

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

No. 43181-5-II

FIRST-CITIZENS BANK & TRUST COMPANY, successor in
interest to VENTURE BANK,

Plaintiff/Appellant,

v.

BRUCE A. REIKOW and SANDRA J. REIKOW, individual
and the marital community comprised thereof,

Defendants/Respondents.

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DIVISION II
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On Appeal from the Superior Court of Pierce County
Hon. Stephanie A. Arend
Superior Court Docket Number 10-2-14116-8

BRIEF OF APPELLANT

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I. INTRODUCTION

This appeal arises from a post-foreclosure deficiency action that Plaintiff/Appellant First-Citizens Bank & Trust Company (“**FCB**”) brought against the guarantors of a \$6,700,000 commercial loan (the “**Loan**”) that the former Venture Bank made to the guarantors’ company, NBP, LLC (the “**LLC**”). A first position Deed of Trust on the LLC’s commercial property, commonly known as the Narrows Business Park in Gig Harbor, secured this loan.

FCB acquired this loan from the FDIC as Receiver for Venture Bank after Venture Bank failed on September 11, 2009. The LLC later defaulted on its Loan, FCB non-judicially foreclosed its Deed of Trust, and FCB purchased the Narrows Business Park at a trustee’s sale held on July 9, 2010.

FCB was the only bidder at this trustee’s sale. At that time, FCB purchased the Narrows Business Park by way of a credit bid for \$5,215,000. After FCB took title to the Narrows Business Park, a deficiency balance remained owing to FCB because the Narrows Business Park sold for less than the secured debt of \$7,168,710.74. FCB then initiated this action for a deficiency judgment against the guarantors of the loan, the Zetterbergs and the Reikows, based on their absolute and unconditional guaranty of the loan at issue.

The guarantors denied their liability to FCB for any deficiency balance on the grounds that the “fair value” of the Narrows Business Park exceeded the secured loan balance as of the date of the trustee’s sale. Thus, according to the guarantors, FCB was not entitled to the entry of any deficiency judgment against them because the collateral property was

actually worth more than the secured loan balance on the date of the trustee's sale.

On August 25, 2011, Plaintiff moved for summary judgment on its deficiency claim, and the trial court granted this motion in part on January 27, 2012. The trial court determined that the Reikows owed FCB money under the Loan, and that the "fair value" of the Narrows Business Park on the date of the July 9, 2010 trustee's sale presented a genuine issue of material fact for trial. The trial court refused to enter a deficiency judgment against the Reikows as a matter of law based on the waivers in their absolute and unconditional commercial guaranties. These guaranties state the Reikows agreed to waive, among other things, "any defenses given to guarantors at law or in equity other than actual payment and performance of the Indebtedness" and "any and all rights or defenses arising by reason of any 'one action' or 'anti-deficiency' law." The guaranties further state that the guarantors warranted and agreed "that each of the waivers set forth [herein] is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law."

The parties proceeded to trial solely on the "fair value" issue on February 21, 2012. At trial, the bank's appraiser testified that the Narrows Business Park's as-is fair market value was \$6,630,000. The appraiser and two of his colleagues signed off on an appraisal of this property; it was the only appraisal admitted into evidence. FCB testified that it believed the Narrows Business Park was worth only \$6,370,000 in light of its internal appraisal review reports, which were also admitted into evidence. FCB further testified it paid \$133,358.14 in delinquent property taxes that were owed on the Narrows Business Park as of the foreclosure sale, and that an

Internal Revenue Service Form 1099A that FCB sent to the LLC in January 2011 mistakenly stated the fair market value of the Narrows Business Park was \$7,820,000. FCB testified this figure in the Form 1099 was incorrect because it represented a fully-tenanted or fully stabilized value for the collateral property, which property was never fully-tenanted or fully stabilized.

The Reikows proceeded to trial *pro se*. Neither of them testified at trial regarding their opinion of the value of the Narrows Business Park at the time of the trustee's sale, nor did they furnish any expert testimony whatsoever on this topic. Instead, Mr. Reikow took the stand in his own defense and explained that despite his investment of \$820,000 in the Narrows Business Park, he still lost this property in foreclosure. Mr. Reikow further asserted that the fair value of the Narrows Business Park should be based on the \$7,820,000 figure that FCB mistakenly put into the Form 1099A that Mr. Reikow received in January 2011, some six (6) months after the trustee's sale and some three (3) months after FCB filed the underlying deficiency action.

Immediately after closing arguments, the trial court ruled from the bench. The trial court stated it was "lost as to why [FCB] didn't issue a revised 1099 or an amended or a corrected or whatever the right term would be." The trial court then paused, and went on to state "I guess since the plaintiff has the burden of proof and the burden of persuasion, I'm going to find that the fair market value as of July 9, 2010 was \$7,820,000." In doing so, the trial court determined there was no deficiency. The trial court then entered judgment in favor of the Reikows against FCB on March 8, 2012 for \$14,653.26, which represents the attorneys' fees the Reikows incurred in connection with this case before

they proceeded to trial *pro se*. FCB filed its Notice of Appeal on March 12, 2012.

FCB now asks this Court to reverse the trial court's ruling as to fair value, vacate the Reikows' judgment against FCB, and enter a deficiency judgment against the Reikows in the principal amount of \$672,068.88 by upholding and enforcing the waivers set forth in the Reikows' guaranties, which FCB submits prevented the Reikows from demanding and obtaining a fair value hearing. In the alternative, if the Court determines that these waivers are not enforceable, FCB asks the Court to reverse the trial court's ruling as to fair value, hold that the fair value of the Narrows Business Park was \$6,496,641.86 at the time of the trustee's sale based on the evidence in the record,¹ and remand this case to the trial court with an instruction to enter judgment in favor of FCB against the Reikows in the principal amount of \$672,068.88.²

II. ASSIGNMENTS OF ERROR

1. The trial court erred when it refused to enter summary judgment against the Reikows on FCB's deficiency claim pursuant to the waiver provisions of the Guaranties and the facts and circumstances of this case.

2. Finding of fact number 4, which states the fair value of the Narrows Business Park on the date of the trustee's sale was \$7,820,000, is not supported by substantial evidence.

¹ FCB arrived at this "fair value" figure by taking the \$6,630,000 appraised "fair value" for the collateral property and then subtracting the \$133,358.14 in delinquent property taxes that were due and owing on the Narrows Business Park as of the date of the trustee's sale. *See* RCW 61.24.005(6) (discussing how fair value is to be calculated).

² FCB arrived at the \$672,068.88 deficiency balance by subtracting the "fair value" of the Narrows Business Park (\$6,496,641.86) from the secured loan balance as of the date of the trustee's sale (\$7,168,710.74).

3. The findings of fact do not support the trial court's first conclusion of law, which provides that the Reikows are not liable to FCB for any deficiency judgment whatsoever.

III. ISSUE STATEMENTS

1. Whether the Pierce County Superior Court erred when it refused to enter summary judgment in favor of FCB against the Reikows on FCB's deficiency claim when (1) the Guaranties that the Reikows signed to obtain a \$6.8 million loan for their company provide the Reikows waived any and all defenses to payment they otherwise would have had at law or in equity, including any rights arising from any one-action or anti-deficiency law; (2) the Guaranties further state the Reikows have agreed such waivers are not contrary to law or in violation of public policy; and (3) the Reikows obtained a "fair value" hearing pursuant to their demand for one, and not because the trial court determined *sua sponte* that one should be held. Answer: **Yes. (Assignment of Error 1).**

2. Whether substantial evidence supports the trial court's finding that the fair value of the Narrows Business Park was \$7,820,000 on the date of the trustee's sale when (1) the only appraisal admitted into evidence reflects the Narrows Business Park's as-is fair market value was \$6,630,000; (2) the only appraiser to testify at trial testified this property was worth \$6,630,000; (3) the Narrows Business Park was only worth \$6,370,000 according to FCB's appraisal review reports; (4) the Reikows provided no testimony of their own on the topic of fair value; and (5) FCB paid over \$133,000 in delinquent property taxes that were owed on the Narrows Business Park as of the date of the trustee's sale. Answer: **No. (Assignments of Error 2 and 3).**

3. Whether FCB is entitled to an award of attorney's fees and

costs on appeal if it is the prevailing party in this forum when the Guaranties at issue provide for the recovery of FCB's attorney's fees and costs. Answer: *Yes*.

IV. STATEMENT OF THE CASE

On December 2, 2008, the LLC executed and delivered to Venture Bank a Promissory Note in the original principal amount of \$6,746,803.53 (the "**Note**"). Clerk's Papers (CP) at 17, 24-25. Venture Bank loaned the LLC money pursuant to the Note (the "**Loan**"). CP at 17-18.

A first position Construction Deed of Trust dated July 25, 2005, secured the Note. The LLC executed and delivered the Deed of Trust to Venture Bank concerning certain of the LLC's commercial realty, which property is commonly known as the Narrows Business Park. CP at 18, 27-35. The Construction Deed of Trust was recorded on July 29, 2005, under Pierce County Auditor's File No. 200507292359, and is subject to a Modification of Deed of Trust dated November 22, 2006, which was recorded on November 29, 2006, under Pierce County Auditor's File No. 200611291393, records of Pierce County, Washington (as modified, the "**Deed of Trust**"). CP at 18, 36-38.

As further security for the Note, Defendants / Respondents Bruce and Sandra Reikow and their former business partners, Karl R. Zetterberg and Jane Zetterberg, each executed and delivered to Venture Bank a Commercial Guaranty, whereby each of these individuals absolutely and unconditionally promised and guaranteed to repay to Venture Bank the

Loan and all other outstanding indebtedness of the LLC to Venture Bank (collectively, the “**Guaranties**”).³ CP at 18, 40-51.

Under the heading entitled Guarantor’s Waivers, each of the Guaranties states the following:

“Guarantor also waives any and all rights or defenses arising by reason of (A) any “one action” or “anti-deficiency” law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender’s commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; ... or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the Indebtedness.”

CP at 18, 41, 44, 47, 50.

The immediately following section of the Guaranties, which is entitled Guarantor’s Understanding With Respect to Waivers, states the following:

Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor’s full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law.

CP at 41, 44, 47, 50.

The Washington State Department of Financial Institutions closed Venture Bank and placed it into an FDIC receivership on September 11, 2009. CP at 18. FCB purchased all or substantially all of the failed Venture Bank’s assets from said FDIC receivership, including the Note, Deed of Trust, Guaranties, and all other loan and security documents concerning the Loan. CP at 18-19. FCB is now the owner and holder of

³ The Zetterbergs settled their claims with FCB short of trial and were dismissed from this action as a result. CP at 216-17.

the Guaranties, and is the successor in interest to Venture Bank with respect to these instruments and all other instruments concerning the Loan. CP at 19.

The LLC defaulted on the Note because it failed to make the required monthly payments that were due and owing under this instrument from November 2009 forward. CP at 19. As a consequence of the LLC's default on the Note, FCB commenced a non-judicial foreclosure of the Deed of Trust under RCW 61.24 et seq. CP at 19.

On the appointed trustee's sale date of July 8, 2010, and at the appointed sale time, the successor trustee conducted a trustee's sale concerning the Narrows Business Park. CP at 19. FCB was the only bidder at the trustee's sale, and it purchased the Narrows Business Park at that time. CP at 19.

The sum of the total amount the Reikows owed to FCB as evidenced by the Note, including outstanding principal, accrued interest, accrued default interest, late charges, attorneys' fees, and foreclosure costs, was no less than \$7,168,710.74 on the date of the trustee's sale. CP at 19. After FCB's credit bid was applied to this indebtedness, a deficiency balance remained, and FCB filed an action for a deficiency judgment on October 18, 2010. CP at 19.

On August 25, 2011, FCB moved for summary judgment on its deficiency claim, and the trial court granted this motion in part on January 27, 2012. CP at 9-16, 213-15. In so doing, the trial court determined as a

matter of law that FCB was owed no less than \$7,168,710.74 under the subject Loan documents as of the date of the July 8, 2010 trustee's sale. CP at 214. The trial court also found that the "fair value" of the Narrows Business Park on the date of the trustee's sale presented a genuine issue of material fact for trial despite the waivers in the Guaranties. CP at 214. In doing so, the trial court refused to enforce the waivers in the Guaranties. Verbatim Report of Proceedings (VRP) (Jan. 27, 2012) at 12. It also appears from the verbatim report of proceedings concerning the summary judgment hearing that Mr. Reikow, a non-attorney who proceeded *pro se* at the hearing, was not sworn in once this case was called. See VRP (Jan. 27, 2012). As seen from the verbatim report of proceedings, although Mr. Reikow admitted to executing his Guaranty, he claims to have not known what it meant:

THE COURT: You did sign it [the Guaranty], didn't you?

MR. REIKOW: Well, I did sign it, but, you know, you sign them in the bank, you don't sign them in front of an escrow agent and you don't sign in front of an attorney, and I can't remember the bank even offering to – certainly, they didn't go over the papers with me. I guess when you're a contractor, you know, you assume the bank is your friend and kind of looking out for you, but that's certainly not the case. But you're right, I did sign it, but actually knowing what all that meant is foreign to me.

THE COURT: And small print and all that, but if people would just say "I didn't understand what I signed," then that would be the end of any written contract, wouldn't it?

MR. REIKOW: I agree.

VRP (Jan. 27, 2012) at 8.

Later in the summary judgment hearing Mr. Reikow mentioned that FCB previously sent him an IRS Form 1099A that stated the fair market value of the Narrows Business Park was \$7.8 million as of July 9, 2010. VRP (Jan. 27, 2012) at 9. Mr. Reikow then mentioned the disparity between the \$7.8 million figure in FCB's appraisal and the \$6.6 million figure in this same appraisal. VRP (Jan. 27, 2012) at 10. Nevertheless, the trial court correctly recognized from the bank's summary judgment declarations that the \$7.8 million appraised value "would be fully realized if it [the Narrows Business Park] was all full and all the tenants were in and things like that." VRP (Jan. 27, 2012) at 10 (emphasis added).⁴ As seen from the summary judgment pleadings, it is undisputed that the Narrows Business Park was never fully tenanted or stabilized. CP at 198-99.

As for FCB's waiver argument, the trial court was well aware that the Guaranties provide that "the guarantor also waives any and all rights or defenses arising by reason of one action or anti-deficiency law or any other law which may prevent lender from bringing any action, including a claim for a deficiency against the guarantor before or after the lender's commencement or completion of any foreclosure action." VRP (Jan. 27, 2012) at 11. Nevertheless, the trial court found that the Guaranties do not specifically state "the guarantors waive the right to a hearing to determine

⁴ The bank-owned Narrows Business Park was actually listed for sale at **\$4.3 million** on January 27, 2012, the date of the summary judgment hearing. VRP (Jan. 27, 2012) at 6.

the fair market value at the time of the trustee sale.” VRP (Jan. 27, 2012) at 11. Apparently, it is for this reason that the trial court denied FCB’s motion for summary judgment on the waiver issue; the trial court did not explain its ruling in this regard, nor did it refer at all to the case law regarding waiver that FCB briefed in its summary judgment pleadings. VRP (Jan. 27, 2012) at 11.

The case then proceeded to trial on the sole issue of fair value.⁵ The Reikows represented themselves at trial *pro se*. VRP (Jan. 27, 2012) at 1. At trial, FCB asked the trial court to conclude the fair value of the Narrows Business Park was \$6,496,641.86 as of the date of the trustee’s sale. VRP (Feb. 21, 2012) at 10. FCB arrived at this sum by taking the appraised as-is fair market value from the appraisal, \$6,630,000, and subtracting the \$133,358.14 in delinquent property taxes that were owed on the Narrows Business Park as of the date of the trustee’s sale, which taxes FCB subsequently paid. VRP (Feb. 21, 2012) at 10.

At trial, certified MAI appraiser Reid Erickson testified the Narrows Business Park’s as-is fair market value was \$6,630,000. VRP (Feb. 21, 2012) at 12-13, 19. The appraisal of the Narrows Business Park that Mr. Erickson prepared with two of his appraiser colleagues was admitted into evidence at trial in connection with his testimony. VRP (Feb. 21, 2012) at 23. This was the only appraisal that was admitted into

⁵ At trial on February 21, 2012, the Reikows withdrew their demand for a jury to decide the “fair value” issue. VRP (Feb. 21, 2012) at 5.

evidence at trial. The Valuation Glossary set forth at the end of this appraisal defines As-Is Value as follows:

“[t]he value of specific ownership rights to an identified parcel of real estate as of the effective date of the appraisal; relates to what physically exists and is legally permissible and excludes all assumptions concerning hypothetical market conditions or possible rezoning.”

Exhibit 1 at 131.

The appraisal defines Fair Market Value as follows:

“the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, each dealing with the other with full knowledge of all the uses and purpose for which the Narrows Business Park is reasonably adaptable and available.”

Exhibit 1 at 134; VRP (Feb. 27, 2012) at 31.

Mr. Erickson was the only real estate expert witness to testify at trial. Mr. Reikow admitted while cross-examining Mr. Erickson that Mr. Erickson’s appraisal’s definitions of fair market value and as-is value square with the statutory definition of fair value. VRP (Feb. 27, 2012) at 33. Further, the appraisal of the Narrows Business Park that Mr. Erickson prepared with two of his colleagues reflects the Narrows Business Park’s as-is fair market value was \$6,630,000. Exhibit 1 at 6. Mr. Erickson testified the Narrows Business Park would have been worth more had it been fully tenanted or stabilized, and that as far as he knew, this property was never fully tenanted or stabilized. VRP (Feb. 27, 2012) at 19.

FCB employee Michael Meyer then testified that FCB believed, based on its own internal appraisal reviews conducted after the appraisal

was prepared, that the Narrows Business Park was actually worth only \$6,370,000, some \$260,000 less than the appraised value. VRP (Feb. 27, 2012) at 38-41. Mr. Meyer also testified that the IRS Form 1099 that FCB sent to Mr. Reikow in January 2011 contained a mistake, that the bank erred when it noted in this form that the Narrows Business Park's fair market value was \$7,820,000 as of July 9, 2010, and that FCB did not know about this mistake until many months after this deficiency action was filed. *See* VRP (Feb. 27, 2012) at 49. Mr. Meyer also testified that FCB paid \$133,358.14 in delinquent property taxes that were owed on the Narrows Business Park as of the date of the trustee's sale after FCB took this property back at the trustee's sale. VRP (Feb. 27, 2012) at 45-46.

Neither Bruce nor Sandra Reikow testified at trial as to what they themselves believed the Narrows Business Park was worth, nor did the Reikows call any witnesses of their own to testify on this topic.

According to FCB's appraisal, which again was the only appraisal admitted into evidence at trial, the Narrows Business Park would have been worth \$7,820,000 if it was fully tenanted or fully stabilized. Nevertheless, it is undisputed that the Narrows Business Park was never fully tenanted or stabilized. It is also undisputed that this property was only 63% occupied or "leased up" on the date of the trustee's sale. Exhibit 1 at 45.

The Reikows' defense at trial was based solely on the above-described IRS Form 1099. Mr. Reikow took the stand in his own defense

and explained how he invested \$820,000 in the Narrows Business Park but still lost this property in foreclosure. VRP (Feb. 27, 2012) at 66. Mr. Reikow then asserted that the fair value of this property should be based on the \$7,820,000 figure that FCB mistakenly put into the Form 1099 that Mr. Reikow received in January 2011, some six (6) months after the trustee's sale and some three (3) months after FCB filed the underlying deficiency action. VRP (Feb. 27, 2012) at 68. The record reflects that neither Mr. nor Mrs. Reikow ever asked FCB to issue an amended or corrected Form 1099. *See* VRP (Feb. 27, 2012) at 71.⁶

Immediately after closing arguments, the trial court ruled from the bench. The trial court stated it was "lost as to why [FCB] didn't issue a revised 1099 or an amended or a corrected or whatever the right term would be." VRP (Feb. 27, 2012) at 80. The trial court then paused, and went on to state "I guess since the plaintiff has the burden of proof and the burden of persuasion, I'm going to find that the fair market value as of July 9, 2010 was \$7,820,000." VRP (Feb. 27, 2012) at 80-81.

On March 8, 2012 the trial court entered findings of fact and conclusions of law and a judgment in favor of the Reikows against FCB. CP at 256-60. Said judgment totaled \$14,653.26 and was based on the

⁶ Nevertheless, post-trial, FCB issued a corrected IRS Form 1099A to the LLC for tax year 2010. This corrected Form 1099 reflects the "fair market value" of the Narrows Business Park was \$6,630,000 on the date of the trustee's sale.

attorney's fees provision in the Reikows' Guaranties.⁷ CP at 259-60.

FCB then filed its Notice of Appeal on March 12, 2012. CP at 261.

V. ARGUMENT

A. THE GUARANTOR OF A COMMERCIAL LOAN DOES NOT HAVE A RIGHT TO A FAIR VALUE HEARING UNDER RCW 61.24. THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING SUCH A HEARING TO OCCUR IN THIS CASE.

The Reikows had no right to a fair value hearing and the trial court abused its discretion by allowing one to occur. There is no such thing as a right to a fair value hearing under RCW 61.24. If the guarantor has not waived its ability to request such a hearing, the trial court may properly refuse such a request so long as its decision to do so does not amount to an abuse of discretion. *See* RCW 61.24.100(5) (“the guarantor may *request* the court or other appropriate adjudicator to determine, or the court or other appropriate adjudicator *may in its discretion* determine, the fair value of the property sold at the sale...”) (emphasis added).

The trial court abused its discretion in granting the Reikows a fair value hearing when only one appraisal was offered into evidence on summary judgment and the Reikows did not dispute the appraisal's methods. The only reason there was a fair value hearing in this case is because the Reikows requested one and the trial court improperly refused to enforce the waiver provisions in the Guaranties, as discussed more fully

⁷ This judgment stemmed from the attorney fees and costs that the Reikows incurred in connection with this case prior to trial while they were represented by two (2) attorneys, Brian Budsberg and Jeff Helsdon.

below. Importantly, FCB submitted the only complete and current appraisal of the Narrows Business Park. Three licensed commercial real estate appraisers prepared the appraisal, which the trial court later admitted into evidence at trial. Thus, this is not a case of “dueling experts” in which two or more expert witnesses had materially different opinions as to what the Narrows Business Park was worth on the date of the trustee’s sale, nor is this a case where the foreclosing lender paid pennies on the dollar for the collateral property at the foreclosure sale.

Further, this is not a case where the guarantor defendants were able to explain at the summary judgment hearing (or at trial) why the bank’s appraisal did not accurately reflect the fair value of the collateral property on the date of the trustee’s sale. FCB finds it noteworthy that the trial court did not take issue with the appraisal at the summary judgment hearing, nor did it make any findings, conclusions, comments, or suggestions to the effect that the appraisal was not accurate or correct, and that a fair value hearing was therefore necessary or proper.

In light of these facts and circumstances, and the waivers in the Guaranties that are discussed below, the trial court erred when it allowed FCB’s deficiency claim to proceed to trial. The trial court should have instead resolved this claim on summary judgment by granting FCB’s motion for summary judgment *in toto*.

B. THE TRIAL COURT ERRED WHEN IT REFUSED TO GRANT FCB'S MOTION FOR SUMMARY JUDGMENT BASED ON THE WAIVERS IN THE REIKOWS' GUARANTIES.

The de novo standard of review applies when reviewing all trial court rulings made in conjunction with a summary judgment motion. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

An absolute and unconditional guaranty should be and is enforceable according to its terms, and the courts are to enforce it as the parties meant it to be enforced, with full effect given to its contents, and without reading into it terms and conditions upon which it is completely silent. *Nat'l Bank of Wash. v. Equity Inv.*, 81 Wn.2d 886, 919, 506 P.2d 20 (1973), *superseded by statute on other grounds as recognized in Pac. Continental Bank v. Soundview 90, LLC*, --- Wn. App. ---, 273 P.3d 1009, 1013 (2012).

A guarantor can waive certain defenses. *Fruehauf Trailer Co. of Canada Ltd. v. Chandler*, 67 Wn.2d 704, 709-10, 409 P.2d 651 (1966); *Sec. State Bank v. Burk*, 100 Wn. App. 94, 97, 995 P.2d 1272 (2000). Generally, the promise to stand for the debt of another is purely contractual and collateral to that of the principal debtor. *JPMorgan Chase Bank, N.A. v. Spec. Rest., Inc.*, 243 P.3d 8, 12 (Okla. 2010). Intent at execution controls the meaning of the written terms and the extent of the obligation is defined by the promise given. *JPMorgan Chase*, 243 P.3d at 12. Contract language is accorded its plain and ordinary meaning absent a term intended to carry a specific technical meaning. *JPMorgan Chase*,

243 P.3d at 12. Absent illegality, the parties are free to bargain as they see fit and the courts will neither make a new contract or rewrite existing terms. *JPMorgan Chase*, 243 P.3d at 12; *see also Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC, LLC*, 169 Wn.2d 265, 269 n.3, 236 P.3d 193 (2010) (“Courts do not have the power, under the guise of interpretation, to rewrite contracts which the parties have deliberately made for themselves”).

Under the plain and unambiguous language of the Guaranties, the Reikows waived their right to request a valuation hearing for the purpose of determining the size of the deficiency judgment that should be entered against them. The “Guarantor’s Waivers” portion of the guaranties provides the Reikows have waived “(A) any ‘one action’ or ‘anti-deficiency’ law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender’s commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; ... or (F) *any defenses given to guarantors at law or in equity other than actual payment and performance of the Indebtedness.*” CP at 41, 44, 47, 50 (emphasis added).

Courts will enforce a guarantor’s waivers when such waivers are clear and unambiguous. *Fruehauf Trailer Co. of Canada*, 69 Wn.2d at 709. In *Fruehauf*, the guarantors contracted that the “liability of the [guarantors] shall not be affected by the discharge or release of any obligation of the [principal].” 69 Wn.2d at 709. The Washington

Supreme Court held this language clearly and unambiguously waived any defense of release or discharge. *Fruehauf Trailer Co. of Canada*, 69 Wn.2d at 709.

A guarantor can waive any right it otherwise might have had to a credit or setoff of the fair and reasonable market value of the collateral property at the time of the foreclosure sale if the guaranty provides for a waiver of the guarantor's rights and defenses. *JPMorgan Chase Bank*, 243 P.3d at 13-14. In *JPMorgan Chase*, the guarantors

waived any and all rights or defenses arising by reason of...(d) any defense given to guarantors at law or in equity other than actual payment and performance of the indebtedness...Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment, or similar right, whether such claim, demand or right may be asserted by the Borrower, Guarantor, or both...

243 P.3d at 13 (ellipses in original). The *JPMorgan Chase* court then held that the "plain, clear, unmistakable, unambiguous, and unequivocal language of the...guaranty agreement waived 'any and all' rights of any setoff to the guarantors' debts." *JPMorgan Chase*, 243 P.3d at 14. It did not matter that the waiver failed to reference specific statutory provisions. *JPMorgan Chase*, 243 P.3d at 13.

Similarly, the waivers in this case specifically reference the rights that were waived. The Reikows waived any "anti-deficiency" law and "any other law which may prevent the Lender from bringing any action, including a claim for deficiency, against Guarantor." CP at 41, 44, 47, 50

(emphasis added). The Reikows also waived “any defenses” they may have had “at law or in equity other than actual payment and performance of the indebtedness.” CP at 41, 44, 47, 50. Accordingly, the Guaranties are plain and unambiguous — the Reikows have waived any right to bring or maintain any defenses, at law or equity, including the right to argue against the entry of a deficiency judgment. There is no ambiguity here, nor is there any controlling authority that supports the trial court’s refusal to enforce this contract.

In light of the Guaranties, the fact is the Reikows waived any right they otherwise might have had to request a “fair value” hearing. The trial court erred when it refused to enter summary judgment in FCB’s favor on the fair value issue in light of these waivers and the facts and circumstances set forth above.

In addition to being warranted under the law, a determination that the Reikows waived their right to request a fair value hearing is supported by sound public policy. Access to commercial credit will become increasingly costly and difficult to obtain if lenders cannot be assured that their loan documents will be construed according to their actual and specific terms. Such a scenario would hurt numerous individuals and small businesses here in Washington, especially as the regional and national economy struggles to recover from the Great Recession.

Moreover, let it not be forgotten that this case concerns a \$6.8 million *commercial* loan and not a consumer loan. Different public

policies come into play with commercial loans as opposed to consumer loans, and the law recognizes such at both the state and federal level. For instance, usury laws do not apply to commercial loans here in Washington, although they do apply to consumer loans. In addition, federal consumer protection statutes like the Truth in Lending Act and Regulation Z apply to consumer loans but not commercial loans. The point is that in the context of a large commercial loan like the Loan at issue in this case, the parties should be free to negotiate and agree to loan terms and memorialize these terms in their loan and security documents. Holding to the contrary by not upholding the terms of the parties' bargain would be contrary to public policy and, once again, detrimental to both individuals and businesses here in Washington.

C. SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE TRIAL COURT'S FINDING THAT THE FAIR VALUE OF THE NARROWS BUSINESS PARK WAS \$7,820,000, NOR DO THE FINDINGS SUPPORT THE TRIAL COURT'S CONCLUSION THAT THE REIKOWS ARE NOT LIABLE TO FCB.

Insufficient evidence supports the trial court's Finding of Fact No. 4, in which the trial court found that the Narrows Business Park's fair market value was \$7,820,000 on the date of the trustee's sale. CP at 257.

This court reviews the trial court's factual findings to see if they are supported by substantial evidence and, if so, whether the findings support the trial court's conclusions of law. *Keever & Assocs., Inc. v. Randall*, 129 Wn. App. 733, 737, 119 P.3d 926 (2005), *review denied*, 157 Wn.2d 1009 (2006). Substantial evidence is evidence sufficient to

persuade a fair-minded person of the truth of the asserted premise.

Keever, 129 Wn. App. at 734. This court reviews alleged errors of law de novo. *Trotzer v. Vig*, 149 Wn. App. 594, 612, 203 P.2d 1056, *review denied*, 166 Wn.2d 1023 (2009).

RCW 61.24.100(5) discusses how the amount of a deficiency judgment against the guarantor of a commercial loan following a trustee's sale should be determined. This statute provides in relevant part as follows:

“[T]he deficiency judgment against the guarantor shall be for an amount equal to the sum of the total amount owed to the beneficiary by the guarantor as of the date of the trustee's sale, less the fair value of the property sold at the trustee's sale or the sale price paid at the trustee's sale, whichever is greater...”

RCW 61.24.100(5).

“Fair value” is defined in RCW 61.24.005(6) as follows:

“Fair value” means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuming that neither is under duress.”

RCW 61.24.005(6).

FCB is not aware of any published or unpublished appellate court decisions in Washington that concern a “fair value” determination after a non-judicial deed of trust foreclosure conducted under RCW 61.24.

As seen below, there are numerous appellate court decisions that concern the establishment of an “upset price” based on a collateral property’s fair value in the judicial foreclosure context. Regardless, as seen from the following, even if the appropriate standard of review concerning a fair value determination under RCW 61.24.100 is abuse of discretion, there is no question that substantial evidence does not support the trial court’s Finding of Fact No. 4.

Here, the only expert witness to testify at trial was FCB’s appraiser, Reid Erickson. Mr. Erickson concluded the Narrows Business Park’s as-is fair market value was \$6,630,000. The only appraisal of the Narrows Business Park that was admitted into evidence reflects Mr. Erickson and two (2) of his appraiser colleagues established the as-is fair market value of the Narrows Business Park at \$6,630,000 using both the income approach and the sales comparison approach. This appraisal defines fair market value as “the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, each dealing with the other with full knowledge of all the uses and purpose for which the property is reasonably adaptable and available.”

This definition of fair market value is extremely similar to the “fair value” definition set forth in RCW 61.24.005(6), which defines fair value as “the value of the property ... [that] shall be determined ... by reference to the most probable price, as of the date of the trustee’s sale, which would

be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuming that neither is under duress." Thus, Mr. Erickson's testimony and his appraisal go a long way toward establishing the fair value of the Narrows Business Park under RCW 61.24.

Moreover, bank officer Michael Meyer testified that FCB believed, based on its internal appraisal reviews, that the Narrows Business Park was only worth \$6,370,000. These appraisal reviews were admitted into evidence at trial. FCB also provided at trial uncontradicted testimony from Mr. Meyer that showed FCB paid \$133,358.14 in delinquent property taxes that were owed on the Narrows Business Park as of the date of the trustee's sale.

The Reikows did not testify at trial as to their own lay opinion of what the Narrows Business Park was worth. Nor did the trial court find that the testimony of appraiser Reid Erickson or bank officer Michael Meyer was not credible, or conclude that the only appraisal of the Narrows Business Park that was admitted into evidence was not credible.

Despite all of this, the trial court found the "fair value" of the Narrows Business Park was \$7,820,000 on the date of the trustee's sale.

This is the exact same figure that was mistakenly included in the IRS Form 1099A that FCB sent to the LLC. The LLC received this form in the mail in January 2011, some seven (7) months after the trustee's sale and some three (3) months after FCB filed this deficiency action. It was uncontradicted at trial that the balance given on the IRS Form 1099A was a typographical mistake.

The trial court should have determined that the fair value of the Narrows Business Park should be derived from the as-is fair market value set forth in Mr. Erickson's appraisal minus the delinquent property taxes that the bank paid. Such a ruling would have been consistent with the applicable fair value statute, RCW 61.24.005(6). This court need look no further than this statute to conclude that the trial court committed reversible error by way of its fair value determination.

Although RCW 61.12 and case law concerning upset prices in the *judicial* foreclosure context are not controlling here, case law concerning the establishment of an upset price in the judicial foreclosure context is instructive and analogous, at least to some extent.

An upset price is a minimum price that must be bid for mortgaged real property as a condition for the trial court's confirmation of a judicial foreclosure sale.⁸ RCW 61.12.060; *Am. Fed. Savings Loan Ass'n of Tacoma v. McCaffrey*, 107 Wn.2d 181, 186, 728 P.2d 155 (1986). The

⁸ Unlike the "fair value" statute that applies only to guarantors of commercial loans, the upset price statute in RCW 61.12 applies to both borrowers and guarantors alike. Further, the upset price statute can also come into play in cases that concern consumer loans.

setting of an upset price involves a determination as to the fair value of the collateral property. *See* RCW 61.12.060 (“[t]he court may ... establish the value of the property, and ... require that the fair value of the property be credited upon the foreclosure judgment”). A fair price is the amount a competitive bidder would consider to be a fair bid at the time of sale under normal conditions. *Id.* In setting an upset price, the trial court may properly receive any competent evidence, whether opinion or of direct facts which might affect the amount of such a bid. *Nat’l Bank of Wash.*, 81 Wn.2d at 926.

Division Three of the Washington Court of Appeals has held that the setting of an upset price for foreclosed farmland below the opinion of fair value expressed by one of the mortgagors’ experts was not an abuse of discretion, even though the expert was the only witness who considered all factors necessary to establish “fair value,” where the mortgagee’s witnesses disputed portions of the expert’s testimony and the trial court was free to use the testimony of the mortgagee’s witnesses to discount the estimate of fair value by the mortgagors’ expert. *Farm Credit Bank of Spokane v. Tucker*, 62 Wn. App. 196, 206-07, 813 P.2d 619, *review denied* 118 Wn.2d 1001, (1991). The *Farm Credit Bank* court reasoned the trial court did not abuse its discretion in arriving at the upset price of \$956,400 because “[t]he upset price is *within the range of the testimony*,” which ranged from \$790,000 to \$1,065,800. 62 Wn. App. at 207 (emphasis added).

Similarly, in *National Bank of Washington*, the trial court set the upset price for the collateral property at \$2,247,500 after considering the actual investment in the property of approximately \$2,300,000, an appraisal at \$2,500,000 that the bank relied upon to make the loan, and appraisal testimony from two expert witnesses that set the value at \$2,000,000 and \$2,150,000. 81 Wn.2d at 926-27, 506 P.2d 20. In holding that the trial court did not abuse its discretion in setting the upset price at \$2,247,500, the Washington Supreme Court reasoned that “[i]n view of the range of figures, and the position of the trial court to evaluate the witnesses and to determine from the evidence what might be a fair price for the property, we are unable to say that the court here abused its discretion.” *Id.* at 926-27, 506 P.2d 20.

In contrast to *Farm Credit Bank* and *National Bank of Washington*, only one expert testified as to valuation in this case. The only expert witness to testify at trial was the bank’s appraiser, Reid Erickson. Mr. Erickson concluded the Narrows Business Park’s as-is fair market value was \$6,630,000. The only appraisal of the Narrows Business Park that was admitted into evidence reflects Mr. Erickson and two (2) of his colleagues valued the Narrows Business Park at \$6,630,000 under both the income approach and the sales comparison approach. These approaches unquestionably yielded a fair value for the collateral property instead of a forced-sale value or “fire sale” value.

Further, bank officer Michael Meyer testified the bank believed

based on its internal appraisal reviews that the Narrows Business Park was only worth \$6,370,000. These appraisal reviews were admitted into evidence. The bank also provided at trial uncontradicted testimony from Mr. Meyer that showed the bank paid \$133,358.14 in delinquent property taxes that were owed on the Narrows Business Park as of the date of the trustee's sale.

The Reikows did not testify at trial as to their own lay opinion of what the Narrows Business Park was worth. Nor did the trial court find that the testimony of appraiser Reid Erickson or bank officer Michael Meyer was not credible, or conclude that the only appraisal of the Narrows Business Park that was admitted into evidence was not credible.

Despite all of this, the trial court found the "fair value" of the Narrows Business Park was \$7,820,000 on the date of the trustee's sale. This figure of \$7,820,000 is well outside the \$6,370,000 to \$6,630,000 range of testimony at trial.

If this case involved the establishment of an upset price under RCW 61.12, there is no question that the trial court's \$7,820,000 fair value figure would have been contrary to both *Farm Credit Bank* and *National Bank of Washington*.

In sum, Finding of Fact No. 4 concerning the fair value of the Narrows Business Park is not supported by substantial evidence. In turn, the trial court's conclusion that the Reikows are not liable to FCB for any

deficiency balance is therefore not supported by the findings of fact.⁹ As such, this court should reverse and vacate the judgment for attorney's fees that the trial court entered in favor of the Reikows against FCB and hold that the fair value of the Narrows Business Park was \$6,496,641.86 on the date of the trustee's sale.

In doing so, this court should also remand this case to the trial court with instructions to enter a deficiency judgment in favor of the bank against the Reikows in the principal amount of \$672,068.88.

FCB arrived at this sum by taking its outstanding loan balance as of the date of the trustee's sale (\$7,168,710.74) and subtracting from this figure the \$6,496,641.86 "fair value" of the Narrows Business Park, which exceeded the sum that the bank paid for this property at the trustee's sale.

C. FCB IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS IF IT PREVAILS ON APPEAL.

Attorney's fees and expenses incurred on appeal can be awarded if applicable law, contract, or equity permits an award of such fees and expenses. RAP 18.1(a). The party requesting an award of fees and expenses must devote a section of its opening brief to the request for the fees or expenses. RAP 18.1(b).

Assuming that an applicable provision in a contract provides that

⁹ Similarly, if the court determines the applicable standard of review is abuse of discretion, the trial court undoubtedly abused its discretion by setting the "fair value" of the Narrows Business Park at \$7,820,000. *Cf. Nat'l. Bank of Wash. v. Equity Investors*, 81 Wn.2d 886, 506 P.2d 20 (1973) (the fixing of an upset price in a judicial foreclosure action is reviewed for abuse of discretion).

attorney fees will be paid in a suit to enforce the instrument, the court has no authority to disregard it. 14A K. Teglund, WASHINGTON PRACTICE: CIVIL PROCEDURE, § 37.6, at 549 (1st ed. 2003) (citing several cases, including *Seattle First Nat. Bank v. Mitchell*, 87 Wn. App. 448, 942 P.2d 1022 (1997)).

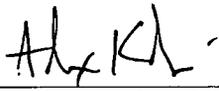
Here, the Guaranties provide that FCB is entitled to recover its attorney fees and costs from the Reikows in the event the bank prevails in this forum. As such, this court should award FCB its attorney's fees and expenses incurred on appeal in the event that FCB is the prevailing party before the Court of Appeals. *See, e.g., Farm Credit Bank of Spokane*, 62 Wn. App. at 207-208 (awarding bank's attorney fees on appeal pursuant to parties' contract when bank prevailed on appeal and mortgagor debtors did not prevail on their cross-appeal).

VI. CONCLUSION

Based on the foregoing, FCB respectfully asks this court to (a) reverse and vacate the judgment for attorney fees that the trial court entered in favor of the Reikows against FCB; (b) conclude the trial court erred by refusing to grant FCB's motion for summary judgment *in toto* and allowing FCB's deficiency claim to proceed to trial; (c) determine that the fair value of the Narrows Business Park was \$6,496,641.86 on the date of the trustee's sale; and (d) remand this case to the trial court with instructions to enter a deficiency judgment in favor of FCB against the Reikows in the principal amount of \$672,068.88.

RESPECTFULLY SUBMITTED this 13th day of July, 2012.

EISENHOWER CARLSON PLLC

By: 
Alexander S. Kleinberg, WSBA # 34449
Chrystina R. Solum, WSBA # 41108
Joshua B. Lane, WSBA # 42192
Attorneys for Appellant First-Citizens
Bank & Trust Company

I, Jennifer K. Fernando, am a legal assistant with the firm of Eisenhower & Carlson, PLLC, and am competent to be a witness herein. On July 13th, 2012, at Tacoma, Washington, I caused a true and correct copy of the Brief of Appellant to be served upon the following in the manner indicated below:

Jeffrey Paul Helsdon, Esq. Oldfield & Helsdon, PLLC 1401 Regents Blvd., Suite 102 Fircrest, WA 98466	<input checked="" type="checkbox"/> by Legal Messenger
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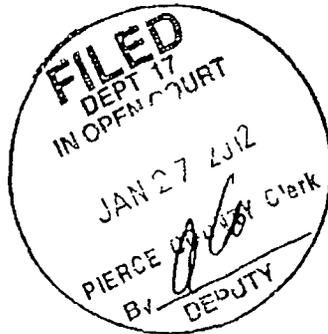
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of July, 2012, at Tacoma, Washington.


Jennifer K. Fernando

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STATE OF WASHINGTON

APPENDIX A



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

FIRST CITIZENS BANK & TRUST
COMPANY successor in interest to
VENTURE BANK

Plaintiff

NO 10 2 14116 8

ORDER GRANTING PLAINTIFF S
MOTION FOR SUMMARY JUDGMENT
IN PART AS TO DEFENDANTS
REIKOW

vs

BRUCE A REIKOW and SANDRA J
REIKOW *individually and the marital
community comprised thereof* KARL R
ZETTERBERG and JANE ZETTERBERG
*individually and the marital community
comprised thereof*

Defendants

THIS MATTER having come on regularly for hearing upon Plaintiff's Motion for
Summary Judgment (the **Motion**) Plaintiff appearing by and through its attorneys
Eisenhower & Carlson PLLC and Robert G Casey and Defendants Reikow appearing *pro se*
and the Court having reviewed the records and files herein including the following pleadings

- 1 Plaintiff's Motion for Summary Judgment
- 2 Declaration of Dennis Shade in Support of Plaintiff's Motion for Summary
Judgment
- 3 Declaration of Bruce A Reikow in Opposition to Plaintiff's Motion for Summary

ORDER GRANTING PLAINTIFF S MOTION FOR SUMMARY
JUDGMENT IN PART AS TO DEFENDANTS REIKOW 1

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EISENHOWER & CARLSON PLLC 253 5 7 500
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Judgment

4 Plaintiff's Reply in Support of Motion for Summary Judgment and

5 Reply Declaration of Dennis Shade in Support of Plaintiff's Motion for Summary
Judgment

The Court finding that adequate and proper notice of said Motion was provided that
Defendants Bruce and Sandra Reikow personally guaranteed the repayment of the commercial
loan that is more fully described in Plaintiff's Motion that Plaintiff has standing to bring this
action that Defendants Reikow failed to repay Plaintiff pursuant to their guaranties and have
breached their contracts with Plaintiff and are in default under said instruments that Plaintiff
has preserved its right to pursue Defendants Reikow for a deficiency judgment under RCW
61 24 that Plaintiff was owed no less than \$7 168 710 74 by Defendants Reikow on the date of
the subject trustee s sale which was July 9 2010 and that the only remaining issue for trial is
the fair value of the property as of the date of the trustee s sale and the resulting deficiency
judgment to which Plaintiff is entitled against Defendants Reikow and having so found it is
hereby

ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion is granted in part as
to Defendants Bruce A Reikow and Sandra J Reikow leaving the only issue remaining for trial
the fair value of the property as of the trustee s sale date of July 9 2010

DONE IN OPEN COURT this 27th day of January, 2012

FILED
IN OPEN COURT
JAN 27 2012
PIERCE COUNTY Clerk
JTY


PIERCE COUNTY SUPERIOR COURT JUDGE
RONALD E. CULPEPPER

ORDER GRANTING PLAINTIFF S MOTION FOR SUMMARY
JUDGMENT IN PART AS TO DEFENDANTS REIKOW 2

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Presented by

EISENHOWER & CARLSON PLLC

By Robert G Casey
Robert G Casey WSBA # 14183
Alexander S Kleinberg WSBA # 34449
Attorneys for Plaintiff First Citizens Bank
& Trust Company

Approved as to form
Notice of presentation waived
By Bruce Reikow
Bruce Reikow

ORDER GRANTING PLAINTIFF S MOTION FOR SUMMARY
JUDGMENT IN PART AS TO DEFENDANTS REIKOW 3

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253 2 2 5732

APPENDIX B

COMMERCIAL GUARANTY

Principal	Loan Date	Maturity	Loan No	Call / Coll 01A / 013	Account	Officer 307	Initials
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							

Borrower: NBP L.L.C.
P O Box 1579
Gig Harbor, WA 98335

Lender: VENTURE BANK
FIRCREST FINANCIAL CENTER
1902 64TH AVENUE WEST
TACOMA, WA 98466
(253) 564-3780

Guarantor: Bruce A Reikow
P O Box 1579
Gig Harbor, WA 98335

AMOUNT OF GUARANTY. The amount of this Guaranty is Unlimited.

CONTINUING UNLIMITED GUARANTY. For good and valuable consideration, Bruce A Reikow ("Guarantor") absolutely and unconditionally guarantees and promises to pay to VENTURE BANK ("Lender") or its order, on demand, in legal tender of the United States of America, the Indebtedness (as that term is defined below) of NBP L.L.C. ("Borrower") to Lender on the terms and conditions set forth in this Guaranty. Under this Guaranty, the liability of Guarantor is unlimited and the obligations of Guarantor are continuing.

INDEBTEDNESS GUARANTEED. The Indebtedness guaranteed by this Guaranty includes any and all of Borrower's indebtedness to Lender and is used in the most comprehensive sense and means and includes any and all of Borrower's liabilities, obligations and debts to Lender, now existing or hereinafter incurred or created, including, without limitation, all loans, advances, interest, costs, debts, overdraft indebtedness, credit card indebtedness, lease obligations, other obligations, and liabilities of Borrower, or any of them, and any present or future judgments against Borrower, or any of them; and whether any such Indebtedness is voluntarily or involuntarily incurred, due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined; whether Borrower may be liable individually or jointly with others, or primarily or secondarily, or as guarantor or surety; whether recovery on the Indebtedness may be or may become barred or unenforceable against Borrower for any reason whatsoever; and whether the Indebtedness arises from transactions which may be voidable on account of infancy, insanity, ultra vires, or otherwise.

DURATION OF GUARANTY. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all Indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender, by certified mail, at Lender's address listed above or such other place as Lender may designate in writing. Written revocation of this Guaranty will apply only to advances or new Indebtedness created after actual receipt by Lender of Guarantor's written revocation. For this purpose and without limitation, the term "new Indebtedness" does not include Indebtedness which at the time of notice of revocation is contingent, unliquidated, undetermined or not due and which later becomes absolute, liquidated, determined or due. This Guaranty will continue to bind Guarantor for all Indebtedness incurred by Borrower or committed by Lender prior to receipt of Guarantor's written notice of revocation, including any extensions, renewals, substitutions or modifications of the Indebtedness. All renewals, extensions, substitutions, and modifications of the Indebtedness granted after Guarantor's revocation, are contemplated under this Guaranty and, specifically will not be considered to be new Indebtedness. This Guaranty shall bind Guarantor's estate as to Indebtedness created both before and after Guarantor's death or incapacity, regardless of Lender's actual notice of Guarantor's death. Subject to the foregoing, Guarantor's executor or administrator or other legal representative may terminate this Guaranty in the same manner in which Guarantor might have terminated it and with the same effect. Release of any other guarantor or termination of any other guaranty of the Indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty. It is anticipated that fluctuations may occur in the aggregate amount of Indebtedness covered by this Guaranty, and Guarantor specifically acknowledges and agrees that reductions in the amount of Indebtedness, even to zero dollars (\$0.00), prior to Guarantor's written revocation of this Guaranty shall not constitute a termination of this Guaranty. This Guaranty is binding upon Guarantor and Guarantor's heirs, successors and assigns so long as any of the guaranteed Indebtedness remains unpaid and even though the Indebtedness guaranteed may from time to time be zero dollars (\$0.00).

OBLIGATIONS OF MARRIED PERSONS. Any married person who signs this Guaranty hereby expressly agrees that recourse under this Guaranty may be had against both his or her separate property and community property.

GUARANTOR'S AUTHORIZATION TO LENDER. Guarantor authorizes Lender, either before or after any revocation hereof, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (A) prior to revocation as set forth above, to make one or more additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the Indebtedness or any part of the Indebtedness, including increases and decreases of the rate of interest on the Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the Indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral; (D) to release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) to determine how, when and what application of payments and credits shall be made on the Indebtedness; (F) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the Indebtedness; and (H) to assign or transfer this Guaranty in whole or in part.

GUARANTOR'S REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants to Lender that (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at Borrower's request and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor; (E) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (F) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided to Lender is and will be true and correct in all material respects and fairly present Guarantor's financial condition as of the dates the financial information is provided; (G) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

GUARANTOR'S FINANCIAL STATEMENTS. Guarantor agrees to furnish Lender with the following:

Annual Statements. As soon as available, but in no event later than ninety (90) days after the end of each fiscal year, Guarantor's balance sheet and income statement for the year ended, prepared by Guarantor in form satisfactory to Lender.

Tax Returns. As soon as available, but in no event later than sixty (60) days after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns, prepared by a tax professional satisfactory to Lender.

All financial reports required to be provided under this Guaranty shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Guarantor as being true and correct.

GUARANTOR'S WAIVERS. Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the Indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to pursue any other remedy within Lender's power; or (F) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

In addition to the waivers set forth herein, if now or hereafter Borrower is or shall become insolvent and the indebtedness shall not at all times until paid be fully secured by collateral pledged by Borrower, Guarantor hereby forever waives and gives up in favor of Lender and Borrower, and Lender's and Borrower's respective successors, any claim or right to payment Guarantor may now have or hereafter have or acquire against Borrower, by subrogation or otherwise, so that at no time shall Guarantor be or become a "creditor" of Borrower within the meaning of 11 U.S.C. section 547(b), or any successor provision of the Federal bankruptcy laws.

Guarantor also waives any and all rights or defenses arising by reason of (A) any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the indebtedness; (D) any right to claim discharge of the indebtedness on the basis of unjustified impairment of any collateral for the indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding indebtedness of Borrower to Lender which is not barred by any applicable statute of limitations; or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS. Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold these funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR. Guarantor agrees that the indebtedness of Borrower to Lender, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the indebtedness of Borrower to Lender. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Guaranty:

Amendments. This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

Governing Law. This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Washington without regard to its conflicts of law provisions. This Guaranty has been accepted by Lender in the State of Washington.

Choice of Venue. If there is a lawsuit, Guarantor agrees upon Lender's request to submit to the jurisdiction of the courts of PIERCE County, State of Washington.

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and peril evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

Interpretation. In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

Notices. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. All revocation notices by Guarantor shall be in writing and shall be effective upon delivery to Lender as provided in the section of this Guaranty entitled "DURATION OF GUARANTY." Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

COMMERCIAL GUARANTY
(Continued)

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Successors and Assigns. Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means NBP L.L.C. and includes all co-signers and co-makers signing the Note.

GAAP. The word "GAAP" means generally accepted accounting principles.

Guarantor. The word "Guarantor" means each and every person or entity signing this Guaranty, including without limitation Bruce A Reikow.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Indebtedness. The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

Lender. The word "Lender" means VENTURE BANK, its successors and assigns.

Note. The word "Note" means and includes without limitation all of Borrower's promissory notes and/or credit agreements evidencing Borrower's loan obligations in favor of Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for promissory notes or credit agreements.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY". NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED JULY 25, 2005.

GUARANTOR:

X 
Bruce A Reikow

COMMERCIAL GUARANTY

Principal	Loan Date	Maturity	Loan No.	Call / Coll	Account	Officer	Initials
				01A / 013		307	WV
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.							

Borrower: NBP L.L.C.
P O Box 1579
Gig Harbor, WA 98335

Lender: VENTURE BANK
FIRCREST FINANCIAL CENTER
1902 64TH AVENUE WEST
TACOMA, WA 98466
(253) 564-3780

Guarantor: Sandra J Reikow
P O Box 1579
Gig Harbor, WA 98335

AMOUNT OF GUARANTY. The amount of this Guaranty is Unlimited.

CONTINUING UNLIMITED GUARANTY. For good and valuable consideration, Sandra J Reikow ("Guarantor") absolutely and unconditionally guarantees and promises to pay to VENTURE BANK ("Lender") or its order, on demand, in legal tender of the United States of America, the Indebtedness (as that term is defined below) of NBP L.L.C. ("Borrower") to Lender on the terms and conditions set forth in this Guaranty. Under this Guaranty, the liability of Guarantor is unlimited and the obligations of Guarantor are continuing.

INDEBTEDNESS GUARANTEED. The Indebtedness guaranteed by this Guaranty includes any and all of Borrower's indebtedness to Lender and is used in the most comprehensive sense and means and includes any and all of Borrower's liabilities, obligations and debts to Lender, now existing or hereinafter incurred or created, including, without limitation, all loans, advances, interest, costs, debts, overdraft indebtedness, credit card indebtedness, lease obligations, other obligations, and liabilities of Borrower, or any of them, and any present or future judgments against Borrower, or any of them; and whether any such Indebtedness is voluntarily or involuntarily incurred, due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined; whether Borrower may be liable individually or jointly with others, or primarily or secondarily, or as guarantor or surety; whether recovery on the Indebtedness may be or may become barred or unenforceable against Borrower for any reason whatsoever; and whether the Indebtedness arises from transactions which may be voidable on account of infancy, insanity, ultra vires, or otherwise.

DURATION OF GUARANTY. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all Indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender, by certified mail, at Lender's address listed above or such other place as Lender may designate in writing. Written revocation of this Guaranty will apply only to advances or new Indebtedness created after actual receipt by Lender of Guarantor's written revocation. For this purpose and without limitation, the term "new Indebtedness" does not include Indebtedness which at the time of notice of revocation is contingent, unliquidated, undetermined or not due and which later becomes absolute, liquidated, determined or due. This Guaranty will continue to bind Guarantor for all Indebtedness incurred by Borrower or committed by Lender prior to receipt of Guarantor's written notice of revocation, including any extensions, renewals, substitutions or modifications of the Indebtedness. All renewals, extensions, substitutions, and modifications of the Indebtedness granted after Guarantor's revocation, are contemplated under this Guaranty and, specifically will not be considered to be new Indebtedness. This Guaranty shall bind Guarantor's estate as to Indebtedness created both before and after Guarantor's death or incapacity, regardless of Lender's actual notice of Guarantor's death. Subject to the foregoing, Guarantor's executor or administrator or other legal representative may terminate this Guaranty in the same manner in which Guarantor might have terminated it and with the same effect. Release of any other guarantor or termination of any other guaranty of the Indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty. It is anticipated that fluctuations may occur in the aggregate amount of Indebtedness covered by this Guaranty, and Guarantor specifically acknowledges and agrees that reductions in the amount of Indebtedness, even to zero dollars (\$0.00), prior to Guarantor's written revocation of this Guaranty shall not constitute a termination of this Guaranty. This Guaranty is binding upon Guarantor and Guarantor's heirs, successors and assigns so long as any of the guaranteed Indebtedness remains unpaid and even though the Indebtedness guaranteed may from time to time be zero dollars (\$0.00).

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All financial reports required to be provided under this Guaranty shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Guarantor as being true and correct.

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**COMMERCIAL GUARANTY
(Continued)**

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In addition to the waivers set forth herein, if now or hereafter Borrower is or shall become insolvent and the indebtedness shall not at all times until paid be fully secured by collateral pledged by Borrower, Guarantor hereby forever waives and gives up in favor of Lender and Borrower, and Lender's and Borrower's respective successors, any claim or right to payment Guarantor may now have or hereafter have or acquire against Borrower, by subrogation or otherwise, so that at no time shall Guarantor be or become a "creditor" of Borrower within the meaning of 11 U.S.C. section 547(b), or any successor provision of the Federal bankruptcy laws.

Guarantor also waives any and all rights or defenses arising by reason of (A) any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the indebtedness; (D) any right to claim discharge of the indebtedness on the basis of unjustified impairment of any collateral for the indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding indebtedness of Borrower to Lender which is not barred by any applicable statute of limitations; or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS. Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold these funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR. Guarantor agrees that the indebtedness of Borrower to Lender, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the indebtedness of Borrower to Lender. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Guaranty:

Amendments. This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

Governing Law. This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Washington without regard to its conflicts of law provisions. This Guaranty has been accepted by Lender in the State of Washington.

Choice of Venue. If there is a lawsuit, Guarantor agrees upon Lender's request to submit to the jurisdiction of the courts of PIERCE County, State of Washington.

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and partial evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

Interpretation. In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

Notices. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. All revocation notices by Guarantor shall be in writing and shall be effective upon delivery to Lender as provided in the section of this Guaranty entitled "DURATION OF GUARANTY." Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

COMMERCIAL GUARANTY
(Continued)

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Successors and Assigns. Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means NBP L.L.C. and includes all co-signers and co-makers signing the Note.

GAAP. The word "GAAP" means generally accepted accounting principles.

Guarantor. The word "Guarantor" means each and every person or entity signing this Guaranty, including without limitation Sandra J Reikow.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Indebtedness. The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

Lender. The word "Lender" means VENTURE BANK, its successors and assigns.

Note. The word "Note" means and includes without limitation all of Borrower's promissory notes and/or credit agreements evidencing Borrower's loan obligations in favor of Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for promissory notes or credit agreements.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY". NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED JULY 25, 2005.

GUARANTOR:

x 
Sandra J Reikow

APPENDIX C

RCW 61.24.005**Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate of beneficiary" means any entity which controls, is controlled by, or is under common control with a beneficiary.

(2) "Beneficiary" means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

(3) "Borrower" means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.

(4) "Commercial loan" means a loan that is not made primarily for personal, family, or household purposes.

(5) "Department" means the department of commerce or its designee.

→ (6) "Fair value" means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

(7) "Grantor" means a person, or its successors, who executes a deed of trust to encumber the person's interest in property as security for the performance of all or part of the borrower's obligations.

(8) "Guarantor" means any person and its successors who is not a borrower and who guarantees any of the obligations secured by a deed of trust in any written agreement other than the deed of trust.

(9) "Housing counselor" means a housing counselor that has been approved by the United States department of housing and urban development or approved by the Washington state housing finance commission.

(10) "Owner-occupied" means property that is the principal residence of the borrower.

(11) "Person" means any natural person, or legal or governmental entity.

(12) "Record" and "recorded" includes the appropriate registration proceedings, in the instance of registered land.

(13) "Residential real property" means property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit.

APPENDIX D

RCW 61.24.100**Deficiency judgments -- Foreclosure -- Trustee's sale -- Application of chapter.**

(1) Except to the extent permitted in this section for deeds of trust securing commercial loans, a deficiency judgment shall not be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee's sale under that deed of trust.

(2)(a) Nothing in this chapter precludes an action against any person liable on the obligations secured by a deed of trust or any guarantor prior to a notice of trustee's sale being given pursuant to this chapter or after the discontinuance of the trustee's sale.

(b) No action under (a) of this subsection precludes the beneficiary from commencing a judicial foreclosure or trustee's sale under the deed of trust after the completion or dismissal of that action.

(3) This chapter does not preclude any one or more of the following after a trustee's sale under a deed of trust securing a commercial loan executed after June 11, 1998:

(a)(i) To the extent the fair value of the property sold at the trustee's sale to the beneficiary or an affiliate of the beneficiary is less than the unpaid obligation secured by the deed of trust immediately prior to the trustee's sale, an action for a deficiency judgment against the borrower or grantor, if such person or persons was timely given the notices under RCW 61.24.040, for (A) any decrease in the fair value of the property caused by waste to the property committed by the borrower or grantor, respectively, after the deed of trust is granted, and (B) the wrongful retention of any rents, insurance proceeds, or condemnation awards by the borrower or grantor, respectively, that are otherwise owed to the beneficiary.

(ii) This subsection (3)(a) does not apply to any property that is occupied by the borrower as its principal residence as of the date of the trustee's sale;

(b) Any judicial or nonjudicial foreclosures of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure the obligation that was secured by the deed of trust foreclosed; or

(c) Subject to this section, an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under RCW 61.24.042.

(4) Any action referred to in subsection (3)(a) and (c) of this section shall be commenced within one year after the date of the trustee's sale, or a later date to which the liable party otherwise agrees in writing with the beneficiary after the notice of foreclosure is given, plus any period during which the action is prohibited by a bankruptcy, insolvency, moratorium, or other similar debtor protection statute. If there occurs more than one trustee's sale under a deed of trust securing a commercial loan or if trustee's sales are made pursuant to two or more deeds of trust securing the same commercial loan, the one-year limitation in this section begins on the date of the last of those trustee's sales.

→ (5) In any action against a guarantor following a trustee's sale under a deed of trust securing a commercial loan, the guarantor may request the court or other appropriate adjudicator to determine, or the court or other appropriate adjudicator may in its discretion determine, the fair value of the property sold at the sale and the deficiency judgment against the guarantor shall be for an amount equal to the sum of the total amount owed to the beneficiary by the guarantor as of the date of the trustee's sale, less the fair value of the property sold at the trustee's sale or the sale price paid at the trustee's sale,

whichever is greater, plus interest on the amount of the deficiency from the date of the trustee's sale at the rate provided in the guaranty, the deed of trust, or in any other contracts evidencing the debt secured by the deed of trust, as applicable, and any costs, expenses, and fees that are provided for in any contract evidencing the guarantor's liability for such a judgment. If any other security is sold to satisfy the same debt prior to the entry of a deficiency judgment against the guarantor, the fair value of that security, as calculated in the manner applicable to the property sold at the trustee's sale, shall be added to the fair value of the property sold at the trustee's sale as of the date that additional security is foreclosed. This section is in lieu of any right any guarantor would otherwise have to establish an upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

(6) A guarantor granting a deed of trust to secure its guaranty of a commercial loan shall be subject to a deficiency judgment following a trustee's sale under that deed of trust only to the extent stated in subsection (3)(a)(i) of this section. If the deed of trust encumbers the guarantor's principal residence, the guarantor shall be entitled to receive an amount up to the homestead exemption set forth in RCW 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid at the foreclosure or trustee's sale accepted by the sheriff or trustee prior to the application of the bid to the guarantor's obligation.

(7) A beneficiary's acceptance of a deed in lieu of a trustee's sale under a deed of trust securing a commercial loan exonerates the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction.

(8) This chapter does not preclude a beneficiary from foreclosing a deed of trust in the same manner as a real property mortgage and this section does not apply to such a foreclosure.

(9) Any contract, note, deed of trust, or guaranty may, by its express language, prohibit the recovery of any portion or all of a deficiency after the property encumbered by the deed of trust securing a commercial loan is sold at a trustee's sale.

(10) A trustee's sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.

(11) Unless the guarantor otherwise agrees, a trustee's sale shall not impair any right or agreement of a guarantor to be reimbursed by a borrower or grantor for a deficiency judgment against the guarantor.

(12) Notwithstanding anything in this section to the contrary, the rights and obligations of any borrower, grantor, and guarantor following a trustee's sale under a deed of trust securing a commercial loan or any guaranty of such a loan executed prior to June 11, 1998, shall be determined in accordance with the laws existing prior to June 11, 1998.

[1998 c 295 § 12; 1990 c 111 § 2; 1965 c 74 § 10.]

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