority to alter, modify or amend the terms, or any of them, of any of the leases pertaining to the property described on Exhibit A attached hereto in any particular whatsoever without first obtaining the consent in writing of the Assignee to such alteration modification or amendment.

Nothing herein contained shall be construed as making the Assignee, or its successors and assigns, Mortgagee in possession, nor shall it or its successors, and assigns, be liable for laches for failure to collect said rents, issues, profits, revenues, royalties, rights and benefits, and it is understood that said Assignee is to account only for such sums as are actually collected.

IT IS UNDERSTOOD AND AGREED that neither the existence of this Assignment nor the exercise of its privilege to collect said rents, issues, profits, revenues, royalties, rights and benefits hereunder shall be construed as a waiver by the Assignee, or its successors and assigns, of the right to enforce payment of the debt hereinabove mentioned, in strict accordance with the terms and provisions of the Note and Mortgage and all other Loan Documents for which this Assignment is given as additional security and by any means provided in said Mortgage, and the rights hereby given are in addition to and cumulative of all rights given by said Mortgage.

The covenants and obligations herein undertaken by the Assignor shall be binding upon its successors and assigns, and the rights and benefits herein conferred upon the Assignee shall inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed under Seal as of the day and year first hereinabove written.

WITNESSES:

Egon W Buchman
Fig

ATLANTIC PRIVATE EQUITY GROUP,
LLC

By: New Colony Holdings Corporation, Manager

By: Terry L. Rohlifing
Terry L. Rohlifing, President

By: _____

As to Assignor

STATE OF SOUTH CAROLINA)

COUNTY OF ~~CHARLESTON~~
BEAUFORT)

PROBATE)

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s) he saw the within named ATLANTIC PRIVATE EQUITY GROUP, LLC by Terry L. Rohlifing, President of New Colony Holdings Corporation, Manager authorized signers, sign, seal, and as its act and deed, deliver the within written Assignment of Leases, Rents and Profits, and that (s) he with the other above-subscribed witness witnessed the execution thereof.

WITNESS

Fig

SWORN TO before me this
27th Day of March, 2008.

Egon W Buchman
Notary Public of South Carolina
My Commission Expires: 6/5/11

EXHIBIT "A"

Parcel 1:

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

Parcel 2:

ALL that certain piece, parcel or lot of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase 1 Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

SCHEDULE A

Any and all goods, chattels, furniture, fixtures, equipment, inventory and tangible or intangible personal property of any kind, nature or description (including without limitation, any and all accounts, contract rights, franchises, licenses, permits, now owned or hereafter acquired, or in which Debtor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, other title retention document or otherwise) which is, are or shall be located upon and used in the Debtor's project and improvements, or other operations or enterprises of Debtor carried out upon the real property more particularly described in Exhibit A attached hereto, together with any and all replacements or substitutions thereof or therefore as well as the proceeds thereof or therefrom regardless of form.

EXHIBIT D

GUARANTY

Charleston

(City)

SC

(State)

March 27, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Community First Bank, 694 Orleans Rd, Charleston, SC 29407

(herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of ATLANTIC PRIVATE EQUITY GROUP, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: LOAN AND NOTE NUMBER 145803387 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 350,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____
☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

TERRY L. ROHLFING

"Undersigned" shall refer to all persons who sign this guaranty, jointly and jointly

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness; or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

(page 2 of 2)

GUARANTY

Charleston

(City)

SC

(State)

March 27, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Community FirstBank, 884 Orleans Rd, Charleston, SC 29407 (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of ATLANTIC PRIVATE EQUITY GROUP, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: LOAN AND NOTE NUMBER 145003387 and any extensions,

renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 350,000.00 (if unlimited or if no amount is stated, the Undersigned shall be liable for all indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____
☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

Jerry T. Caldwell

Jerry T. Caldwell

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

(page 2 of 2)

EXHIBIT E



LOAN MODIFICATION AGREEMENT

WHEREAS, COMMUNITY FIRSTBANK loaned Two Million Dollars and no/100 (\$2,000,000.00) to ATLANTIC PRIVATE EQUITY GROUP LLC, evidenced by its Loan No. 145003387 and the original note executed and delivered dated March 27, 2008, including but not limited to any modifications, substitutions and/or renewals, which note hereby referred to as a part of this instrument, and

WHEREAS, the undersigned parties agree to modify the original note as follows (change only applies if block is checked):

PAYMENT SCHEDULE: Principal and interest hereon will be paid as follows:

- ☐ **TIME** The principal amount of the Note is payable in full on _____, with interest thereon payable beginning _____.
- ☐ **INSTALLMENT** In _____ consecutive payments of _____ ☐ including interest ☐ plus interest, beginning _____.
All principal and interest if not sooner paid shall be due and payable on _____.
- ☒ **LINE OF CREDIT** The principal amount outstanding under this ☒ Revolving ☐ Non-Revolving Line of Credit is due on April 16, 2010, with interest thereon payable Monthly beginning May 16, 2009. The line of credit shall not exceed \$2,000,000.00.
- ☐ **OTHER**
- ☒ **MONETARY** ☒ Renewal/Modification fee in the amount of \$1,000.00 due at signing.
☒ Current interest in the amount of \$5,930.89 due at signing.
☐ _____ in the amount of _____ due at signing.
- ☒ **RATE** Interest accrual on the unpaid balance will be calculated at
☐ a fixed rate of _____ % per annum.
☒ a variable rate of Community FirstBank Prime plus .50%, the rate to be adjusted from time to time. The change in the Variable Rate will become effective on the day that the prime rate changes. The new interest rate floor will be 5.50%. The new interest rate ceiling will be N/A%.
- ☒ **LATE CHARGES** If Payment is 10 days or more late, Borrower will be charged 5.00% of the unpaid portion of the the payment amount or \$25.00, whichever is greater.
- ☒ **DEFAULT RATE OF INTEREST:** In the event of default under any of the loan documents, interest shall begin accruing at the current note rate plus five percent (5%) per annum.

EXCEPT as specifically modified herein, the provisions of all loan documents on Loan Number 145003387 shall remain the same.

THEREFORE, it is hereby agreed that the unpaid balance of said indebtedness upon the date of this Agreement is One Million Five Hundred Fifty Thousand Dollars AND 00/100 (\$1,550,000.00).

THE terms of all Loan Documents on Loan Number 145003387 as herein modified are binding on the Parties, their heirs, successors, and assigns. It is specifically agreed and understood by the Parties hereto that this Modification is not intended to be and is not a novation and that any attempt to so construe the Modification as such would be contrary to the express intent of the Parties.

SIGNED, SEALED AND DELIVERED this 23rd day of April, 2009.

Witness

Witness

Witness

Atlantic Private Equity Group LLC
By New Colony Holdings Corporation - Member

BY:
Terry L. Rohlfing, President

BY: _____

COMMUNITY FIRSTBANK

BY:
David Morrow, Chief Policy Officer

EXHIBIT F



LOAN MODIFICATION AGREEMENT

WHEREAS, COMMUNITY FIRSTBANK loaned Two Million Dollars and no/100 (\$2,000,000.00) to ATLANTIC PRIVATE EQUITY GROUP LLC, evidenced by its Loan No. 145003387 and the original note executed and delivered dated March 27, 2008, including but not limited to any modifications, substitutions and/or renewals, which note hereby referred to as a part of this instrument, and

WHEREAS, the undersigned parties agree to modify the original note as follows (change only applies if block is checked):

PAYMENT SCHEDULE: Principal and interest hereon will be paid as follows:

- ☐ **TIME** The principal amount of the Note is payable in full on _____, with interest thereon payable beginning _____.
- ☒ **INSTALLMENT** In 59 consecutive Monthly payments of \$14,468.86 ☒ including interest ☐ plus interest, beginning July 09, 2010. All principal and interest if not sooner paid shall be due and payable on June 09, 2015.
- ☐ **LINE OF CREDIT** The principal amount outstanding under this ☐ Revolving ☐ Non-Revolving Line of Credit is due on _____ with interest thereon payable beginning _____. The line of credit shall not exceed _____.
- ☐ **OTHER**
- ☒ **MONETARY** ☒ Renewal/Modification fee in the amount of \$1,000.00 due at signing.
☒ Current interest in the amount of \$8,246.72 due at signing.
☐ _____ in the amount of _____ due at signing.
- ☒ **RATE** Interest accrual on the unpaid balance will be calculated at
☐ a fixed rate of _____ % per annum.
☒ a variable rate of Community FirstBank Prime plus .50%, the rate to be adjusted from time to time. The change in the Variable Rate will become effective on the day that the prime rate changes. The new interest rate floor will be 6.00%. The new interest rate ceiling will be N/A%.

☒ **LATE CHARGES** If Payment is 10 days or more late, Borrower will be charged 5.00% of the unpaid portion of the the payment amount or \$25.00, whichever is greater.

☒ **DEFAULT RATE OF INTEREST:** In the event of default under any of the loan documents, interest shall begin accruing at the current note rate plus five percent (5%) per annum.

EXCEPT as specifically modified herein, the provisions of all loan documents on Loan Number 145003387 shall remain the same.

THEREFORE, it is hereby agreed that the unpaid balance of said indebtedness upon the date of this Agreement is Two Million Dollars AND 00/100 (\$2,000,000.00).

THE terms of all Loan Documents on Loan Number 145003387 as herein modified are binding on the Parties, their heirs, successors, and assigns. It is specifically agreed and understood by the Parties hereto that this Modification is not intended to be and is not a novation and that any attempt to so construe the Modification as such would be contrary to the express intent of the Parties.

SIGNED, SEALED AND DELIVERED this 24th day of May, 2010.

Atlantic Private Equity Group LLC
By New Colony Holdings Corporation - Member

BY:

Terry L. Robling, President

BY:

Witness

Witness

COMMUNITY FIRSTBANK

BY:

Robert Tennyson, Vice President

Witness

EXHIBIT G

2 PB
Bird
14205

S. Bird Q,
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

BEAUFORT COUNTY SC - ROD
BK 03176 PGS 2243-2244
FILE NUM 2012055076
09/24/2012 12:16:19 PM
REC'D BY P BAXLEY RCPT# 689277
RECORDING FEES 7.00

**PARTIAL RELEASE
OF MORTGAGE and ASSIGNMENT OF LEASES, RENTS & PROFITS**

KNOW ALL MEN that CresCom Bank, successor by merger to Community First Bank, owner of the Mortgage and Assignment of Leases, Rents and Profits hereinafter referred to, for and in consideration of good and valuable consideration, receipt of which is hereby acknowledged, does forever discharge and release that certain tract of land described as follows, to wit:

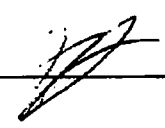
All that certain piece, parcel or lot of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase 1 Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

from all claims and liens under that certain Mortgage dated 3/27/08, from Atlantic Private Equity Group, LLC, as Mortgagor, to CresCom Bank, successor by merger to Community First Bank, as Mortgagee, and recorded in the Office of the Clerk of Court for Beaufort County in Mortgage Book 2701 at Page 632 and Assignment of Leases, Rents and Profits recorded in Book 2701 at Page 641, Beaufort County Records.

IN ALL OTHER RESPECTS, the aforesaid Mortgage shall remain in full force and effect.

IN WITNESS WHEREOF, CresCom Bank, successor by merger to Community First Bank has caused these presents to be executed this 30 day of August, 2012.

CresCom Bank, successor by merger to Community First Bank

By: 

2 Rachel Moberg
Witness
3 Laura J. Dooling
Witness

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that JAMIN M. HUJIK, as the duly authorized officer of CresCom Bank, successor by merger to Community First Bank by and on behalf of the Bank, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 30 day of August, 2012.

4. Rachel Hisey
Notary Public for SOUTH CAROLINA

My commission expires: 01-18-2021

EXHIBIT H

Upon Recording Return To:
Altman & Coker, LLC
575 King Street, Suite A
Charleston, South Carolina 29403

23

20

2022

Appendix 230

This document confirms the assignment that was made as of September 28, 2012. This documents is dated September 28, 2012.

CresCom Bank, successor by merger to
Community FirstBank

Witness:

Rachel A. Hujik
Laura L. Hujik

By: Jamin M. Hujik
Jamin M. Hujik
Its: Executive Vice President

STATE OF SOUTH CAROLINA

§
§
§

COUNTY OF CHARLESTON

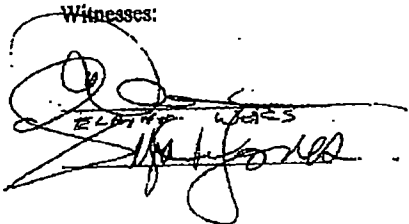
This instrument was acknowledged before me on this 4 day of October, 2012, by Jamin M. Hujik, well known to be the Executive Vice President of CresCom Bank, successor by merger to Community FirstBank, and who executed the foregoing instrument, and he acknowledge to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

Rachel A. Hujik
Notary Public State of South Carolina
Print Name Rachel A. Hujik
My Commission Expires: 01-18-2021

Page 2 of 4

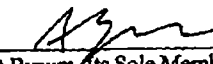
THE WITHIN ASSIGNMENT IS ACCEPTED WITHOUT RECOURSE,
REPRESENTATIONS, WARRANTIES, EXPRESSED OR IMPLIED.

Witnesses:


ELI W. WASS

ASSIGNEE

Deep Keel, LLC

By: 
Scott Bynum, Its Sole Member, Member

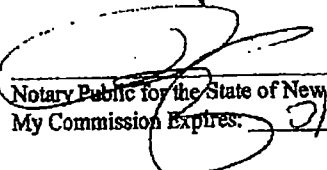
STATE OF NEW YORK)
COUNTY OF W. 43)

ACKNOWLEDGMENT

BEFORE me personally appeared Scott Bynum, well known to be the Sole Member of Deep Keel, LLC, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 28th day of September, 2012.

JENNIFER L. WERTZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NASSAU COUNTY
NO. 01466202693
COM EXPIRES 01/31/2013


Notary Public for the State of New York
My Commission Expires: 01/30/13

Page 3 of 4

Book3181/Page259

ASSIGNMENT OF MORTGAGE AND PROMISSORY NOTE WITHOUT RECOURSE

Prepared By: Altman & Coker, LLC
575 King Street, Suite A
Charleston, South Carolina 29403

CresCom Bank, successor by merger to Community FirstBank a South Carolina state-chartered savings bank, ("Assignor") and Deep Keel, LLC, a South Carolina limited liability company, ("Assignee") are parties to an Agreement providing for the sale by Assignor and the purchase by Assignee of a certain loan by Atlantic Private Equity Group, LLC, (the "Borrower") made on March 27, 2008, as modified on April 23, 2009, and May 24, 2010, and related loan documents.

ASSIGNOR, as contemplated by such Agreement and for consideration as set forth therein, the sufficiency and receipt of which are hereby acknowledged, does hereby bargain, sell, give, grant, convey, transfer, set over and assign unto Assignee, and its successors and assigns, all of Assignor's right, title and interest in and to the following: (a) that certain Mortgage from Atlantic Private Equity Group, LLC, ("Mortgagor") dated March 27, 2008, to Community FirstBank, n/k/a CresCom Bank, and recorded on March 28, 2008 in Book 02701 at Page 0632, in the Beaufort County ROD Office ("Mortgage"), exclusive of that security interest released by a Partial Release of Mortgage and Assignment of Leases, Rents & Profits recorded on September 24, 2012, in Book 03176 at Page 2243 Beaufort County ROD Office; (b) that certain Assignment of Leases, Rents and Profits from Atlantic Private Equity Group, LLC, ("Mortgagor") dated March 27, 2008, to Community FirstBank, n/k/a CresCom Bank, and recorded on March 28, 2008 in Book 02701 at Page 0641, in the Beaufort County ROD Office ("Mortgage"), exclusive of that security interest released by a Partial Release of Mortgage and Assignment of Leases, Rents & Profits recorded on September 24, 2012, in Book 03176 at Page 2243 Beaufort County ROD Office; (c) the guaranties of Terry L. Rohlfing and Jerry T. Caldwell, dated March 27, 2008; dated January 19, 2006; and (d) the obligations secured by the Mortgage, including, but not limited to, that promissory note issued by Borrower to Assignor dated March 27, 2008, and in the original maximum principal amount of \$ 2,000,000.00 (the "Note"), as modified by that note modification dated April 23, 2009, and that certain note modification dated May 24, 2010, and the money due and to become due with respect to such obligations and Note (collectively, the "Obligations").

TO HAVE AND TO HOLD the same, together with all rights, titles, interests, privileges, claims, demands and equities existing and to exist in connection therewith unto Assignee, its successors and assigns forever. Assignor expressly waives and releases in favor of Assignee any and all rights that Assignor may now have or hereinafter has to establish or enforce any lien or security interest securing payment of any of the Obligations under the Mortgage or any of the loan documents relating to any of the Obligations. Assignor directs that all payments hereafter due with regard to any of the Obligations be made directly to Assignee.

ASSIGNEE hereby assumes, and agrees to the terms, and agrees to perform, in accordance with the terms thereof, any and all of Assignor's obligations under the above Obligations or

Mortgage arising on or after the date hereof. The undersigned, on behalf of the Assignee, hereby declares that he has the authority accept the terms of the Agreement and this Assignment on behalf of the Assignee.

This Assignment of Mortgage and Promissory Note is made, executed and delivered **WITHOUT RECOURSE, REPRESENTATIONS, WARRANTIES, EXPRESSED OR IMPLIED**, pursuant to the Agreement, and is subject to all of the terms, provisions and conditions thereof. This Assignment may be executed in a number of multiple, identical counterparts which, when taken together, shall constitute collectively one Assignment, but in making proof of this Assignment, it shall not be necessary to produce or account for more than one such counterpart as executed by the party to be charged.

IN WITNESS WHEREOF, said Assignor and Assignee have signed, sealed and delivered this instrument on this 28 day of September, 2012.

ASSIGNOR

CresCom Bank, successor by merger to
Community FirstBank

By: [Signature]
Its: Executive Vice President
Print Name: Jamin M. Hujik

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

BEFORE me personally appeared Jamin M. Hujik well known to be the Executive Vice President of CresCom Bank, successor by merger to Community FirstBank, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 28 day of September, 2012.

Rachel Absay
Notary Public for South Carolina
My Commission Expires: 01-18-2021

THE WITHIN ASSIGNMENT IS ACCEPTED WITHOUT RECOURSE,
REPRESENTATIONS, WARRANTIES, EXPRESSED OR IMPLIED.

ASSIGNEE

Deep Keel, LLC

By: [Signature]
Scott Bynum, Its Sole Member

STATE OF NEW YORK)

COUNTY OF Kings)

ACKNOWLEDGMENT

BEFORE me personally appeared Scott Bynum, well known to be the sole member of Deep Keel, LLC, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 28th day of September, 2012.

[Signature]
Notary Public for the State of New York
My Commission Expires: 01/30/13

JENNIFER L. WERTZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NASSAU COUNTY
NO. 01116520203
MY COMMISSION EXPIRES 03-03-13

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

DEEP KEEL, LLC,)

Plaintiff,)

vs.)

ATLANTIC PRIVATE EQUITY)
GROUP, LLC, TERRY L.)
ROHLFING, JERRY T.)
CALDWELL AND BLUFFTON)
VILLAGE TOWN CENTER)
PROPERTY OWNERS')
ASSOCIATION, INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-07-1933

2016 SEP -6 PM 4:50
JERRI ANN ROSENEAU
BEAUFORT COUNTY S.C.
CLERK OF COURT

**MOTION TO RECONSIDER ORDER
GRANTING SUMMARY JUDGMENT**

Defendants, Terry L. Rohlfing and Jerry T. Caldwell, move pursuant to Rules 59 and 60, SCRCP, for an order reconsidering, altering and/or amending the order entered on August 23, 2016, written notice of which was received by the undersigned by email on August 23, 2016, in the following respects on the grounds stated:

FAILURE OF PROOF AS TO AMOUNT OF THE DEBT

Plaintiff's motion for summary judgment was supported by two affidavits, one from an officer of CresCom Bank ("Hujik Affidavit") and one from the sole member of Plaintiff Deep Keel, LLC ("Bynum Affidavit"). The court determined that the affidavits demonstrated "sufficient competency, authority and personal knowledge to testify" concerning amounts due and owing on the loan. The court relied on the Hujik Affidavit to find the amount due at the time of the assignment of the loan to Plaintiff and relied on the Bynum Affidavit to find the amount due as of the date of the hearing. This was erroneous.

Rule 56(e), SCRCP requires that affidavits in support of a motion for summary judgment:

- Shall be made on personal knowledge

- Shall set forth such facts as would be admissible in evidence, and
- Shall show affirmatively that the affiant is competent to testify to the matters stated therein.

Neither of the affidavits met these requirements in regard to the amount allegedly due.

The Bynum Affidavit at Paragraph 9 expressly relies upon the Hujik Affidavit for the amount due at the time of the assignment and, therefore, for its conclusion as to the amount due at the time of hearing as set forth in Paragraph 11. There is nothing in the affidavit to demonstrate the affiant's personal knowledge of or competence to testify about the amount due at the time of the assignment. The court of appeals has already ruled this testimony of this affiant to be inadmissible hearsay. *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015). The affidavit includes no new facts upon which to base a different conclusion from that previously reached by the court of appeals. The Bynum Affidavit did not meet the requirements of Rule 56(e) and the court erred, it is respectfully submitted, in accepting and relying upon it in its grant of summary judgment.

Paragraph 14 of the Hujik Affidavit summarized, as of September 28, 2012, a principal balance and various other charges and credits, and stated a conclusion as to the total amount due on that date. There is nothing in the affidavit to show the affiant's personal knowledge of the loan or competence to testify about it. There is no evidence concerning how long the affiant was employed with the bank, whether he was with the bank when the loan was made, at the time the payments were made, or what his duties and responsibilities were generally or in respect to the subject loan. Plaintiff argued at the hearing that the affiant's testimony was based on records maintained by the bank. The affidavit does not say so and even if it did, the affiant's testimony from records not produced at the hearing would be inadmissible hearsay. *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015). All the affidavit shows is that the affiant is a vice-president of the bank. However, his status as a vice-president is not a sufficient substitute for personal knowledge. *Englert, Inc. v. Netherlands Ins.*

Co., 315 S.C. 300, 433 S.E.2d 871 (Ct. App. 1993). The Hujik Affidavit did not meet the requirements of Rule 56(e) and the court erred, it is respectfully submitted, in accepting and relying upon it in its grant of summary judgment.

Further, the conclusory summary of the alleged status of the loan as of a specific date as presented in the Hujik Affidavit is functionally no different from the summary statements offered by the plaintiff bank in *South Carolina Nat'l Bank v. Jones*, 302 S.C. 154, 394 S.E.2d 323 (1990). In that case the supreme court reversed a directed verdict in favor of the bank, ruling that summary statements on which it was based were not admissible under the Uniform Business as Records Act because there was no evidence showing that the entries on the statements were made at or near the time of the transactions. The testimony from a bank officer that the summaries were compiled from monthly statements issued to the debtor did not cure the defect. The present case does not involve the introduction of business records but the effect is the same. The court has granted judgment against the debtor based upon an unsupported, uncorroborated summary, offered not in the form of a record but included in testimony submitted by affidavit. If a written summary prepared by the bank would not be admissible certainly testimony from or about such a summary would not be admissible either.

In its presentation of the amount allegedly due the Hujik Affidavit began with "Principal" of \$1,980,734.28. This amount is less than the \$2,000,000.00 principal amount of the loan as set forth in Paragraph 2 and as stated in a 2nd Modification referenced in Paragraph 8. Therefore, there must have been payments made but there is no accounting of what payments were made or when they were applied, nor were any records introduced concerning any payments. The presentation includes a credit described as resulting from the sale of one the parcels subject to the mortgage as referenced in Paragraph 11. There is evidence of the release of parcel 2 from the mortgage but no evidence to show that the correct amount, and not some greater number, was credited by the bank. Likewise, the presentation includes summary entries for "late charges" and unspecified "fees" with no records or other evidence as to what these entries were for or when

they were made. Plaintiff cannot meet the evidentiary requirements of *South Carolina National Bank v. Jones* with a testamentary summary of the amount due.

In their Answer, at paragraph 17, Defendants denied the amount of the debt and demanded strict proof thereof. A party against whom summary judgment is sought is entitled to rest on his pleadings unless and until "a motion for summary judgment is made and supported as provided in [Rule 56]." Rule 56(e), SCRCF. Inasmuch as the affidavits filed in support of the motion did not meet the requirements of Rule 56(e), the motion was not made or supported as required by the rule. Defendants were therefore under no obligation to offer evidence as to the amount of the alleged debt, an issue on which evidence is exclusively within the control of the Plaintiff's assignor. Because Plaintiff's motion for summary judgment was unsupported by admissible evidence concerning the amount of the debt the court erred, it is respectfully submitted, in granting summary judgment on this issue.

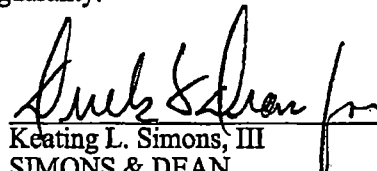
JOINT AND SEVERAL LIABILITY OF DEFENDANTS FOR A SINGLE LIMIT

In its order the court held that each Defendant is individually liable for \$350,000 in principal for a total of \$700,000 in principal, as opposed to joint and several liability of Defendants for a single limited amount of principal of \$350,000. This was erroneous, it is respectfully submitted. Under paragraph 4 of the guaranty: "The liability of the Undersigned hereunder shall be limited to a principal amount of \$350,000.00." The capitalized term "Undersigned" is defined below the signature lines: "'Undersigned' shall refer to all persons who sign this guaranty, severally and jointly." Paragraph 13 of the bank's guaranty form states, in relevant part: "If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of [sic] every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned." Consistent with these provisions, in its complaint at paragraph 28 Plaintiff alleges that Defendants "each guaranteed, jointly and severally, the payment and performance of each and every debt, liability and obligation of every type and description which Atlantic Private Equity

Group, LLC owed Plaintiff up to a principal amount of \$350,000.00." The court erred, it is respectfully submitted, in granting relief not prayed for in the complaint and which goes beyond the limited undertaking of the Defendants under the terms of the guaranty.

Here there were allegedly two signers and under the terms of the guaranty their liability would be joint and several for the single limited amount of principal of \$350,000. That the signatures appeared on two different copies of the bank's form does not negate the fact that there was a single guaranty. The definition of "Undersigned" refers to "this guaranty," not to multiple copies of the same document. Nowhere does the form warn signers that if they sign different copies that they double their liability under the guaranty. Any ambiguity or uncertainty resulting on this point from the definition of "Undersigned" and other provisions concerning joint and several liability of the guarantors included in the bank's form should be construed against the bank as drafter of same.

For all the above reasons Defendants move that the court reconsider its order, deny summary judgment to Plaintiff, set the matter for trial and reverse its conclusion concerning the individual liability of Defendants under the guaranty.


Keating L. Simons, III
SIMONS & DEAN
147 Wappoo Creek Drive, Suite 604
Charleston, SC 29412
klsimons@simonsanddean.com
(843) 762-9132

Attorney for Defendants
Terry L. Rohlffing and Jerry T. Caldwell

Charleston, SC
September 1, 2016

CERTIFICATE OF SERVICE

I, Debra Y. Coffey, a paralegal with the Law Offices of Simons & Dean, do hereby certify that I have served counsel and The Honorable Marvin H. Dukes, III in this action with a copy of the foregoing Motion to Reconsider Order Granting Summary Judgment upon the below named by mailing a copy of same via U.S. Mail, postage prepaid, and properly addressed as follows:

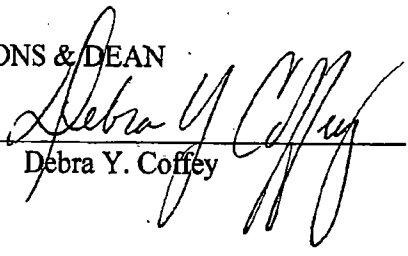
The Honorable Marvin H. Dukes, III
PO Drawer 1228
Beaufort, South Carolina 29901

Charles S. Altman, Esquire
Altman & Coker, LLC
575 King Street, Suite A
Charleston, South Carolina 29403
Attorney for Deep Keel, LLC

2016 SEP - 9 PM 4:50
JEREMY ANN ROOSE, S.C.
CLERK OF COURT
JEREMY ANN ROOSE, S.C.
CLERK OF COURT

This 1st day of September, 2016.

SIMONS & DEAN

BY: 

Debra Y. Coffey

82596

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master In Equity

RECEIVED

FEB 23 2017

Case No.: 2011-CP-07-1933

SC Court of Appeals

DEEP KEEL, LLC, ...Respondent,

v.

ATLANTIC PRIVATE EQUITY GROUP, LLC,
TERRY L. ROHLFING, JERRY T. CALDWELL, ...Appellants.

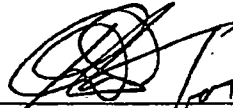
and

BLUFFTON VILLAGE TOWN CENTER
PROPERTY OWNERS' ASSOCIATION, INC.

NOTICE OF APPEAL

Atlantic Private Equity Group, LLC, Terry L. Rohlfing and Jerry T. Caldwell appeal the Order granting Plaintiff's motion for summary judgment entered by The Honorable Marvin H. Dukes, III on August 23, 2016 and the Order Denying Defendants' Motion for Reconsideration entered by The Honorable Marvin H. Dukes, III on January 17, 2017. Appellants received written notice of entry of the Order granting Plaintiff's motion for

summary judgment via electronic mail on August 23, 2016, timely made their Motion to Reconsider Order Granting Summary Judgment and received written notice of entry of the Order Denying Defendants' Motion for Reconsideration via notice of electronic filing on January 17, 2017.



Keating L. Simons, III
Simons & Dean
147 Wappoo Creek Road, Suite 112
Charleston, South Carolina 29412
(843) 762-9132

Charleston, S.C.
February 13, 2017

Attorneys for Appellants

Other Counsel of Record:
Charles S. Altman, Esquire
ALTMAN & COKER, LLC
575 King Street, Suite A
Charleston, South Carolina 29403
(843) 853-9907

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master In Equity

Case No.: 2011-CP-07-1933

RECEIVED

FEB 23 2017

SC Court of Appeals

DEEP KEEL, LLC, ...Respondent,

v.

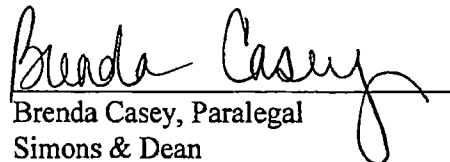
ATLANTIC PRIVATE EQUITY GROUP, LLC,
TERRY L. ROHLFING, JERRY T. CALDWELL, ...Appellants.

and

BLUFFTON VILLAGE TOWN CENTER
PROPERTY OWNERS' ASSOCIATION, INC.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Deep Keel, LLC by depositing a copy of it in the United States Mail, postage prepaid on February 13, 2017, addressed to their attorneys of record, Charles S. Altman, Esquire, Altman & Coker, LLC, 575 King Street, Suite A, Charleston, South Carolina 29403, Attorneys for Respondent.



Brenda Casey, Paralegal
Simons & Dean
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February 13, 2017

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUN 05 2017

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2011-CP-07-1933

Case No. 2017-000487

Deep Keel, LLC,

Respondent,

v.

Atlantic Private Equity Group, LLC, Terry L. Rohlfig,
Jerry T. Caldwell, and Bluffton Village Town Center
Property Owners' Association, Inc.,

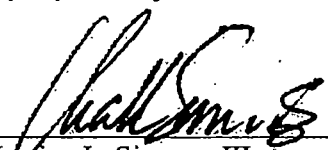
Defendants,

Of Whom Atlantic Private Equity Group, LLC,
Terry L. Rohlfig, and Jerry T. Caldwell are the

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies in accordance with Rule 210(g), SCACR, that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


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May 15, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Court of Common Pleas

The Honorable Marvin H. Dukes, III
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Defendants,

Of Whom Atlantic Private Equity Group, LLC,
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Appellants.

BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the lower court erred in granting summary judgment in favor of Deep Keel where the affidavits filed in support failed to meet the requirements of Rule 56(e) such that the record lacked competent evidence to establish the amount of the debt due.
- II. Whether the court erred in construing the bank's limited guaranty form to provide for individual liability of the guarantors for two separate limits of principal instead of joint liability for a single limit of principal.

STATEMENT OF THE CASE

This is an action commenced by Community First Bank on April 25, 2011. Two causes of action were stated, the first to foreclose a mortgage on two parcels of real estate in Beaufort County owned by Appellant Atlantic Private Equity Group, LLC, and the second for judgments against two alleged guarantors, Appellants Terry L. Rohlfing and Jerry T. Caldwell. A deficiency judgment was sought against all Appellants. [R. p. 22]

Appellants timely filed an answer by which, generally stated, they admitted that a loan was made, that it was secured by a mortgage and that it had not been repaid by the mortgagor or the alleged guarantors. Appellants did not admit the specific loan documents alleged and specifically denied the amount claimed to be due under the note. [R. p. 31]

In July of 2011, Community First Bank merged into CresCom Bank. There was no substitution of parties at that time.

In August of 2012, one of the two parcels was sold and released from the mortgage. The action continued as to the remaining parcel.

In September of 2012, CresCom Bank assigned the loan to Respondent Deep Keel, LLC.

On April 17, 2013, the circuit court entered an order referring the case to the master-in-equity for the purpose of adjudicating the mortgage foreclosure action. The order further provided

that “upon a resolution or disposition of the foreclosure action, this case is to be returned to the Circuit Court for final hearing and disposition as to any issues triable by jury as against Defendants Terry L. Rohlfig and Jerry T. Caldwell.”

On April 17, 2013, the circuit court also entered an order substituting Respondent Deep Keel, LLC for Community First Bank as plaintiff in the action.

A non-jury foreclosure hearing was held on July 10, 2013, before The Honorable Marvin H. Dukes, III. Appellants appeared through counsel, but Messrs. Rohlfig and Caldwell were not in attendance. No one appeared as a witness to establish the execution of the note, mortgage and other loan documents by the Appellants. Instead, Deep Keel, LLC offered into evidence the alleged loan documents through its sole member, Scott Bynum. Appellants Atlantic Private Equity Group, LLC, Terry L. Rohlfig, and Jerry T. Caldwell objected to this on the grounds that the witness lacked personal knowledge sufficient to lay a proper foundation and was seeking to introduce inadmissible hearsay. The court overruled the objections and allowed the introduction of the documents.

Deep Keel, LLC also sought to establish the amount due on the loan through Mr. Bynum based on information the witness said he received from CresCom Bank at the time of the assignment of the loan. Appellants again objected on hearsay grounds, and the court again overruled the objection.

On July 29, 2013, the court entered its Master's Report and Judgment of Foreclosure and Sale (Deficiency Demanded). Appellants received written notice of the entry of this order on August 5, 2013 and filed a Motion to Reconsider on August 13, 2013. In the motion, Appellants pointed out that the order erroneously recited the court's having received written testimony and indicated “there were no objections.” Appellants repeated the evidentiary objections made at the hearing and moved

that various factual findings enumerated in the motion, and any conclusions of law based thereon, be altered, amended, and vacated as without evidentiary support.

On September 5, 2013, the court entered its Amended Master's Report and Judgment of Foreclosure and Sale (Deficiency Demanded). This order included an additional paragraph addressing, though incompletely, Appellants' objections and stating the court's ruling with respect thereto.

Written notice of the entry of the amended order was received by Appellants' counsel on September 13, 2013. Appellants served notice of appeal on October 10, 2013.

The initial foreclosure auction was conducted on September 3, 2013. The high bid was made by Deep Keel, LLC in the amount of \$900,000.00. The second auction was held on October 3, 2013. There being no other bidders the sale to Deep Keel, LLC became final. The court having found the debt to amount to \$1,655,026.52, the amount involved in the appeal is \$755,026.52 plus interest

Appellants timely appealed and this Court issued its decision on June 17, 2015. In summary, the court:

- Affirmed the master's admission into evidence of the loan documents;
- Found that the testimony regarding the amount due on the debt was inadmissible hearsay; and
- Found that the master acted outside the scope of the order of reference in making a finding bearing upon the liability of the alleged guarantors.

Accordingly, the court affirmed the judgment of foreclosure, reversed the deficiency judgment, vacated the master's finding concerning the guarantors and remanded for further proceedings necessary for final judgment on all claims. *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015).

Remittitur to the court of common pleas was issued on July 6, 2015. The case was thereafter placed on the jury roster and ultimately again referred to the master by consent of the parties pursuant to an order entered on July 18, 2016. [R. p. 4]

On July 6, 2016, Deep Keel filed a motion for summary judgment against the alleged guarantors, Terry L. Rohlfing and Jerry T. Caldwell. [R. p. 85] The motion was supported by a memorandum and various exhibits attached thereto. [R. p. 87] In further support of its motion, Deep Keel filed two affidavits on July 12, 2016, one from Scott Bynum, sole member of Deep Keel [R. p. 133] and the other from Jamin M. Hujik, Executive Vice President of CresCom Bank. [R. p. 191]

Deep Keel's motion for summary judgment was heard by The Honorable Marvin H. Dukes, III on August 3, 2016 [R. p. 35] and thereafter granted by order entered August 23, 2016. [R. p. 11]

Appellants timely filed their Motion to Reconsider Order Granting Summary Judgment on September 6, 2016, [R. p. 235] which was denied by an order entered and electronically filed on January 17, 2017. [R. p. 6]

Appellants received written notice of entry of the Order Denying Defendants' Motion for Reconsideration via notice of electronic filing on January 17, 2017 and timely served Notice of Appeal on February 13, 2017. [R. p. 241]

The amounts involved in this appeal include: judgment entered against Terry L. Rohlfing individually in the amount of \$457,314.17; judgment entered against Jerry T. Caldwell individually in the amount of \$457,314.17; and, judgment entered against Terry L. Rohlfing and Jerry T. Caldwell jointly and severally in the amount of \$37,869.34.

ARGUMENT

I. THE COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE THE AFFIDAVITS OFFERED BY DEEP KEEL FAIL TO MEET THE REQUIREMENTS OF RULE 56(e) WITH RESPECT TO THE AMOUNT OF THE DEBT ALLEGEDLY DUE.

Plaintiff's motion for summary judgment was supported by two affidavits, one from an officer of CresCom Bank ("Hujik Affidavit") and one from the sole member of Deep Keel, LLC ("Bynum Affidavit"). The court determined that the affidavits demonstrated "sufficient competency, authority and personal knowledge to testify" concerning amounts due and owing on the loan. [R. p. 13] The court relied on the Hujik Affidavit to find the amount due at the time of the assignment of the loan to Deep Keel and relied on the Bynum Affidavit to find the amount due as of the date of the hearing. This was erroneous.

Rule 56(e), SCRPC requires that affidavits in support of a motion for summary judgment:

- Shall be made on personal knowledge
- Shall set forth such facts as would be admissible in evidence, and
- Shall show affirmatively that the affiant is competent to testify to the matters stated therein.

Neither of the affidavits meets these requirements in regard to the amount allegedly due.

The Bynum Affidavit at Paragraph 9 expressly relies upon the Hujik Affidavit for the amount due at the time of the assignment and, therefore, for its conclusion as to the amount due at the time of hearing as set forth in Paragraph 11. There is nothing in the affidavit to demonstrate the affiant's personal knowledge of or competence to testify about the amount due at the time of the assignment. The court of appeals has already ruled this testimony of this affiant to be inadmissible hearsay. *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 70, 773 S.E.2d 607, 614 (Ct. App.

2015). The affidavit includes no new facts upon which to base a different conclusion from that previously reached by this court. The Bynum Affidavit does not meet the requirements of Rule 56(e), and the court erred in accepting and relying upon it in its grant of summary judgment.

Paragraph 14 of the Hujik Affidavit summarized, as of September 28, 2012, a principal balance and various other charges and credits, and stated a conclusion as to the total amount due on that date. [R. p. 194] There is nothing in the affidavit to show the affiant's personal knowledge of the loan or competence to testify about it. The affidavit does not state that it is based on personal knowledge, must less include any factual statements to affirmatively demonstrate the affiant's personal knowledge or competence to offer the testimony. There is, for example, no evidence concerning how long the affiant was employed with the bank, whether he was employed with the bank when the loan was made or at the time the payments were made, or what his duties and responsibilities were generally or in respect to the subject loan. Mr. Hujik's conclusory statement concerning the amount allegedly due is not admissible evidence within the meaning of Rule 56(e), SCRPC and should not be considered. *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994)(a conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment); *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002)(materials used to support or refute a motion for summary judgment must be those which would be admissible in evidence).

Deep Keel argued at the hearing that the affiant's testimony was based on records maintained by the bank. [R. p. 64, lines 8-10] The affidavit does not say so. Even if it were to do so, the affiant's testimony from records not produced at the hearing would be inadmissible hearsay. *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015). All the

affidavit shows is that the affiant is a vice-president of the bank. However, his status as a vice-president is not a sufficient substitute for personal knowledge. *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 433 S.E.2d 871 (Ct. App. 1993). The Hujik Affidavit did not meet the requirements of Rule 56(e) and the court erred, it is respectfully submitted, in accepting and relying upon it in its grant of summary judgment.

Further, the conclusory summary of the alleged status of the loan as of a specific date as presented in the Hujik Affidavit is functionally no different from the summary statements offered by the plaintiff bank in *South Carolina Nat'l Bank v. Jones*, 302 S.C. 154, 394 S.E.2d 323 (1990). In that case the supreme court reversed a directed verdict in favor of the bank, ruling that summary statements on which it was based were not admissible under the Uniform Business Records as Evidence Act because there was no evidence showing that the entries on the statements were made at or near the time of the transactions. The testimony from a bank officer that the summaries were compiled from monthly statements issued to the debtor did not cure the defect. The present case does not involve the introduction of business records but the effect is the same. The court has granted judgment against the debtor based upon an unsupported, uncorroborated summary, offered not in the form of a record but included in testimony submitted by affidavit. If a written summary prepared by the bank would not be admissible, certainly an affidavit including testimony from or about such a summary would not be admissible either.

In its presentation of the amount allegedly due the Hujik Affidavit began with "Principal" of \$1,980,734.28. [R. p. 194, ¶ 14] This amount is less than the \$2,000,000.00 principal amount of the loan as set forth in Paragraph 2 and as stated in a 2nd Modification referenced in Paragraph 8. Therefore, there must have been payments made but there is no accounting of what payments were

made or when they were applied, nor were any records introduced concerning any payments. The presentation includes a credit described as resulting from the sale of one the parcels subject to the mortgage as referenced in Paragraph 11. There is evidence of the release of parcel 2 from the mortgage but no evidence to show that the correct amount, and not some greater number, was credited by the bank. Likewise, the presentation includes summary entries for “late charges” and unspecified “fees” with no records or other evidence as to what these entries were for or when they were made. Plaintiff cannot meet the evidentiary requirements of *South Carolina National Bank v. Jones* with a testamentary summary of the amount due.

In their Answer, at paragraph 17, Appellants denied the amount of the debt and demanded strict proof thereof. [R. pp. 32-33] A party against whom summary judgment is sought is entitled to rest on his pleadings unless and until “a motion for summary judgment is made and supported as provided in [Rule 56].” Rule 56(e), SCRCPP. When faced with a motion for summary judgment “that is supported by evidence” the party opposing the motion must show the court the existence of a genuine issue of fact. *Dyer v. Moss*, 284 S.C. 208, 211, 325 S.E.2d 69, 70 (Ct. App. 1985). The papers supporting the movant are to be closely scrutinized. *Id*; *Spencer v. Miller*, 259 S.C. 453, 192 S.E.2d 863 (1972). The master conducted no such scrutiny or analysis, merely finding without explanation or elaboration:

The affidavits filed in support of the Motion for Summary Judgment contain the amounts due Plaintiff as of the dates stated therein, including as of the date of the hearing on the Motion. The amounts as stated have not been contested. [R. p. 18]

In the order granting summary judgment the master did not address Appellants’ arguments, made at the hearing on the motion, that the affidavits failed to meet the requirements of Rule 56(e), SCRCPP. In their motion to reconsider Appellants again made these arguments. [R. pp. 235-238]

In the order denying Appellants' motion the master stated:

Mr. Hujik specifically states in his affidavit he is an Executive Vice President of the Bank and has relied on the records maintained by the Bank up to the time of the assignment of the loan to Plaintiff in setting forth the facts contained in the affidavit, including the calculation of the amount owed at the time of the assignment to Plaintiff. [R. p. 7]

Contrary to the court's order, the Hujik Affidavit contains no statement, specific or otherwise, concerning the affiant's reliance on records maintained by the bank in regard to the calculation of the amount owed at the time of the assignment to Deep Keel. Similarly, there is no factual support in the affidavit for the master's statement in its order denying reconsideration that Hujik:

... provided the information in his affidavit based on bank records kept in the ordinary course of business. Mr. Hujik's affidavit conveys information from a person with knowledge at the time the records were created, a situation specifically allowed under Rule 803(6), SCRE. *Twelfth RMS [sic] Partners, L.P. v National Safe Corp.*, 335 S.C. 635, 518 S.E.2d 44 (1999). [R. p. 8]

The only statement about the bank's maintenance of records is in Paragraph 13 of the Hujik Affidavit, reciting simply that the exhibits attached to the affidavit were all "maintained in the official records of the Bank until the Assignment to Deep Keel, LLC." There is nothing in the affidavit referring to bank records concerning payments, charges, credits or amounts due on the loan. Not only does the affidavit fail to describe any such records, there is nothing in the affidavit to show that it includes information from a person with knowledge as to the amount due.

The master's reliance on Rule 803(6) and *Twelfth RMA Partners, L.P. v National Safe Corp.* 335 S.C. 635, 518 S.E.2d 44 (1999) was erroneous. As noted by this court in its opinion deciding the first appeal in this case, *Twelfth RMA Partners* permits a "qualified witness" to testify about a

business record. *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 73, 773 S.E.2d 607, 615 (Ct. App. 2015). This court further indicated that the witness in that case, Scott Bynum, “appears to be a ‘qualified witness’ under Twelfth RMA because he studied the manner in which Community First and CresCom Bank maintained the records before he purchased the note.” *Id.* Thus, “his testimony conveyed information from a person with knowledge at the time the records were created.” *Id.* In the present case there is no evidence that Hujik studied or otherwise had any knowledge concerning any records regarding payments, charges and so forth, or the manner in which either bank maintained any such records. Hujik is not a “qualified witness” based on the record here.

Even if the affiant were deemed to be a “qualified witness” Deep Keel has not established a proper foundation for any business records concerning the amount allegedly due on the loan. *Ex parte Dep't of Health & Env'tl. Control*, 350 S.C. 243, 565 S.E.2d 293 (2002). This court has previously held in this case:

Because the business records exception applies only to the admission of business records themselves, the exception does not apply to Bynum's hearsay testimony.

Deep Keel, LLC v. Atlantic Private Equity Group, LLC, 413 S.C. 58, 74, 773 S.E.2d 607, 615 (Ct. App. 2015).

Based on the record now before the court Hujik stands in no better position than did Bynum in the first appeal, and Hujik’s unsupported, uncorroborated, naked conclusion concerning the amount due on the loan at the time of the assignment does not constitute admissible evidence. It is instead inadmissible hearsay not subject to any exception. Thus, the motion for summary judgment was not “made [or] supported” as required by Rule 56, SCRPC. Accordingly, the burden did not shift to Appellants to oppose the motion with affidavits or other evidence. *Dyer v. Moss*, 284 S.C.

208, 211, 325 S.E.2d 69, 70 (Ct. App. 1985). The master erroneously concluded otherwise:

If the Motion for Summary Judgment is supported by affidavits, the party opposing the Motion may not rely on their pleadings, but they must respond by affidavit or other testimony with specific facts evincing a genuine issue for trial. [R. pp. 8-9]

The lower court erred by shifting the burden to Appellants merely because Deep Keel filed supporting affidavits, without scrutinizing the affidavits for admissible evidence as required by *Dyer v. Moss*, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985) and *Spencer v. Miller*, 259 S.C. 453, 192 S.E.2d 863 (1972).

Because the Hujik Affidavit included no admissible evidence concerning the amount due at the time of the assignment to Deep Keel and the Bynum Affidavit expressly relied on the Hujik Affidavit for its calculation concerning the total due, there is no competent, admissible evidence concerning the amount of the debt. The court's grant of summary judgment should be reversed. *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011) (when reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court). The case should be remanded for a trial at which Deep Keel is required to proffer records and/or witnesses subject to cross-examination by Appellants to establish by competent evidence the amounts properly due on the debt. See *Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 799 (Ct. App. 1999)(summary judgment is a drastic remedy which should be cautiously invoked so no person is improperly denied a trial on disputed factual questions); *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997)(summary judgment is not appropriate where further inquiry into the facts is desirable to clarify the application of the law); *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008)(summary judgment should only be granted when plain, palpable and indisputable facts exist on which reasonable minds

cannot differ).

II. THE COURT ERRED IN CONSTRUING THE BANK'S LIMITED GUARANTY FORM TO PROVIDE FOR INDIVIDUAL LIABILITY OF THE GUARANTORS FOR TWO SEPARATE LIMITS OF PRINCIPAL INSTEAD OF JOINT LIABILITY FOR A SINGLE LIMIT OF PRINCIPAL.

In its order the court held that each Appellant is individually liable for \$350,000 in principal for a total of \$700,000 in principal, as opposed to joint and several liability of Appellants for a single limited amount of principal of \$350,000. The construction and enforcement of an unambiguous contract presents a question of law for the court. *Southern Glass & Plastics Co., Inc. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012) citing *Hansen ex rel. Hansen v. United Servs. Auto. Ass'n*, 350 S.C. 62, 67, 565 S.E.2d 114, 116 (Ct. App. 2002). The master erred in his construction and application of the bank's guaranty form.

Under paragraph 4 of the guaranty: "The liability of the Undersigned hereunder shall be limited to a principal amount of \$350,000.00." The capitalized term "Undersigned" is defined below the signature lines: "'Undersigned' shall refer to all persons who sign this guaranty, severally and jointly." Paragraph 13 of the bank's guaranty form states, in relevant part: "If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of [sic] every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned." Consistent with these provisions, in its complaint at paragraph 28 Plaintiff alleges that Defendants "each guaranteed, jointly and severally, the payment and performance of each and every debt, liability and obligation of every type and description which Atlantic Private Equity Group, LLC owed Plaintiff up to a principal amount

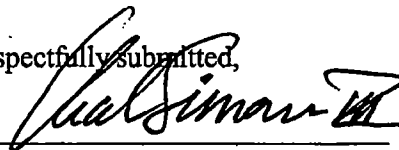
of \$350,000.00.” [R. p. 28] The court erred in granting relief not prayed for in the complaint and which goes beyond the limited undertaking of the Appellants under the terms of the guaranty.

Here there were allegedly two signers and under the terms of the guaranty their liability would be joint and several for the single limited amount of principal of \$350,000. That the signatures appeared on two different copies of the bank’s form does not negate the fact that there was a single guaranty. The definition of “Undersigned” refers to “this guaranty,” not to multiple copies of the same document. Nowhere does the form warn signers that if they sign different copies that they double their collective liability under the guaranty. Any ambiguity or uncertainty resulting on this point from the definition of “Undersigned” and other provisions concerning joint and several liability of the guarantors included in the bank’s form should be construed against the bank as drafter of same. *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423 (1981).

CONCLUSION

Inasmuch as the record contains no competent, admissible evidence concerning the amount of the debt the order granting summary judgment should be reversed and the case remanded for trial. Further, the lower court’s construction of the bank’s guaranty form should also be reversed such that further proceedings may be conducted in light of a proper construction of the guaranty and Appellants’ potential liability thereunder.

Respectfully submitted,



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May 31, 2017

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Appellants:

RULE 211 FINAL BRIEF CERTIFICATION

I hereby certify that the Brief of Appellants complies with Rule 211(b).



for Keating L. Simons, III
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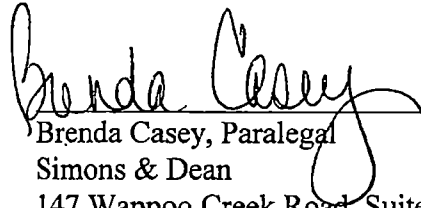
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PROOF OF SERVICE

I certify that I have served the Brief of Appellants and Rule 211 Final Brief Certification on Deep Keel, LLC by depositing a copy of it in the United States Mail, postage prepaid on June 2, 2017, addressed to their attorneys of record, Charles S. Altman, Esquire, Meredith L. Coker, Esquire and Patrick John Norton, Esquire, Altman & Coker, LLC, 575 King Street, Suite A, Charleston, South Carolina 29403, Attorneys for Respondent.

A handwritten signature in black ink, reading "Brenda Casey", is written over a horizontal line.

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June 2, 2017

Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes III, Master in Equity
Beaufort County
Trial Case No. 2011-CP-07-01933

Case No. 2017-000487

RECEIVED

JUN 02 2017

SC Court of Appeals

Deep Keel, LLC,

Respondent,

v.

Atlantic Private Equity Group, LLC, Terry L. Rohlfing,
Jerry T. Caldwell, and Bluffton Village Town Center
Property Owners' Association, Inc.,

Defendants,

Of Whom Atlantic Private Equity Group, LLC,
Terry L. Rohlfing, and Jerry T. Caldwell are the

Appellants.

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This appeal arises from the breach of two guaranties given by the Appellants in relation to a commercial loan made by Community FirstBank to Atlantic Private Equity Group, LLC. Community FirstBank initially brought this matter against Atlantic Private Equity Group, LLC (hereinafter Debtor) for foreclosure of the Mortgage, and against Terry L. Rohlfing and Jerry T. Caldwell for breach of their respective guaranties. [R., p.20]. Subsequent to the commencement of the suit, the debt (to include the guaranties) was purchased by and assigned to Deep Keel, LLC (Respondent) and Respondent substituted as Plaintiff by Order of the Court. [R., p.2].

This action was commenced by Community FirstBank on April 25, 2011, to bring a cause of action for foreclosure against Atlantic Private Equity Group, LLC, and for breach of guaranties against Terry L. Rohlfing and Jerry T. Caldwell (hereinafter collectively Appellants).¹ [R., p.20]. By Order entered April 17, 2013, and with the consent of the parties, the matter was referred to the Beaufort County Master-in-Equity, Marvin H. Dukes III, to hear the foreclosure action. Upon disposition of the foreclosure action, the case was to be returned to the Circuit Court for any issues triable by jury as against the individual Defendants Terry L. Rohlfing and Jerry T. Caldwell on their respective guaranties.

¹Subsequent to the commencement of the suit, Community FirstBank merged with Crescent Bank, and the name of the surviving entity was changed to CresCom Bank (hereinafter referred to as the Bank). This merger is evidenced by the Articles of Merger filed on record with the South Carolina Secretary of State on July 29, 2011, and filed of record with, *inter alia*, the Office of Register of Deeds for Beaufort County, South Carolina, in Book 3098, page 1545, on November 15, 2011.

By further Order entered April 17, 2013, Respondent was substituted as Plaintiff, due to the assignment of all rights, title, and interests to the Note, Mortgage, and other loan documents, to include the individual Guaranties. [R., p.2].

On July 10, 2013, the court below held the foreclosure hearing against Debtor. Neither the Debtor nor Appellants attended the foreclosure hearing, although counsel for the Appellants was present and participated in the hearing.

The Master-in-Equity issued the Master's Report and Judgment of Foreclosure and Sale on July 29, 2013. Appellants filed a Motion for Reconsideration, which Respondent opposed by Memorandum in Opposition filed August 22, 2013. Thereafter, the Master-in-Equity issued an Amended Master's Report and Judgment of Foreclosure and Sale, and the property at issue was sold at public auction without objection by Debtor or Appellants.

Subsequent to an appeal by Debtor, decided by this Court on June 17, 2015, this matter was remanded for hearing and judgment regarding the breach of the guaranties. The remaining matters were referred to the Master-in-Equity by Consent Order, entered on July 18, 2016.

Respondent filed a Motion for Summary Judgment on July 26, 2016, against Terry L. Rohlfing and Jerry T. Caldwell. [R., p.85]. Respondent supported its Motion for Summary Judgment by a Memorandum; the Affidavit of Scott Bynum, the sole member of Respondent; and the Affidavit of Jamin M. Hujik, Executive Vice President of CresCom Bank, the prior owner of the loan and related loan documents. [R., pp. 87, 133, 191]. Appellants did not file any affidavits or additional pleadings in opposition to summary judgment. On August 3, 2016, a hearing on Respondent's Motion for Summary Judgment

was held, after which an Order was entered on August 23, 2016, granting Respondent's Motion and entering judgment in favor of Respondent and against Appellants. [R., p.11].

On September 6, 2016, Appellants filed a Motion to Reconsider Order Granting Summary Judgment, which was denied by Order entered on January 17, 2017. [R., pp. 6, 235]. Appellants then served Notice of Appeal on February 13, 2017. [R., p.241].

ARGUMENT

I. Standard of Review

In reviewing a grant of summary judgment, the appellate court applies the same standard as the trial court under Rule 56(c), SCRCP. Quail Hill, LLC v. County of Richland, 387 S.C. 223 at 234, 692 S.E.2d 499 at 505 (2010). Summary judgment is proper if when viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP; Quail Hill, 387 S.C. at 235, 692 S.E.2d at 505. Neither the trial court nor this Court, however, is "required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine." Main v. Corley, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984).

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App. 2003). Rather, the nonmoving party must come forward

with specific facts showing there is a genuine issue for trial. Rife v. Hitachi Const. Machinery Co. Ltd., 363 S.C. at 214, 609 S.E.2d at 568 (Ct.App. 2005).

“The admission of evidence is within the trial court’s discretion. The court’s ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law.” R. & G Constr., Inc., v. Lowcountry Regional Trans. Authority, 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct.App. 2000) (citations omitted). “[T]o warrant reversal based on the admission or exclusion of evidence, the appealing party must show both the error of the ruling and prejudice.” Fields v. Regional Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

II. The lower Court properly granted summary judgment in favor of Respondent where the affidavits filed in support met the requirements of Rule 56(e), SCRPC, with respect to the amount of debt due.

Respondent is the assignee of the original lender, Community FirstBank, now known as CresCom Bank (the Bank). Respondent, a private investor, purchased the loan from the Bank in a negotiated, arms length transaction. There is no dispute or issue before this Court with regard to the assignment of the Bank’s rights under the Loan Documents to Respondent, and Respondent was substituted as Plaintiff in this action without objection from Appellants. [R., p.2]. “[I]t is well established that an ‘assignee . . . stands in the in the shoes of its assignor When a contract is assigned, the assignee should have all the same rights and privileges . . . as the assignor.’” Twelfth RMA Partners, LP v. National Safe Corporation, 335 S.C. 635, 639-40, 518 S.E.2d 44, 46 (Ct.App. 1999) (citations omitted).

In support of its Motion for Summary Judgment, Respondent submitted two affidavits relating to the obligations of Appellants under the respective guaranties. An affidavit is “[a]

voluntary declaration of facts written down and sworn to by a declarant, usually before an officer authorized to administer oaths.” Black’s Law Dictionary (10th ed. 2014). Respondent introduced the Affidavit of Jamin M. Hujik (hereinafter “Hujik”). In Hujik’s affidavit, he clearly states he is the Executive Vice President of CresCom Bank. He states material and substantial facts relating to the loan documents, the terms therein, and the calculations of the debt. [R., p.191]. The affidavit on its face evinces the personal knowledge and competence of Hujik to assert the facts therein. Hujik states further that the records and documents referenced within his affidavit were maintained in the official records of the Bank at all times relevant to the time period of his affidavit. [R., p.191, paragraph 13].

Appellants improperly rely on Englert, Inc. v. Netherlands Ins. Co., 315 S.C. 300, 433 S.E.2d 871 (Ct.App. 1993), which held an affidavit did not meet the requirements of 56(e), SCRPC, where the affiant stated a third party rejected construction materials due to “*alleged* defects,” because the affiant failed to state the basis for any such knowledge. Different from the facts in Englert, Hujik’s affidavit sets out the terms of the loan documents specifically, as well as the calculation of the amounts owed under the loan and guaranties while the Bank held the loan. As Executive Vice President of the Bank, he is competent to testify as to the documents, which were maintained at all times in the official records of the Bank. [R., p.191]. Appellants also claim Hujik’s affidavit contains conclusory statements regarding the amount due pursuant to the loan documents, and cites to Shupe v. Settle, 315 S.C.510, 445 S.E.2d 651, stating, “[a] conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.” In contrast to Shupe, Hujik’s affidavit contained no conclusory statement and was offered in

support of Respondent's Motion for Summary Judgment, not offered to create a genuine issue of fact for purposes of resisting summary judgment. For the above reasons, Hujik's affidavit clearly meets the requirements of Rule 56(e), SCRCP.

The second affidavit submitted in support of Respondent's Motion for Summary Judgment was that of Scott Bynum. It is uncontroverted that Scott Bynum is the sole member of Respondent and the party who reviewed and maintained the business records of Respondent. [R., p.133]. The evidence further shows that the loan made to Appellants was purchased by Respondent from the loan originator, Community FirstBank, now known as CresCom Bank. [R., p.133, paragraph 3]. Finally, the evidence shows that Respondent reviewed and kept the records prepared by CresCom Bank prior to the purchase of the loan and during pendency of the action on the loan subsequent to the purchase and thereafter. [R., p.133, paragraph 10].

The testimony of Bynum with regard to the amounts outstanding under the loan are clearly within the purview of the business records exception to the hearsay rule. Rule 803(6), SCRE, excludes business records from the hearsay rule:

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness

Id.; see also S.C. Code § 19-5-510. Twelfth RMA is precisely on point. In that case, the holder of a promissory note and guarantee acquired through assignment from the RTC sued the guarantors. The original lender was closed by the United States Government, which appointed RTC as the receiver. The testifying witness for Twelfth RMA Partners was a portfolio manager for Twelfth RMA. Twelfth RMA, 335 S.C. 635, 639, 518 S.E.2d 44, 45-46. In Twelfth RMA,

Ms. Every testified that the records about which she testified were part of her file that she maintained in Twelfth's regular course of business.

The Smiths argue, however, that she was not the custodian "at or near the time" the records were made. Here, Ms. Every's testimony merely conveyed information from a person "with knowledge" at the time the records were created, a situation expressly allowed under Rule 803(6).

Twelfth RMA Partners at 642, 518 S.E.2d at 48. "Business records of an entity are admissible even though another entity made the records, and the rule does not require an employee of the entity that prepared the record to lay the foundation." Midfirst Bank v. C.W. Haynes & Company, Inc. et al., 893 F.Supp. 1304, 1310 (U.S.D.C., S.C., 1994) (citations omitted) (decision based on the Federal Rules of Evidence). "Moreover, Rule 803(6) does not require the testifying witness to have personally participated in the creation of the document or to know who actually recorded the information." Id. at 1311. Moreover, Respondent submitted the Hujik affidavit with regard to all calculations and amounts at issue prior to Respondent's purchase of the loan debt.

Appellants provided no testimony and no evidence to the court below, much less any evidence to dispute, deny, or contradict the testimony and evidence of Respondent.

Appellants merely rested on their allegations or denials contained in their initial pleadings. The Affidavits of Hujik and Bynum each provide specific and substantially detailed facts relating to the loan documents, the guaranties, and the amounts owing. Nothing therein can be construed as conclusory or unsupported by personal knowledge of the facts. See, e.g., Schmidt v. Courtney, et al., 357 S.C. 310, 321, 592 S.E.2d 326, 331 (Ct.App. 2003); S.C. Labor Ltd., LLC v. Eastern Tree Service, Inc., 362 S.C. 654, 657, 609 S.E.2d 305, 306 (Ct.App. 2005). The Master committed no error in admitting the documents and testimony of Respondent, and Appellants cannot meet their burden to show any error committed by the Master nor any prejudice resulting therefrom. The court below made no error in admitting the affidavits and relying upon the uncontroverted facts set forth therein to support a finding of summary judgment in favor of Respondent.

III. The lower Court correctly construed the Bank's Guaranty forms to provide for individual liability of each Guarantor for two separate principal amounts of \$350,000.00.

A guaranty of payment is an absolute or unconditional promise to pay a particular debt if it is not paid by the debtor at maturity. AMA Management Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868 (Ct.App.1992). It is a personal obligation running directly from the guarantor to the creditor which is immediately enforceable against the guarantor upon default of the debtor. See Peoples Federal Savings and Loan Assoc. v. Myrtle Beach Retirement Group, Inc., 300 S.C. 277, 387 S.E.2d 672 (1989). It is well-established in South Carolina that "[a] contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause." McGill v. Moore, 381 S.C. 179, 672

S.E.2d 571, 575 (2009); Alexander's Land Company, L.L.C. v. M & M & K Corp., 390 S.C. 582, 703 S.E.2d 207 (2010).

Appellants Rohlfing and Caldwell each individually executed separate guaranties, containing one signature block and one signature each. Appellants' Answer admitted the documents were executed in connection with the loan, demand had been made on the Guarantors, and Guarantors had not made payment. [R., p.31]. Said guaranties made each, Appellant Rohlfing and Appellant Caldwell, individually liable for a principal amount of \$350,000.00 plus accrued interest thereon and all attorney's fees, collection costs, and enforcement expenses.

Appellants claim the two (2) guaranties were multiple copies of the same document, however this is incorrect. The two (2) separate guaranties contain different signature blocks intended for different individuals, thus, are not copies of the same document. Appellants further claim the guaranties are ambiguous, referring to the definition of "Undersigned" in the guaranties. Not only is there clearly only one "Undersigned" to each of the two (2) guaranties, but the guaranties are contracts which must be read as a whole. See McGill, 381 S.C. 179, 672 S.E.2d 571, 575 (2009). An ambiguity cannot be created by simply pointing to one sentence or clause, as discussed in McGill, let alone one single word. Appellants' contention that the two guaranties were merely copies of a single document is without merit, without any evidentiary support, and without logical basis. The loan at issue was in the amount of Two Million Dollars, and was secured by multiple parcels of commercial property and the two (2) limited guaranties of the Appellants Roling and Caldwell in the amount of \$350,000.00 each. A single capped guaranty amount of \$350,000.00 would be less than

twenty percent of the loan amount. Moreover, Respondent was in possession of the original separate documents, and at the hearing counsel for Respondent made those available for review if desired. [R., p.38, 8-11].² That the two (2) guaranties were actually copies of one document, making Appellants Rohlring and Caldwell jointly and severally liable for one amount of just \$350,000.00 is illogical, as the guaranties serve to secure a loan in the amount of \$2,000,000.00.

Respondent admits that each guaranty was limited in its maximum amount. That is, a principal amount of no more than \$350,000.00, plus interest, fees, and costs. The guaranties are clearly two (2) separate contracts making Appellants Rohlring and Caldwell each individually liable for a principal amount of \$350,000.00 plus accrued interest thereon and all attorney's fees, collection costs, and enforcement expenses, and are not copies of the same document. Appellants concede it is within the Court's purview to determine the construction and enforcement of an unambiguous contract. The lower court did not err in doing so and in the entry of judgment against each guarantor with regard to his respective guaranty and breach thereof.

CONCLUSION

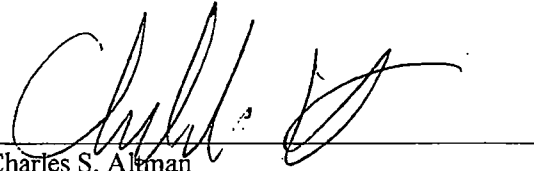
Appellants make no substantive argument with regard to either the facts set forth in the Respondent's affidavits, nor with regard to any defenses as to the breach of the guaranties. The Master-in-Equity properly granted summary judgment in favor of Respondent, as the affidavits in support met the requirements of Rule 56(e), SCRCP.

²

The original documents have been available for review by opposing counsel, Appellants, and the court at several times throughout the course of the litigation. [R., p.38, 8-11, 16-22].

Further, the Master-in-Equity correctly construed guaranties to provide for individual liability of Appellants Rohlfing and Caldwell for the amount set forth in each respective guaranty. For the reasons stated herein, Respondent respectfully requests this Honorable Court affirm the judgment of the Master-in-Equity, award costs to Respondent in its defense of the appeal, and for all other relief as this Court deems equitable and proper.

Respectfully submitted this 31st day of May, 2017.



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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Deep Keel, LLC, Respondent,

v.

Atlantic Private Equity Group, LLC, Terry L. Rohlfing,
Jerry T. Caldwell, and Bluffton Village Town Center
Property Owners' Association, Defendants,

Of which Atlantic Private Equity Group, LLC, Terry L.
Rohlfing, and Jerry T. Caldwell are the Appellants.

Appellate Case No. 2017-000487

Appeal From Beaufort County
Marvin H. Dukes, III, Master-in-Equity

Unpublished Opinion No. 2019-UP-270
Submitted May 8, 2019 – Filed July 24, 2019

AFFIRMED

Keating L. Simons, III, of Simons & Dean, of
Charleston, for Appellants.

Charles S. Altman, of The Law Offices of Charles S.
Altman, Meredith L. Coker, and Patrick J. Norton, all of
Charleston, for Respondent.

PER CURIAM: In this action to collect deficiency judgments, Atlantic Private Equity Group, LLC (Atlantic) appeals the master-in-equity's order granting summary judgment to Deep Keel, LLC (Deep Keel). On appeal, Atlantic argues the master erred in (1) granting summary judgment because Deep Keel's affidavits failed to meet the requirements of Rule 56(e), SCRCP, with respect to the amount of debt due on the loan and (2) construing personal guarantees to impose individual liability as opposed to joint and several liability. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. *Woodson v. DLI Props., LLC*, 406 S.C. 517, 528, 753 S.E.2d 428, 434 (2014) ("In reviewing a grant of summary judgment, our appellate court applies the same standard as the trial court under Rule 56(c), SCRCP."); *id.* ("Summary judgment is proper if, viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law."); *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003) ("Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings."); *id.* ("Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.").

2. *HK New Plan Exch. Prop. Owner I, LLC v. Coker*, 375 S.C. 18, 23, 649 S.E.2d 181, 184 (Ct. App. 2007) ("[T]he construction of a contract is a question of law for the court."); *First-Citizens Bank & Tr. Co. v. Conway Nat'l Bank*, 282 S.C. 303, 305, 317 S.E.2d 776, 777 (Ct. App. 1984) (providing when a motion for summary judgment presents a question as to the construction of a written contract, if the language employed by the agreement is plain and unambiguous, the question is one of law); *id.* ("In such a case, summary judgment is proper and a trial unnecessary whe[n] the intention of the parties as to the legal effect of the contract may be gathered from the four corners of the instrument itself."); *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) ("The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language."); *Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993) ("Whe[n] the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect."); *id.* ("The [c]ourt's duty is to enforce the contract made by the parties

regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully.").

AFFIRMED.¹

HUFF, THOMAS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

90587

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2011-CP-07-1933

Case No. 2017-000487

RECEIVED

AUG 12 2019

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Deep Keel, LLC,

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Jerry T. Caldwell, and Bluffton Village Town Center
Property Owners' Association, Inc.,

Defendants,

Of Whom Atlantic Private Equity Group, LLC,
Terry L. Rohlfing, and Jerry T. Caldwell are the

Appellants.

APPELLANTS' PETITION FOR REHEARING

Keating L. Simons, III
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Attorneys for Appellants

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Appellants petition the Court for rehearing of this case. The Court decided the case without oral argument and issued its *per curiam* unpublished opinion on July 24, 2019. Appellants respectfully submit that the Court overlooked or misapprehended material points of fact or law in its opinion upon consideration of which the Court should reverse its decision.

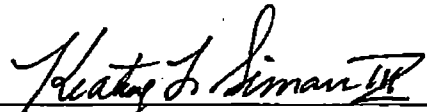
As addressed in greater detail in the accompanying memorandum, in its decision the Court referenced Appellants' argument that the affidavits submitted in support of the motion for summary judgment failed to meet the requirements of Rule 56(e), SCRCP. However, the Court did not discuss this issue in its opinion and the cases cited by the Court as authorities upon which the Court's decision were based do not address sufficiency of affidavits under Rule 56(e). Based on the cases cited by the Court, it appears that the Court determined that because affidavits had been filed the burden shifted to Appellants to "come forward with specific facts showing there is a genuine issue for trial," and because Appellants did not do so, Respondent was entitled to summary judgment. Appellants respectfully submit this was erroneous in that this burden shifting only occurs when a summary judgment motion is supported by affidavits that meet the personal knowledge requirements of Rule 56(e), a point overlooked, or at least not addressed by, the Court in its decision. Because the affidavits in this case were not based on personal knowledge they did not comply with Rule 56(e), Appellants were under no obligation to come forward with evidence and Respondent had simply failed to establish that it was entitled to judgment as a matter of law.

In its decision the Court also referenced Appellants argument that the personal guarantees imposed joint and several liability not personal liability upon the guarantors. Based upon the cases cited by the Court, it appears the Court decided the case on the ground that unambiguous contracts

are to be construed and enforced in accordance with the plain meaning of the language used by the parties. Appellants do not take issue with this as a correct statement of the law. However, the Court overlooked, or at least did not address, the language of the guarantees providing for joint and several liability or the allegations of Respondent's complaint that the guarantors "each guaranteed, jointly and severally" the payment of the debt.

Appellants arguments are stated more fully in the accompanying memorandum. Appellants respectfully request that the Court grant this Petition for Rehearing, vacate its prior decision, set the case for oral argument and consider Appellants' arguments made hereby.

Respectfully submitted,

A handwritten signature in black ink, reading "Keating L. Simons, III". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Keating L. Simons, III
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August 8, 2019
Charleston, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
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Defendants,

Of Whom Atlantic Private Equity Group, LLC,
Terry L. Rohlfig, and Jerry T. Caldwell are the

Appellants.

APPELLANTS' MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

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MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

ARGUMENT

- I. THE COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE THE AFFIDAVITS OFFERED BY DEEP KEEL FAIL TO MEET THE REQUIREMENTS OF RULE 56(e) WITH RESPECT TO THE AMOUNT OF THE DEBT ALLEGEDLY DUE.

As summarized in Appellants' Petition for Rehearing, Appellants respectfully submit that the Court overlooked or misapprehended the fact that the affidavits in support of the motion for summary judgment were not based upon personal knowledge as required by Rule 56(e), SCRCPP and that for that reason the master erred in granting summary judgment to Respondent.

Rule 56(e), SCRCPP requires that affidavits in support of a motion for summary judgment:

- Shall be made on personal knowledge
- Shall set forth such facts as would be admissible in evidence, and
- Shall show affirmatively that the affiant is competent to testify to the matters stated therein.

This Court has required that affidavits be based upon personal knowledge. *S.C. Labor Ltd., LLC v. Eastern Tree Service, Inc.*, 362 S.C. 654, 609 S.E.2d 305 (Ct.App. 2005)(affidavits based on personal knowledge could be considered); *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 433 S.E.2d 871 (Ct.App. 1993)(affidavit insufficient where affiant did not assert that he knew materials were defective).

The Supreme Court has also addressed the issue. While holding that a verified complaint could meet the requirements of summary judgment, the Supreme Court further held that allegations based upon information and belief did not meet the personal knowledge requirement of the rule.

Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003).

In this case the master's determination of the amount due was based on an affidavit from an officer of CresCom Bank ("Hujik Affidavit"). Paragraph 14 of the Hujik Affidavit summarized a principal balance and various other charges and credits, and stated a conclusion as to the total amount due when the debt was assigned to Respondent. [R. p. 194] There is nothing in the affidavit to show the affiant's personal knowledge of the loan or competence to testify about it. The affidavit does not state that it is based on personal knowledge, must less include any factual statements to affirmatively demonstrate the affiant's personal knowledge or competence to offer the testimony.

In the order granting summary judgment the master did not address Appellants' arguments, made at the hearing on the motion, that the affidavits failed to meet the requirements of Rule 56(e), SCRPC. In their motion to reconsider Appellants again made these arguments. [R. pp. 235-238] In the order denying Appellants' motion the master stated:

Mr. Hujik specifically states in his affidavit he is an Executive Vice President of the Bank and has relied on the records maintained by the Bank up to the time of the assignment of the loan to Plaintiff in setting forth the facts contained in the affidavit, including the calculation of the amount owed at the time of the assignment to Plaintiff. [R. p. 7]

Contrary to the master's order, the Hujik Affidavit contains no statement, specific or otherwise, concerning the affiant's reliance on records maintained by the bank in regard to the calculation of the amount owed at the time of the assignment to Respondent. The only mention in the record of the affiant's alleged reliance on bank records is a statement to that effect from Respondent's counsel at the hearing. [R. p. 64, lines 8-10] But factual statements or arguments made by an attorney are not evidence and ordinarily may not be considered by the court considering

summary judgment. *Higgins v. Medical University of South Carolina*, 326 S.C. 592, 486 S.E.2d 269 (Ct.App. 1997).

Again, the affidavit includes no averment that the testimony concerning the amount of the debt due was based on business records maintained by the bank. Even if it were to do so, the affiant's testimony from records not produced at the hearing would be inadmissible hearsay. *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 773 S.E.2d 607 (Ct.App. 2015). All the affidavit shows is that the affiant is a vice-president of the bank. However, his status as a vice-president is not a sufficient substitute for personal knowledge. *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 433 S.E.2d 871 (Ct. App. 1993). The Hujik Affidavit did not meet the requirements of Rule 56(e) and the court erred, it is respectfully submitted, in accepting and relying upon it in its grant of summary judgment.

There is no factual support in the record for the master's statement in his order denying reconsideration that Hujik:

... provided the information in his affidavit based on bank records kept in the ordinary course of business. Mr. Hujik's affidavit conveys information from a person with knowledge at the time the records were created, a situation specifically allowed under Rule 803(6), SCRE. *Twelfth RMS [sic] Partners, L.P. v National Safe Corp.*, 335 S.C. 635, 518 S.E.2d 44 (1999). [R. p. 8]

The only statement about the bank's maintenance of records is in Paragraph 13 of the Hujik Affidavit, reciting simply that the exhibits attached to the affidavit were all "maintained in the official records of the Bank until the Assignment to Deep Keel, LLC." (emphasis added) There is nothing in the affidavit referring to bank records concerning payments, charges, credits or amounts due on the loan. Not only does the affidavit fail to describe any such records, there is nothing in the

affidavit to show that it includes information from a person with knowledge as to the amount due.

The master's reliance on Rule 803(6) and *Twelfth RMA Partners, L.P. v National Safe Corp.* 335 S.C. 635, 518 S.E.2d 44 (1999) was also erroneous. As noted by this Court in its opinion deciding the first appeal in this case, *Twelfth RMA Partners* permits a "qualified witness" to testify about a business record. *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 73, 773 S.E.2d 607, 615 (Ct. App. 2015). This Court further indicated that the witness in that case, Scott Bynum, "appears to be a 'qualified witness' under Twelfth RMA because he studied the manner in which Community First and CresCom Bank maintained the records before he purchased the note." *Id.* Thus, "his testimony conveyed information from a person with knowledge at the time the records were created." *Id.* In the present case there is no evidence that Hujik studied or otherwise had any knowledge concerning any records regarding payments, charges and so forth, or the manner in which either bank maintained any such records. Hujik is not a "qualified witness" based on the record here.

Even if the affiant were deemed to be a "qualified witness," Respondent has not established a proper foundation for any business records, nor did Respondent seek to introduce any business records, concerning the amount allegedly due on the loan. *Ex parte Dep't of Health & Env'tl. Control*, 350 S.C. 243, 565 S.E.2d 293 (2002). This court has previously held in this case:

Because the business records exception applies only to the admission of business records themselves, the exception does not apply to Bynum's hearsay testimony.

Deep Keel, LLC v. Atlantic Private Equity Group, LLC, 413 S.C. 58, 74, 773 S.E.2d 607, 615 (Ct. App. 2015).

Based on the record now before the Court, Hujik stands in no better position than did Bynum in the first appeal, and Hujik's unsupported, uncorroborated, naked conclusion concerning the

amount due on the loan at the time of the assignment does not constitute admissible evidence. It is instead inadmissible hearsay not subject to any exception. Thus, the motion for summary judgment was not “made [or] supported” as required by Rule 56, SCRCP.

Moreover, the conclusory summary of the alleged status of the loan as of a specific date as presented in the Hujik Affidavit is functionally no different from the summary statements offered by the plaintiff bank in *South Carolina Nat'l Bank v. Jones*, 302 S.C. 154, 394 S.E.2d 323 (1990). In that case the Supreme Court reversed a directed verdict in favor of the bank, ruling that summary statements on which it was based were not admissible under the Uniform Business Records as Evidence Act because there was no evidence showing that the entries on the statements were made at or near the time of the transactions. The testimony from a bank officer that the summaries were compiled from monthly statements issued to the debtor did not cure the defect. The present case does not involve the introduction of business records but the effect is the same. The court has granted judgment against the debtor based upon an unsupported, uncorroborated summary, offered not in the form of a record but included in testimony submitted by affidavit. If a written summary prepared by the bank would not be admissible, certainly an affidavit presenting testimony equivalent to a written summary would not be admissible either.

The Hujik Affidavit should be seen as what it is: a statement from a bank officer that based upon bank records or information received from other bank employees (on this record we cannot know how the affiant acquired the information) he is informed and believes that the principal balance and other charges owed total to the figure given. The information and belief set forth in the affidavit, which is all that is provided in regard to the amount of the debt, is simply insufficient support for Respondent's summary judgment motion. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

In their Answer, at paragraph 17, Appellants denied the amount of the debt and demanded strict proof thereof. [R. pp. 32-33] A party against whom summary judgment is sought is entitled to rest on his pleadings unless and until “a motion for summary judgment is made and supported as provided in [Rule 56].” Rule 56(e), SCRCF. When faced with a motion for summary judgment “that is supported by evidence” the party opposing the motion must show the court the existence of a genuine issue of fact. *Dyer v. Moss*, 284 S.C. 208, 211, 325 S.E.2d 69, 70 (Ct. App. 1985). The papers supporting the movant are to be closely scrutinized. *Id.*; *Spencer v. Miller*, 259 S.C. 453, 192 S.E.2d 863 (1972). Because the motion for summary judgment was not supported by admissible evidence, that is to say, testimony from a witness with personal knowledge, Appellants were entitled to rest on their pleadings. The burden did not shift to Appellants to oppose the motion with affidavits or other evidence. *Dyer v. Moss*, 284 S.C. 208, 211, 325 S.E.2d 69, 70 (Ct. App. 1985). The master erroneously concluded otherwise:

If the Motion for Summary Judgment is supported by affidavits, the party opposing the Motion may not rely on their pleadings, but they must respond by affidavit or other testimony with specific facts evincing a genuine issue for trial. [R. pp. 8-9]

The master erred by shifting the burden to Appellants merely because Respondent filed supporting affidavits, without first scrutinizing the affidavits for admissible evidence as required by *Dyer v. Moss*, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985) and *Spencer v. Miller*, 259 S.C. 453, 192 S.E.2d 863 (1972).

Summary judgment should not be granted unless the movant establishes that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCF (emphasis added) It is only when a motion for summary judgment is

“made and supported as provided in this rule” that “an adverse party may not rest upon the mere allegations or denials of his pleading.” Rule 56(e), SCRCP. Here the Respondent’s motion was not supported as required by Rule 56(e), Appellants were not required to come forward with evidence showing a genuine issue of fact and Respondent failed to establish, by admissible evidence, that it was entitled to judgment as a matter of law. Because the Hujik Affidavit included no admissible evidence concerning the amount due at the time of the assignment to Respondent and the Bynum Affidavit expressly relied on the Hujik Affidavit for its calculation concerning the total due, there was no competent, admissible evidence presented to the master concerning the amount of the debt. The master’s grant of summary judgment should be reversed. *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011) (when reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court).

II. THE COURT ERRED IN CONSTRUING THE BANK’S LIMITED GUARANTY FORM TO PROVIDE FOR INDIVIDUAL LIABILITY OF THE GUARANTORS FOR TWO SEPARATE LIMITS OF PRINCIPAL INSTEAD OF JOINT LIABILITY FOR A SINGLE LIMIT OF PRINCIPAL.

As summarized in Appellants’ Petition for Rehearing, Appellants do not take issue with the correctness of the legal proposition, apparently relied on by the Court in its disposition of this case, that unambiguous contracts are to be construed and enforced in accordance with the plain meaning of the language used by the parties. However, Appellants respectfully submit that the Court overlooked or misapprehended the language of the guarantees providing for joint and several liability and the allegations of Respondent’s complaint that the guarantors “each guaranteed, jointly and severally” the payment of the debt.

In the Complaint, at paragraph 28, plaintiff alleges that Defendants “each guaranteed, jointly

and severally, the payment and performance of each and every debt, liability and obligation of every type and description which Atlantic Private Equity Group, LLC owed Plaintiff up to a principal amount of \$350,000.00.” [R. p. 28] In the prayer for relief, at item 3, plaintiff sought judgment against Appellants “jointly and severally, in the amount found to be due.” [R. p. 29]

The guarantee forms are in the record as exhibits to Respondent’s motion for summary judgment. [R. pp. 109, 111] Under paragraph 4 of the guaranty: “The liability of the Undersigned hereunder shall be limited to a principal amount of \$350,000.00.” The capitalized term “Undersigned” is defined below the signature lines: “‘Undersigned’ shall refer to all persons who sign this guaranty, severally and jointly.” Paragraph 13 of the bank’s guaranty form states, in relevant part: “If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of [sic] every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned.”

Here there were two signers and under the terms of the guaranty their liability would be joint and several for the single limited amount of principal of \$350,000. That the signatures appeared on two different copies of the bank’s form does not negate the fact that there was a single guaranty. The definition of “Undersigned” refers to “this guaranty,” not to multiple copies of the same document. Nowhere does the bank’s form provide that if guarantors do not sign the same form their liability becomes individual not joint and several and if they sign different copies that they effectively double their collective liability under the guaranty. This could not have been the intent of the parties in light of the clear language: “If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several.”

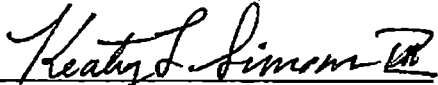
The master erred, it is respectfully submitted, in his construction of the guarantee forms and

his granting relief beyond that sought by Respondent for “joint and several” liability of the guarantors.

CONCLUSION

On the first appeal of this case this Court correctly held, based on the record at that time, that Respondent had failed to properly prove the amount owed on the debt and remanded the case to give Respondent another try. *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015). The nature and quality of the proof subsequently presented to the master by Respondent and now before the Court in this case is no better or different in any substantive way from that involved in the first appeal. The result should be the same.

Respectfully submitted,


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August 8, 2019
Charleston, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2011-CP-07-1933

Case No. 2017-000487

RECEIVED

AUG 12 2019

SC Court of Appeals

Deep Keel, LLC,

Respondent,

v.

Atlantic Private Equity Group, LLC, Terry L. Rohlfing,
Jerry T. Caldwell, and Bluffton Village Town Center
Property Owners' Association, Inc.,

Defendants,

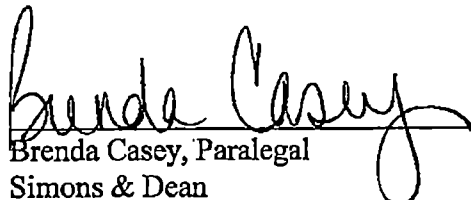
Of Whom Atlantic Private Equity Group, LLC,
Terry L. Rohlfing, and Jerry T. Caldwell are the

Appellants.

PROOF OF SERVICE

I certify that I have served Appellants' Petition for Rehearing and Appellant's Memorandum in Support of Petition for Rehearing on Deep Keel, LLC by depositing a copy of it in the United States Mail, postage prepaid on August 8, 2019, addressed to their attorneys of record, Charles S. Altman, Esquire, Meredith L. Coker, Esquire and Patrick John Norton, Esquire, Altman & Coker, LLC, 575 King Street, Suite A, Charleston, South Carolina 29403, Attorneys for Respondent.

August 8, 2019
Charleston, S.C.


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The South Carolina Court of Appeals

Deep Keel, LLC, Respondent,

v.

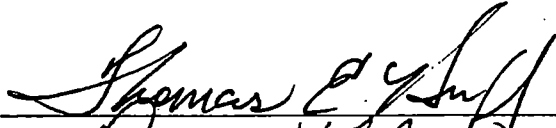
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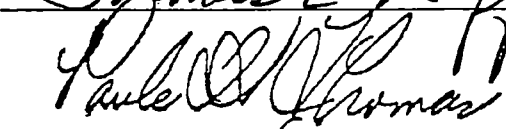
Of whom Atlantic Private Equity Group, LLC, Terry L.
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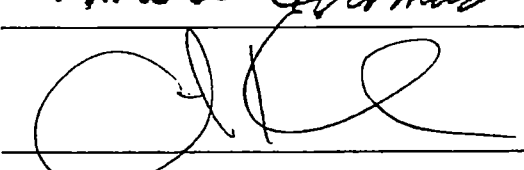
Appellate Case No. 2017-000487

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.


J.


J.

Columbia, South Carolina

cc: .

FILED

September 19, 2019

Keating L. Simons, III, Esquire
Charles S. Altman, Esquire
Meredith L. Coker, Esquire
Patrick John Norton, Esquire