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FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT ON
MOTION FOR SUMMARY JUDGMENT ON LOAN, NOTE AND GUARANTY AGREEMENTS

(Title of Document)

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ALAN GLOVER

BY  CLERK
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA IN AND FOR CARSON CITY

CITY NATIONAL BANK, a national
banking association,

Plaintiff,

vs.

ALPHA HOMES, LLC; PATRICIA B.
HON, an individual; RAYMOND L. HON,
an individual; DWIGHT C. MILLARD, an
individual; SANDRA MILLARD, an
individual; RANDALL L. MILLARD, an
individual; ANNA MILLARD, an
individual; THOMAS G. GARRETSON, an
individual; KATHY M. GARRETSON, an
individual; STANTON PARK
DEVELOPMENT, INC.; DWIGHT C.
MILLARD, TRUSTEE OF DWIGHT C.
MILLARD TRUST,

Defendants.

Case No.: 10 OC 00020 1B

Dept. No.: II

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT ON MOTION
FOR SUMMARY JUDGMENT ON LOAN, NOTE AND GUARANTY
AGREEMENTS**

In the cause captioned above, the plaintiff City National Bank has filed and
submitted a Motion for Summary Judgment, which the parties now have fully briefed.

The Court having considered the Motion for Summary Judgment and Declarations
and Exhibits filed in its support, as well as the defendants' Memorandum of Points and
Authorities filed in Opposition to the Motion for Summary Judgment, and, finally, the
Reply in Support of Motion for Summary Judgment, makes and hereby enters the following
findings of fact, which are material to the disposition of the motion before the Court but are
not genuinely in dispute, and conclusions of law:

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PG- 3379
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FINDINGS OF FACT

1
2
3 1. A Loan was made to Alpha Homes, LLC, ("Borrower") by Business Bank of
4 Nevada, a Nevada banking corporation, in the amount of \$2,200,000, with the maturity date
5 of July 19, 2008. **Exhibits 1 and 10.**

6 2. The Loan was evidenced by a Business Loan Agreement, and three
7 successive Change in Terms Agreements, dated respectively September 11, 2007,
8 December 19, 2007, and May 13, 2008, and by a Note. **Exhibits 1, 2, 3, and 4 and 1A.**

9 3. The Loan was secured by a Deed of Trust encumbering certain real property.
10
11 **Exhibit 1B.**

12 4. The Guarantors (defendants Patricia B. Hon; Raymond L. Hon; Dwight C.
13 Millard; Sandra Millard; Randall L. Millard; Anna Millard; Thomas G. Garretson; Kathy
14 M. Garretson; Stanton Park Development, Inc.; and Dwight C. Millard, Trustee of the
15 Dwight C. Millard Trust) each executed a separate Commercial Guaranty dated September
16 26, 2006 ("Guaranty"), wherein they absolutely and unconditionally guaranteed full and
17 punctual payment and satisfaction of the Borrower's indebtedness to CNB and the
18 performance and discharge of all of Borrower's obligations under the \$2.2 million Note and
19 the Business Loan Agreement. **Exhibit 5.**

20
21
22 5. Stanton Park Development, Inc., and Dwight C. Millard have filed for
23 bankruptcy reorganization. While that bankruptcy filing does not stay this proceeding
24 against the other defendants, it does stay all proceedings against Stanton Park
25 Development, Inc., and Dwight C. Millard.

26
27 6. CNB has settled its with Thomas G. Garretson and Kathy M. Garretson and
28 will submit a separate Stipulation and Order for Dismissal of the claims against them.

1 7. For the reasons set forth in Paragraphs 5 and 6 above, this Judgment does not
2 and shall not apply to Stanton Park Development, Inc., Dwight C. Millard or Thomas G.
3 Garretson and Kathy M. Garretson. Accordingly, for purposes of clarity, the term
4 "specified Guarantor Debtors" shall not herein have reference to Stanton Park
5 Development, Inc., Dwight C. Millard or Thomas G. Garretson and Kathy M. Garretson.
6 The term "specified Guarantor Debtors" shall refer solely to defendants Patricia B. Hon;
7 Raymond L. Hon; Sandra Millard; Randall L. Millard; and Anna Millard.
8

9 8. Under the terms of the first paragraph of each of the Guaranties, CNB is
10 entitled to enforce the Guaranties against any of the specified Guarantor Debtors, even if
11 CNB has not exhausted its remedies against anyone else obligated to pay the indebtedness
12 or against any collateral securing the indebtedness. Exhibit 5.
13

14 9. When each Change in Terms Agreement was executed, the Guarantors
15 executed successive Guarantor Acknowledgments (Exhibit 6), pursuant to which they
16 acknowledged they had read each of the (three) Change in Terms Agreements and agreed to
17 the terms such that the Commercial Guaranties would continue in force. Exhibits 2, 3, 4,
18 and 6.
19

20 10. Borrower Alpha Homes failed to pay the outstanding amount due and owing
21 as required under the Note by the maturity date of July 19, 2008. Sullivan Declaration at ¶8
22 and Exhibit 4.
23

24 11. The failure of the Borrower Alpha Homes to pay the entire amount due and
25 owing as required under the Note and other loan documents constituted a default. Sullivan
26 Declaration at ¶9 and Exhibits 1, 4, and 10.

27 12. By non-judicial foreclosure, handled by the Trustee under the Deed of Trust,
28 the real and personal property which secured the Loan was sold at public auction for

1 \$1,040,800.00, on November 20, 2009 (the "Foreclosure Date"). Exhibit 7. The property
2 was sold on December 9, 2009, and, as of that date, according to the Trustee's deed, the
3 total unpaid debt, together with costs and fees (including foreclosure costs) was
4 \$2,353,950.34, leaving a deficiency of \$753,950.34, as of the date of sale.

5
6 13. As of the Foreclosure Date, the real property securing the Loan had a fair
7 value of \$1,600,000.00, based on its actual condition and occupancy. Ott Declaration at
8 ¶¶3-4 and Exhibit 8. The defendants do not challenge the combined valuation of the real
9 and personal property of \$1,600,000.00.

10
11 14. The terms of the Loan documents submitted to the Court entitle the Lender,
12 in calculating the deficiency, to increase it by the amount of the costs expended in
13 liquidating the property, which amounted in this case to \$13,479.50. Exhibit 9. That sum is
14 included in the deficiency of \$753,950.34, as of the date of sale. Exhibit 7.

15
16 15. The Guaranties, by their plain terms, remain in full force and effect until the
17 indebtedness is paid in full. Exhibit 5.

18
19 16. The specified Guarantor Defendants failed to pay the amount due and owing
20 under the Note by the maturity date of July 19, 2008, or thereafter. Sullivan Declaration at
21 ¶13.

22
23 17. As of December 9, 2009, after credit for the fair value of the real property
24 and the personal property (non-transferable sewer hook-ups and water resource credits),
25 there was due and payable by Borrower to Lender the amount of \$753,950.34, including
26 principal and accrued and unpaid interest and foreclosure costs of \$13,479.50, plus
27 attorneys' fees and costs and interest, to be determined by a memorandum of costs and
28 motion following the Court's determination of the motion for summary judgment. (Under
the Note, Business Loan Agreement as modified, and Deed of Trust, the Borrower also



1 became liable for all costs, attorneys' fees, and other expenses incurred in connection with
2 the enforcement of the Loan documents. Exhibits 1, 4, and 10.)

3 18. On May 31, 2009, CNB sent a letter notifying Borrower Alpha Homes and
4 the Guarantor Defendants of their respective defaults and made written demand for
5 payment of the entire amount due and owing. Exhibit 11.

6
7 19. The Loan documents include the following provision concerning Interest
8 owed on the loan: "VARIABLE INTEREST RATE. The interest rate on this loan is subject
9 to change from time to time based on changes in an index which is the City National Bank
10 Prime Rate the "Index". Prime Rate shall mean the rate most recently announced by Lender
11 at its principal office in Beverly Hills, California as its "Prime Rate." Any change in the
12 Prime Rate shall become effective on the same business day on which the Prime Rate shall
13 change, without prior notice to Borrower. Lender will tell Borrower the currant Index rate
14 upon Borrower's request. The interest rate change will not occur more often than each day.
15 Borrower understands that Lender may make loans based on other rates as well. The Index
16 currently is 5.000% per annum. The interest rate to be applied to the unpaid principal
17 balance during this loan will be at a rate of 1.500 percentage points over the Index, adjusted
18 if necessary for any minimum and maximum rate limitations described below, resulting in
19 an initial rate of 6.500% per annum. NOTICE: Under no circumstances will the interest rate
20 on this loan be less than 6.500% per annum or more than the maximum rate allowed by
21 applicable law."
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25 20. As noted in the foregoing, Stanton Park Development, Inc., and Dwight C.
26 Millard have filed for bankruptcy reorganization. Accordingly, all proceedings against them
27 are stayed. This judgment shall not apply to Stanton Park Development, Inc., and Dwight
28 C. Millard. However, because plaintiff CNB is entitled to enforce the Guaranties against

1 any of the Guarantors, even if CNB has not exhausted its remedies against anyone else
2 obligated to pay the indebtedness or against any collateral securing the indebtedness, no
3 just reason exists to delay entry of a final order.

4 **CONCLUSIONS OF LAW**

5
6 21. The Court has jurisdiction of this matter and further has personal jurisdiction
7 over the parties.

8 22. Summary judgment is proper when the moving party is entitled to judgment
9 as a matter of law, and no genuine issue on the question remains. *Van Cleave v. Kietz-Mill*
10 *Mini Mart*, 97 Nev. 414, 633 P.2d 1220 (1981). When the question before the trial court is
11 the meaning or effect of a written instrument between the parties, and the instrument is
12 unambiguous, it speaks for itself and the true intent of the parties cannot be said to
13 constitute a genuine issue of fact. *Parman v. Petricciani*, 70 Nev. 427, 272 P.2d 492 (1954).
14 Issues of contractual construction, in the absence of ambiguity or other factual
15 complexities, present questions of law for the courts and are suitable for determination by
16 summary judgment. *Ellison v. Cal. State Auto Assn.*, 106 Nev. 601, 797 P.2d 975 (1990).
17 The court may disregard a proposed construction by one party which is unreasonable under
18 the facts and circumstances of the case; if one construction is reasonable and the other
19 unreasonable, the trial court may enter summary judgment in favor of the reasonable
20 interpretation. *Parman v. Petricciani, supra*.

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24 23. When a contract is clear on its face, it will be construed from the written
25 language and enforced as written. Parol evidence is not admissible to vary or contradict the
26 clear and unambiguous terms of a written agreement. *Sandy Valley Assoc. v. Sky Ranch Estate*
27 *Owners Assn.*, 117 Nev. 948, 954, 35 P.3d 964 (2001).

28 24. A "guaranty is the undertaking to pay the debt at maturity if the principal does

1 not pay". Daly v. Del E. Webb Corp., 96 Nev. 359, 361, 609 P.2d 319, 320 (1980). Courts
2 interpret guaranty agreements using general contract interpretation principles. Dobron v.
3 Bunch, 125 Nev. 36, 37, 215 P.3d 35, 37 (2009).

4 25. Pursuant to Paragraph 1 of each Commercial Guaranty agreement signed by
5 the Guarantor Defendants, each of the specified Guarantor Defendants agreed
6 unconditionally, upon demand, to pay to Lender all amounts owed by Alpha under the
7 Note and related documents evidencing or securing the Loan. Specifically, in each
8 Guaranty, the specified Guarantor Defendants each "absolutely and unconditionally
9 guarantees full and punctual payment and satisfaction of the indebtedness of Borrower to
10 Lender City National Bank, and the performance and discharge of all Borrower's
11 obligations under the Note and the Related Documents." Exhibit 5.

12 26. The Borrower Alpha Homes, LLC, is in default under the Business Loan
13 Agreement, as modified, Note, and Deed of Trust, by reason of its failure to pay the
14 outstanding principal balance in full together with accrued and unpaid interest by the
15 maturity date of July 19, 2008. Exhibit 7.

16 27. The specified Guarantor Defendants were notified of the default on May 31,
17 2009.

18 28. The specified Guarantor Defendants have failed to pay the Alpha
19 indebtedness to CNB as they "absolutely and unconditionally" agreed to do in the
20 Guaranties.

21 29. The Borrower Alpha Homes breached the terms of the Note by failing to pay
22 the entire amount due and owing on the Note upon its maturity.

23 30. Accordingly, each of the specified Guarantor Defendants became and is
24 jointly and severally liable for repayment of the Loan and interest, as well as for all costs,
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1 attorneys' fees, and other expenses incurred in connection with the enforcement of the
2 Guaranty agreements, Note, Business Loan Agreement as modified, and Deed of Trust.
3 **Exhibit 5** and also **Exhibit 1** at 3-4 and **Exhibit 1B**. The specified Guarantor Defendants
4 have each breached the Guaranties.

5
6 31. Because CNB has settled its claims against Thomas G. Garretson and Kathy
7 M. Garretson and will submit to the Court a separate Stipulation and Order for Dismissal of
8 the claims against them and because proceedings against Stanton Park Development, Inc.,
9 and Dwight C. Millard have been stayed by virtue of their filing for bankruptcy
10 reorganization, this judgment shall not apply to Thomas G. Garretson, Kathy M. Garretson,
11 Dwight C. Millard or Stanton Park Development, Inc. However, no just reason exists to
12 delay entry of a final order because plaintiff CNB is entitled to enforce the Guaranties
13 against any of the Guarantors, even if CNB has not exhausted its remedies against anyone
14 else obligated to pay the indebtedness or against any collateral securing the indebtedness.
15

16
17 32. Accordingly, the Court hereby directs that final judgment be entered against
18 Alpha Homes, LLC, and against the specified Guarantor Defendants, defendants Patricia B.
19 Hon; Raymond L. Hon; Sandra Millard; Randall L. Millard; and Anna Millard.

20
21 33. Moreover, each Commercial Guaranty agreement provides that the specified
22 Guarantor Defendants will pay and reimburse plaintiff CNB for all costs, attorney's fees,
23 and other expenses, which plaintiff CNB expends in connection with the enforcement of
24 each Guaranty. **Exhibit 5**.

25
26 34. Plaintiff CNB will hereafter establish the amount of those fees and costs by
27 affidavit or declaration and with a memorandum of costs.

28
35. Plaintiff CNB is entitled to summary judgment against Alpha Homes, LLC,
and against the specified Guarantor Defendants, defendants Patricia B. Hon; Raymond L.

1 Hon; Sandra Millard; Randall L. Millard; and Anna Millard, under the Loan Documents
2 and Commercial Guaranties. Alpha Homes, LLC, and the specified Guarantor Defendants,
3 Patricia B. Hon; Raymond L. Hon; Sandra Millard; Randall L. Millard; and Anna Millard
4 are and shall be jointly and severally for the total of \$753,950.34, plus attorneys' fees and
5 costs to be established hereafter by affidavit or declaration and with a memorandum of
6 costs.
7

8 Interest will continue to accrue on the sum of \$753,950.34, from December 9, 2009
9 until satisfied, at the variable rates specified in the Loan documents quoted above, at a rate
10 not less than 6.500% per annum.

11 36. To the extent necessary, each conclusion of law herein shall also be deemed a
12 finding of fact, and each finding of fact shall also be deemed a conclusion of law.
13

14 WHEREFORE, by virtue of the foregoing law and undisputed facts, **IT IS**
15 **ORDERED, ADJUDGED AND DECREED**, that the plaintiff City National Bank have
16 summary judgment against Alpha Homes, LLC, and against the specified Guarantor
17 Defendants Patricia B. Hon; Raymond L. Hon; Sandra Millard; Randall L. Millard; and
18 Anna Millard. Because no just reason exists to delay entry of a final order, the Court hereby
19 directs that final judgment be entered on this Judgment against Alpha Homes, LLC, and
20 against the specified Guarantor Defendants, defendants Patricia B. Hon; Raymond L. Hon;
21 Sandra Millard; Randall L. Millard; and Anna Millard, who are jointly and severally liable.
22 As of December 9, 2009, after credit for the fair value of the real property and the personal
23 property (non-transferable sewer hook-ups and water resource credits), there was due and
24 payable by Borrower Alpha Homes, LLC, to Lender CNB the amount of \$753,950.34,
25 including principal and accrued and unpaid interest and foreclosure costs of \$13,479.50.
26 The specified Guarantor Defendants are and shall be jointly and severally with Alpha
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Homes, LLC, for these sums, which total \$753,950.34. Interest will continue to accrue on that sum from the date of December 9, 2009, at the rate(s) specified in the Loan documents quoted above, and the interest rate on this judgment shall not be less than 6.500% per annum, pursuant to the Loan documents.

IT IS FURTHER ORDERED AND DECREED that plaintiff City National Bank have and recover of the specified Guarantor Defendants its costs, attorney's fees, interest and other expenses, in an amount hereafter to be established by City National Bank, which City National Bank or its predecessor in interest expends in connection with the enforcement of the Loan documents and each Guaranty, plus interest thereon at the legal rate until paid. CNB will hereafter establish the amounts of its attorneys' fees and costs by affidavit or declaration and with a memorandum of costs.

IT IS SO ORDERED.

DATED this 16 day of March, 2011.


DISTRICT JUDGE

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: this 14th day of March, 2011.

SUBMITTED BY:

WOODBURN and WEDGE

6100 Neil Road, Suite 500
Reno, Nevada 89511
775/688-3000

By: *Nicholas F. Frey*
NICHOLAS F. FREY, ESQ
Nevada Bar No. 000954
Attorneys for Plaintiff
CITY NATIONAL BANK

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The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office

Date April 18, 2011
Alan Glover, City Clerk and Clerk of the First Judicial District
Court of the State of Nevada, in and for Carson City

By [Signature] Deputy
Per NRS 239 Sec. 6 the SSN may be redacted, but in no way affects the legality of the document