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NO. 69365-4-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

COLUMBIA ASSET RECOVERY GROUP, LLC
a Washington limited liability corporation,

Appellant,

v.

JOSEPH R. KELLY, as the Successor Personal Representative of
THE ESTATE OF WILLIAM D. PHILLIPS,

Respondent.

COURT OF APPEALS
DIVISION ONE
JAN 10 2013

MOTION TO DISMISS APPEAL FOR MOOTNESS
AND, IN THE ALTERNATIVE, BRIEF OF RESPONDENT

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I. INTRODUCTION

Respondent the Estate of William D. Phillips (the “Phillips Estate”), through undersigned counsel, hereby moves this Court to dismiss this appeal for mootness and, in the alternative, files its Brief of Respondent.

Appellant Columbia Asset Recovery Group, LLC (“Columbia Asset”) is currently litigating identical facts underlying two identical claims in two separate forums. Specifically, Columbia Asset is currently litigating the exact same facts underlying identical claims both here and in the United States District Court for the District of Maryland—a critical fact omitted by Columbia Asset in its opening brief.¹ The Phillips Estate requested a stay in that proceeding pending this appeal given the complete overlap between the actions. Columbia Asset opposed the Maryland stay motion, representing to that court that this Washington appeal would involve only the narrow issue of attorneys’ fees and that it would not touch on the merits of its claim. Columbia Asset’s opening brief in this appeal, however, directly contradicts its representations to the Maryland federal court. Indeed, Columbia Asset’s initial Brief of Appellant

¹ Indeed, Columbia Asset’s opening brief is drafted in a way that obscures the Maryland action’s existence, and suggests that no action has yet been filed in another jurisdiction: “Thus, the order on reconsideration serves only to provide CARG with an argument, **should it file the same action in another jurisdiction**, that its claim against the Phillips Estate is not barred by *res judicata*.” Br. of Appellant at 5 (emphasis added).

nowhere addressed attorneys' fees, despite representing to the Maryland court that the appeal would be limited to that issue. When counsel for the Phillips Estate raised this issue with counsel for Columbia Asset, Columbia Asset immediately filed its Motion to File Amended Brief of Appellant in an attempt to reconcile its contradictory behavior and representations.

The Maryland court recently denied the Phillips Estate's motion to stay. Thus, having amended its opening brief to address both the merits and its attorney's fees request, and despite its representations to the Maryland court, Columbia Asset is now poised to litigate the exact same facts underlying identical claims in this appeal and in the District Court for the District of Maryland. Because the relief Petitioner seeks through this appeal is already being addressed in Maryland federal court (including Columbia Asset's request for attorney's fees), this appeal is moot and should be dismissed pursuant to RAP 18.9(c)(2). Moreover, Columbia Asset should be judicially estopped from representing one thing to the Maryland court and another thing to this Court regarding the scope and purpose of its appeal here.

Columbia Asset has requested that this Court vacate the Dismissal Order and the Reconsideration Order and remand to the trial court for further proceedings, including a ruling on Columbia Asset's motion for

summary judgment. However, Columbia Asset's recently filed motion for summary judgment in the District Court for the District of Maryland is nearly identical to Columbia Asset's motion for summary judgment here. Accordingly, all issues that would be determined on appeal are actively being litigated in the District Court for the District of Maryland, rendering this appeal moot. To allow this appeal to continue would result only in duplicative litigation, unnecessary litigation expenses, and abuse of judicial resources.

Should this Court deny the Phillips Estate's Motion to Dismiss for Mootness, the Phillips Estate hereby alternatively files its Brief of Respondent. Specifically, this appeal arises from the trial court's Order Granting the Phillips Estate's Motion to Dismiss the Complaint for Lack of Personal Jurisdiction and also from Columbia Asset's unsuccessful Motion for Reconsideration, which sought to vacate the Dismissal Order. However, there is no reason to disturb the sound discretion of the trial court and the factual findings resulting therefrom. The trial court properly granted the Phillips Estate's Motion to Dismiss the Complaint. Additionally, the trial court did not err in granting Columbia Asset's Motion for Reconsideration insofar as it upheld the trial court's earlier dismissal of the Complaint and held only that the dismissal would be without prejudice.

This lawsuit is the third of four attempts by Timothy Kennedy to recover on the AFH Loan, which he personally guaranteed. Mr. Kennedy first sought to recover on the AFH Loan by pursuing duplicative indemnification claims against the Estate in Delaware and the Western District of Washington for fulfilling his AFH Loan guaranty. Upon realizing that his claim was time-barred in Delaware and after the Western District of Washington dismissed his second indemnification claim for lack of personal jurisdiction, Mr. Kennedy changed tack and filed this action in King County Superior Court. His new theory is that he had not in fact satisfied his guaranty (contrary to what he had represented to the Delaware Chancery Court and Washington federal court), but that an entity that he had formed (Columbia Asset) instead purchased an assignment of the AFH Loan for the exact amount Mr. Kennedy owed on his guaranty. After the Phillips Estate's dismissal motion, and upon the Court's determination that Mr. Kennedy's alter-ego, Columbia Asset, could not exercise personal jurisdiction over the Estate in Washington, Mr. Kennedy decided to seek recovery in Maryland. To pursue a claim in Maryland, however, Mr. Kennedy needs to establish that he has been assigned Columbia Bank's rights under the AFH Loan. It fully appears that the trial court's dismissal found that Mr. Kennedy could not have been assigned Columbia Bank's rights. Accordingly, and with nothing to

lose, Columbia Asset's appeal here is merely an effort to preserve an opportunity for Mr. Kennedy to attempt to recover in his fourth forum of choice, Maryland.

As explained here and in the briefs the Phillips Estate filed with the trial court, Appellant is unable to circumvent the fact that Mr. Kennedy fulfilled his Guaranty of the AFH Loan by way of the Loan Purchase Agreement, thereby fully discharging the AFH Loan Agreement and all obligations assumed thereunder, including the jurisdiction provision. Any rights flowing from the Loan Purchase Agreement, including the jurisdiction provision of the AFH Loan Agreement, were extinguished because the purchase amounted to either a fulfillment of Mr. Kennedy's Guaranty or an assignment from the creditor to the debtor. As discussed further below, the trial court therefore did not err in granting the Phillips Estate's Motion to Dismiss for Lack of Personal Jurisdiction.

Accordingly, if this Court denies the Phillips Estate's Motion to Dismiss for Mootness, then the Phillips Estate respectfully requests that this Court affirm the trial court's Order Granting the Phillips Estate's Motion to Dismiss the Complaint for Lack of Personal Jurisdiction and further affirm the trial court's Order Granting Columbia Asset's Motion for Reconsideration in so far as it upheld the dismissal of the Complaint.

II. RESPONSE TO APPELLANT'S STATEMENT OF ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Whether the trial court abused its discretion by finding that Columbia Asset is an alter ego of Mr. Kennedy.

2. Whether the trial court abused its discretion by finding that the Loan Purchase Agreement fulfilled Mr. Kennedy's Guaranty of the AFH Loan, as Mr. Kennedy previously represented to two different courts and the Phillips Estate, and thus discharged the Loan Agreement and all obligations assumed thereunder, including the jurisdiction provision.

3. Whether the trial court abused its discretion by finding that that the Loan Purchase Agreement amounted to an assignment of the AFH Loan from the creditor to the debtor and thus discharged the Loan Agreement and all obligations assumed thereunder, including the jurisdiction provision.

4. Whether the trial court erred by dismissing the Complaint for lack of jurisdiction.

III. STATEMENT OF THE CASE

A. Factual Summary

1. Columbia Asset is Currently Litigating Identical Facts Underlying Identical Claims in Maryland

On September 6, 2012—one day after the trial court confirmed its earlier decision to dismiss this case (CP 1126–27)—Columbia Asset filed

a complaint in the Circuit Court for Montgomery County, Maryland that is virtually identical to the instant Complaint filed in the Superior Court of Washington for King County. *Compare* Complaint, Circuit Court for Montgomery County, Maryland (Declaration of Andrew R. Escobar in Support of Respondent the Estate of William D. Phillips’ Motion to Dismiss Appeal for Mootness and, in the Alternative, Brief of Respondent (“Escobar Decl.”), Ex. A) with CP 1–5.² Despite this filing, three weeks later, on September 26, 2012, Columbia Asset noticed an appeal of the King County Superior Court’s dismissal below. CP 1128–30.

Shortly thereafter, counsel for the Phillips Estate asked Columbia Asset’s counsel whether Columbia Asset would agree to a stay in Maryland pending resolution of this appeal in Washington. *See* E-mail from Brad Bloodworth to Sean Bellew (Sept. 27, 2012) (Escobar Decl. Ex. B). On October 2, 2012, Columbia Asset’s counsel informed counsel for the Phillips Estate that Columbia Asset would not agree to a stay in Maryland pending resolution of the appeal in Washington. Accordingly, on October 3, 2012, the Phillips Estate filed a Motion to Stay the Proceeding Pending Appeal, noting that the Maryland court “should

² The Estate submits the material attached to the Escobar Declaration to support its Motion to Dismiss for Mootness pursuant to RAP 18.9, and respectfully requests that this Court take judicial notice of these court records in the related case, *Columbia Asset Recovery Group, LLC v. The Estate of William D. Phillips*, Case No. V367943, Circuit Court for Montgomery County Maryland, which was subsequently removed to the District Court for the District of Maryland, Civil No. PJM 12-cv-3191.

abstain from exercising its jurisdiction to avoid conflicting and perhaps inconsistent rulings, since determination of the appeal in Washington affects the issues [in the Maryland proceeding].” *See* Motion to Stay at 1, 4, Oct. 3, 2012 (Escobar Decl. Ex. C).

In its Opposition to the Motion to Stay (the “Opposition”), Columbia Asset represented to the Maryland Court that it “filed a Notice of Appeal [in Washington] to preserve its rights under the attorney fee provisions in the loan agreement” and that “the outcome of the King County appeal will be limited to the issue of attorney fees” and would not address the merits. Pl.’s Opp’n at 3, Nov. 27, 2012 (Escobar Decl. Ex. D). This turned out to be false. On December 10, 2012, after the Motion to Stay had been fully briefed,³ Columbia Asset filed its Brief of Appellant, which blatantly contradicts its representations to the Maryland court regarding the purpose and extent of its appeal in Washington. On December 11, 2012, counsel for the Phillips Estate, Brad Bloodworth, wrote to counsel for Columbia Asset, Sean Bellew, and notified him that:

Columbia Asset’s stay opposition in Maryland contends that its Washington appeal only relates to the narrow issue

³ In its Reply Brief for its stay motion in Maryland, the Phillips Estate noted that “Columbia Asset’s own filings demonstrate that it is pursuing an appeal on the merits, even if it intends to use any favorable appeal decision only to recover attorneys’ fees. The determination of the appeal in Washington affects the merits of this case, and Columbia Asset’s stated purpose of seeking appeal only on the issue of attorneys’ fees does not change this. Accordingly, the risk of conflicting or inconsistent rulings remains.” *See* Reply Brief at 2, Nov. 28, 2012 (Escobar Decl. Ex. E).

of attorneys' fees, and not the merits. Columbia Asset's appeal brief filed yesterday demonstrates otherwise. It seems appropriate that Columbia Asset timely (since stay motion is pending) update the record in Maryland.

See E-mail from Brad Bloodworth to Sean Bellew, Dec. 11, 2012 (Escobar Decl. Ex. F).

Less than six hours later, Columbia Asset filed a Motion to Amend Brief of Appellant to include a request for attorney fees, belying their representations to the Maryland court. *See* Mot. to Amend Brief of Appellant ¶ 3, Dec. 11, 2012. The District Court for the District of Maryland denied the Motion to Stay on December 20, 2012. Order Denying Motion to Stay (Escobar Decl. Ex. G).

On January 7, 2013, Columbia Asset filed its Motion for Summary Judgment in the District Court for the District of Maryland. *See* Mot. for Summary Judgment, Jan. 7, 2013 (Escobar Decl. Ex. H). The Motion for Summary Judgment currently pending in the United States District Court for the District of Maryland is nearly identical to the Motion for Summary Judgment previously filed in this matter in the Superior Court of Washington for King County. *Compare* CP 215-20 to Mot. for Summary Judgment, Jan. 7, 2013 (Escobar Decl. Ex. H).

2. The Underlying Facts - The AFH Loan Agreement and Mr. Kennedy's Personal Guaranty

On June 1, 2009, Columbia Bank as lender on the one hand, and AFH and Mr. Phillips as co-borrowers on the other (the "Co-Borrowers"), entered into a Business Loan Agreement. CP 2, 10, 30-34. That same day, Columbia Bank and the Co-Borrowers also entered into the Credit Agreement and Note that extended a \$1,000,000 line of credit under Loan Number 906002177 to AFH and Mr. Phillips. CP 10, 36-38. On June 4, 2009, Mr. Kennedy entered into a Commercial Loan Guaranty (the "Guaranty" and collectively with the Business Loan Agreement and the Credit Agreement and Note, the "AFH Loan Agreement"), and thereby unconditionally guaranteed all obligations under the AFH Loan Agreement. CP 11, 40-41.

The Business Loan Agreement includes an integration provision that fully integrates those documents related to the AFH Loan Agreement. It also contains a jurisdiction provision that provides that the Co-Borrowers "agree to waive any objection to jurisdiction or venue on the ground that [Co-Borrowers] are not residents of [Columbia Bank's] locality" and that allows for enforcement actions to be brought "in any state court having jurisdiction." CP 34. The Credit Agreement and Note includes a provision that makes it "subject to all the terms" of any

“security agreement, mortgage, deed of trust, trust deed, security deed or loan agreement of even or previous date” that secures it. CP 37. It does not contain a jurisdiction provision. CP 11.

On August 9, 2010, Mr. Phillips perished in a plane crash while on a fishing trip in Alaska with his 13-year old son, Willy. The crash killed four others, including former U.S. Senator Ted Stevens. Mr. Phillips is survived by his wife Janet and sons Andrew, Colter, Paul, and Willy. The Phillips Estate is in probate in Maryland Orphans’ Court. CP 11.

3. Columbia Bank Makes Demand on Mr. Kennedy and Mr. Kennedy Fulfills His Personal Guaranty

On October 22, 2010, Columbia Bank made demand on Mr. Kennedy pursuant to the Guaranty for immediate payment of the AFH Loan and other outstanding indebtedness of the Co-Borrowers. CP 12.

The Phillips Estate paid the interest on the AFH Loan through February 2011. *Id.* By March 17, 2011, the Phillips Estate had informed Columbia Bank that it could no longer pay the interest on the AFH Loan, noting that such payments would be viewed as preferential and are prohibited under Maryland law. *Id.*

On April 13, 2011, Mr. Kennedy discussed with Columbia Bank “options for enforcement of [the AFH Loan].” CP 13, 94. One week later, on April 20, 2011, Mr. Kennedy formed Columbia Asset in

Washington State. *Id.* At its founding, Mr. Kennedy was Columbia Asset's sole member. Almost eight months after Mr. Kennedy formed Columbia Asset, his counsel confirmed to the Phillips Estate's counsel that "Mr. Kennedy formed [Columbia Asset] to facilitate his satisfying the guaranty." CP 13, 101.

On May 27, 2011, Columbia Bank advised Mr. Kennedy that Columbia Bank "expected to be paid in full the \$1,200,000.00 by virtue of Mr. Kennedy's unlimited guaranty of the debt." CP 13, 103.

On July 25, 2011, Mr. Kennedy filed a counterclaim for indemnity against the Phillips Estate in Delaware Chancery Court. CP 13. Specifically, Mr. Kennedy alleged that "William D. Phillips, Sr. is the primary obligor on the debt owed to Columbia Bank. Kennedy, as guarantor, is entitled to be indemnified for any amounts he is required to pay Columbia Bank." CP 14, 143.

On August 4, 2011, Columbia Bank, on the one hand, and Columbia Asset and Mr. Kennedy, an individual, on the other, entered into the Loan Purchase Agreement.⁴ CP 14, 147-151. Mr. Kennedy executed the Loan Purchase Agreement on behalf of Columbia Asset as its "Sole Member." CP 14, 151.

⁴ The Loan Purchase Agreement identifies Columbia Bank as the "Seller" and Columbia Asset as the "Purchaser," but does not specifically identify Mr. Kennedy's status, other than as a party.

The Loan Purchase Agreement, in its Recitals, states that “[p]ursuant to a Commercial Loan Guaranty also dated as of June 1, 2009, Kennedy unconditionally guaranteed all of AFH’s and Phillips’ obligations to the Bank under the Loan.” CP 14, 147. It further states that “[t]he bank has made demand on Kennedy for payment of the amounts owing under the Loan pursuant to the Commercial Loan Guaranty. Kennedy has instead proposed to purchase the Loan through a new entity he has established for that purpose, NEWCO.”⁵ CP 14, 148.

Mr. Kennedy (through Columbia Asset) paid the entire AFH Loan amount due, including legal fees and expenses. CP 14. The Loan Purchase Agreement provides that “[t]he purchase price will be funded by a loan from Bank to Kennedy, the proceeds of which Kennedy will loan to NEWCO.” CP 14, 149. Indeed, on August 4, 2011, Columbia Bank and Mr. Kennedy entered into a Non-Revolving Line of Credit Loan Agreement (“Line of Credit Agreement”). CP 153-177. The Line of Credit Agreement states that “[Mr. Kennedy] has applied to [Columbia Bank] for a non-revolving line of credit in the amount of One Million Two Hundred Fifty Thousand United States Dollars (\$1,250,000.00) to acquire, either directly or through an entity wholly owned by [Mr. Kennedy], both (i) Columbia Bank’s rights relating to a June 2009 loan from [Columbia

⁵ “NEWCO” refers to Columbia Asset.

Bank] to Atlantic Frost Holdings, LLC and William D. Phillips (the “Atlantic Frost Loan”), which [Mr. Kennedy] unconditionally guaranteed . . .” CP 14-15, 156.

On February 3, 2012, Mr. Kennedy’s counsel acknowledged that Mr. Kennedy had been “forced to honor his personal guaranty of an obligation owed by William D. Phillips to Columbia Bank related to the vessel Atlantic Frost.” CP 15, 179. On February 10, 2012, the Phillips Estate’s counsel asked Mr. Kennedy’s counsel to confirm that the Loan Purchase Agreement “satisfied Mr. Timothy Kennedy’s personal guaranty.” CP 15, 183. In response, Mr. Kennedy’s counsel provided a letter of the same day from Columbia Bank to Mr. Kennedy confirming that “your purchase of the loan for full face value certainly satisfied all of your obligations to the Bank under your personal guaranty, and we therefore view you to have honored your guaranty in full.” CP 15, 185, 187.

In addition, during a March 14, 2012 hearing before the Delaware Court of Chancery, Mr. Kennedy’s counsel represented that “Mr. Kennedy used [Columbia Asset] as the vehicle to satisfy his personal guaranty.” CP 15, 195.

Finally, in the Washington Federal Action, Mr. Kennedy provided a sworn declaration to support his opposition to the Phillips Estate’s

dismissal motion (and defense of his indemnification claim), stating “[s]ince the filing of the Complaint, I have been required to make good on my guaranty of that debt by Columbia State Bank.” See Decl. of Tim Kennedy in Supp. of Pl.’s Opp. to the Estate’s Mot. to Dismiss the Compl., Dkt. No. 33, Nov. 15, 2011, *Kennedy et al. v. Phillips, et al.*, No. 11-cv-01231-MJP (W.D. Wash.). CP 886.

B. Procedural History

On March 14, 2012, Columbia Asset brought suit against the Phillips Estate to enforce the Note in the Superior Court of Washington for King County.

On June 8, 2012, the Phillips Estate filed its Motion to Dismiss the Complaint for Lack of Jurisdiction, which the trial court granted on July 16, 2012. In its Motion to Dismiss, the Phillips Estate advanced two bases for dismissal. In granting the Phillips Estate’s dismissal motion, and under either basis for dismissal, it fully appears that the trial court either found that (1) Mr. Kennedy, through Columbia Asset, fulfilled his guaranty of the AFH Loan at issue by way of the Loan Purchase Agreement at issue, or (2) that the assignment of the AFH Loan amounted to an assignment from the creditor to the debtor. In either event, Mr. Kennedy fully discharged the AFH Loan Agreement at issue and any obligations arising thereunder, including the jurisdiction provision. As

Columbia Asset recognizes in its opening brief, this ruling—under either basis—necessarily entailed a factual finding and determination by the trial court that the conflicting representations Mr. Kennedy, his counsel, and Columbia Asset made to the Delaware Chancery Court, the Western District of Washington and the King County Superior Court regarding the purpose of the Loan Purchase Agreement and its effect on Mr. Kennedy’s guaranty operated as a fraud and abuse of Columbia Asset’s corporate form that justified deeming it an alter ego of Mr. Kennedy for purposes of concluding that the Loan Purchase Agreement fulfilled his guaranty and discharged the AFH Loan.

Columbia Asset moved for reconsideration of the King County court’s initial dismissal Order. Upon reconsideration, the court changed the dismissal from with prejudice to without prejudice, but did not vacate its dismissal of the Complaint.

IV. AUTHORITY AND ARGUMENT

A. Dismissal for Mootness

Rule 18.9(c)(2) of the Rules of Appellate Procedure provides that “The appellate court will, on motion of a party, dismiss review of a case... if the application for review is frivolous, moot, or solely for the purpose of delay.” RAP 18.9(c)(2).

1. Columbia Asset’s Identical Litigation in Maryland Renders This Appeal Moot.

Columbia Asset is currently litigating identical facts underlying two identical claims in two separate forums. Specifically, Columbia Asset is litigating the exact same facts underlying identical claims both here and in the United States District Court for the District of Maryland. Columbia Asset represented to the Maryland Court that it “filed a Notice of Appeal [in Washington] to preserve its rights under the attorney fee provisions in the loan agreement” and that “the outcome of the King County appeal will be limited to the issue of attorney fees” and would not address the merits. Pl.’s Opp’n at 3, Nov. 27, 2012 (Escobar Decl. Ex. D). This turned out to be false and Columbia Asset should be judicially estopped from pursuing this Appeal in a manner inconsistent with its representations to the Maryland court—a representation that gained it an advantage in the Maryland litigation (i.e., through the denial of the Estate’s motion to stay).⁶ See, e.g., *Cunningham v. Reliable Concrete Pumping, Inc.*, 126 Wn. App. 222, 224–25, 108 P.3d 147 (2005) (“Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage by

⁶ This is just another example of Mr. Kennedy playing fast and loose with courts across the country by representing one thing to one court and something completely different to another court. This is exactly why the trial court pierced Columbia Asset’s corporate veil. Perhaps not surprisingly, Columbia Asset made no attempt to reconcile Mr. Kennedy’s conflicting representations in any of its briefs to the trial court. Nor has it done so in its opening brief filed with this Court.

asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position.”); *Helpand v. Gerson*, 105 F.3d 530, 534 (9th Cir. 1997) (“Judicial estoppel, sometimes known as the doctrine of preclusion of inconsistent positions, precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position. It is an equitable doctrine intended to protect the integrity of the judicial process by preventing a litigant from ‘playing fast and loose with the courts’”) (citations omitted). As demonstrated by the scope and substance of Appellant’s Brief, it is clear that Columbia Asset is attempting to litigate the exact same facts underlying identical claims in two separate forums.

The denial of the Phillips Estate’s Motion to Stay the Proceeding Pending Appeal and Columbia Asset’s recently filed motion for summary judgment in Maryland renders this appeal moot. Columbia Asset has requested in its opening brief that this Court “vacate the Dismissal Order and the Reconsideration Order and remand to the trial court for further proceedings, including a ruling on [Columbia Asset’s] motion for summary judgment.” Br. of Appellant at 17. Columbia Asset’s recently filed motion for summary judgment in the District Court for the District of Maryland, however, is nearly identical to Columbia Asset’s motion for summary judgment here. *Compare* CP 215-223 with Escobar Decl., Ex.

H. Accordingly, all issues that would be determined on appeal and/or on remand to the trial court are actively being litigated in the District Court for the District of Maryland, rendering this appeal moot.

For the foregoing reasons, the Phillips Estate respectfully requests that this Court dismiss this appeal for mootness under RAP 18.9(c)(2). Alternatively, the Phillips Estate responds to Appellant's Brief as follows.

B. Standard of Review on Appeal

The question of personal jurisdiction is one of law which this court reviews de novo only when the underlying facts are *undisputed*. See *Harbison v. Garden Valley Outfitters, Inc.*, 849 P.2d 669 (1993) (citing *Hein v. Taco Bell, Inc.*, 60 Wn. App. 325, 328, 803 P.2d 329 (1991) (emphasis added). The trial court's unchallenged findings of fact, however, are accepted as verities on appeal. *Standing Rock Homeowners Ass'n v. Misich*, 106 Wn. App. 231, 241 (2001).

Appellant argues that the de novo standard of review is appropriate here because neither of the orders from which Columbia Asset appeals purport to resolve issues of fact and the basis for the superior court's decision is that the Agreement and Note were discharged by operation of law. (Br. of Appellant at 4). However, in dismissing the Complaint for lack of personal jurisdiction, it fully appears that the trial court made certain factual determinations, including but not limited to whether (1)

Columbia Asset and Mr. Kennedy were alter-egos, (2) the Loan Agreement fulfilled Mr. Kennedy's personal guaranty; and (3) the Loan Agreement amounted to an assignment from the creditor to the debtor. Columbia Asset contested the facts underlying these determinations. Accordingly, the de novo standard is not appropriate here and this Court should give deference to the trial court's implicit findings of fact in dismissing the Complaint. See *Merriman v. Cokeley*, 168 Wn.2d 627, 631 (2010). The Court of Appeals reviews the trial court's findings of fact for an abuse of discretion. *Fernando v. Nieswandt*, 87 Wn. App. 103, 108, (1997).

C. The Trial Court's Dismissal Order Must Be Affirmed Because the Note and AFH Loan Agreement Was Discharged by Way of the Loan Purchase Agreement

The trial court's dismissal order must be affirmed. The trial court properly found that the Note and AFH Loan Agreement were discharged by way of the Loan Purchase Agreement, and therefore properly held that the Complaint should be dismissed for lack of personal jurisdiction. The trial court's sound discretion in reaching the factual determinations underlying the dismissal order should not be disturbed.

Despite its styling, the Loan Purchase Agreement is Mr. Kennedy's fulfillment of his Guaranty of the AFH Loan, not an arms-length purchase of that loan by Columbia Asset. On October 22, 2010,

Columbia Bank made demand on Mr. Kennedy pursuant to the Guaranty for immediate payment of the AFH Loan. CP 12. Thereafter, Mr. Kennedy and his counsel met with Columbia Bank and its counsel to discuss “options for enforcement” of the AFH Loan. CP 13, 94.

One week later, to “facilitate his satisfying the guaranty,” Mr. Kennedy formed Columbia Asset. CP 13, 101. At its formation, and throughout the relevant time period, Mr. Kennedy was Columbia Asset’s sole member. Mr. Kennedy signed all of the Loan Purchase Agreement documents on behalf of Columbia Asset, and personally borrowed the \$1.25 million that Columbia Asset used to “purchase” the AFH Loan. CP 13-15, 151, 156.

The Loan Purchase Agreement itself establishes that the transaction is designed to fulfill Mr. Kennedy’s Guaranty. It recites that Mr. Kennedy “unconditionally guaranteed all of AFH’s and Phillips’ obligations to the Bank” and “[t]he bank has made demand on Kennedy for payment of the amounts owing under the Loan pursuant to the Commercial Loan Guaranty.” CP 148. Moreover, it required Mr. Kennedy (through Columbia Asset) to pay the full face value of the note, consistent with Columbia Bank’s position that it “expected to be paid in full ... by virtue of Mr. Kennedy’s unlimited guaranty of the debt.” CP 103.

Tellingly, representations by Mr. Kennedy, his counsel, and even Columbia Bank confirmed that the Loan Purchase Agreement fulfilled Mr. Kennedy's Guaranty. CP 15, 179, 183, 185, 187, 195, 886.⁷ These representations were made when it suited Mr. Kennedy's needs at the time to support his previously filed indemnification claims against the Estate in Delaware and Washington federal court. For example, Mr. Kennedy's counsel represented to the Delaware Court of Chancery that "Mr. Kennedy used [Columbia Asset] as the vehicle to satisfy his personal guaranty." CP 195. Indeed, Mr. Kennedy's indemnity claim as guarantor in Delaware completely belies his (through Columbia Asset) instant claim under the AFH Loan Agreement. Another example is the sworn declaration Mr. Kennedy submitted to Judge Pechman to oppose the dismissal of his Washington federal court complaint (and its indemnification claim) for lack of jurisdiction: "Since the filing of the Complaint, I have been required to make good on my guarantee of that debt by Columbia State Bank." CP 886.⁸

⁷ Appellant argues that Columbia Asset offered affirmative evidence that Columbia Asset did not intend to discharge the Phillips Estate's Obligations on the Note and Agreement (Br. of Appellant at 8). In setting forth this argument, Appellant cites to a declaration by Barbara Hegstrom. Ms. Hegstrom's declaration, however, is self-serving and was made only *after* the Phillips Estate brought this issue to Columbia Asset's attention. Moreover, Ms. Hegstrom's declaration blatantly contradicts Columbia Bank's contemporaneous statements made at the time of and immediately after the execution of the Loan Purchase Agreement. CP 185.

⁸ Appellant's Brief makes the Phillips Estate's point that Columbia Asset was a mere alter ego that Mr. Kennedy created to attempt an end-run around the Maryland statute of

Two more examples are the representations made to the Phillips Estate last year by Mr. Kennedy's counsel and Columbia Bank during discussions about Mr. Kennedy's Delaware indemnification claim. Mr. Kennedy's counsel *sua sponte* wrote the Phillips Estate's counsel to state that Mr. Kennedy had "been forced to honor his personal guaranty." CP 179. In response to the Phillips Estate's request for further confirmation that Mr. Kennedy fulfilled the Guaranty, Columbia Bank wrote to Mr. Kennedy that "your purchase of the loan for full face value certainly satisfied all of your obligations to the Bank under your personal guaranty, and we therefore view you to have honored your guaranty in full." CP 185.⁹

Once Mr. Kennedy's suit before Judge Pechman failed and he realized that his indemnification claim against the Estate was otherwise time-barred,¹⁰ Mr. Kennedy changed his strategy and repackaged his

limitations. Appellant contends that "the purpose of the transaction was to convey Columbia State Bank's interest in the underlying debt to *Kennedy*, not to satisfy Kennedy's guaranty of the Loan." Br. of Appellant at 8. This is not the first time Columbia Asset has confirmed that Columbia Asset and Mr. Kennedy are mere alter egos. Indeed, Columbia Asset's Opposition to the Phillips Estate's Motion to Dismiss the Complaint made this same point, noting that "[t]he Estate's motion should be denied since all of [Columbia Bank's] rights, including the rights under the jurisdiction provision in the Business Loan Agreement, flow to *Kennedy* both under the Assignment and as a matter of subrogation law." CP 431.

⁹ Attached as Appendix A is a timeline of the relevant events and representations made by Mr. Kennedy and his counsel that were presented to the trial court in connection with the Estate's dismissal motion for lack of jurisdiction.

¹⁰ Despite filing six claims against the Phillips Estate in Maryland Orphans' Court, Mr. Kennedy did not file a single claim related to the AFH Loan. CP 298. He is thus

fulfillment of the Guaranty as a loan purchase by Columbia Asset so that he (through Columbia Asset) could purport to assume Columbia Bank's timely filed claim against the Phillips Estate in Maryland Orphans' Court.¹¹ Mr. Kennedy's latest gambit fails for the reasons discussed in the subsections below, as well as the Phillips Estate's dismissal motion papers.

1. The Trial Court Properly Found Columbia Asset to Be the Alter-Ego of Timothy Kennedy

Appellant argues that there is no evidence upon which the trial court could even have considered piercing Columbia Asset's corporate veil or disregarding its separate legal existence. In support of this argument, Appellant cites to *Meisel v. M&N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 410 (1982), noting that the record contains no evidence of fraud, illegality, or misrepresentation that supports piercing the corporate veil. However, a court may pierce the veil of an LLC and hold a member personally liable if respecting the LLC form would work injustice. See *Meisel*, 97 Wn.2d at 410 (1982). The record makes clear that Mr. Kennedy's behavior in forming Columbia Asset and using it to satisfy his Guaranty, only to turn around and seek to enforce the Note against the

time-barred from perfecting any judgment that he may receive as guarantor of the AFH Loan. *See id.*

¹¹ Moreover, Mr. Kennedy's convoluted scheme is also designed to enable his attempt to recover the full face value of the AFH Loan from the Phillips Estate, despite his contribution obligation as a member of AFH.

Phillips Estate in multiple forums, involves exactly the type of misrepresentations and injustice that the alter ego doctrine is intended to avoid.

Throughout the dismissal motion's briefing and hearing, Columbia Asset contended that it, not Mr. Kennedy, satisfied the AFH Loan. In its Motion for Reconsideration, however, Columbia Asset contended otherwise. CP 1032-33. Indeed, Columbia Asset's own arguments in its Motion for Reconsideration presuppose that Mr. Kennedy is an alter-ego of Columbia Asset. Accordingly, the trial court below properly found that Columbia Asset is the alter ego of Mr. Kennedy, and the trial court's sound discretion in reaching this determination should not be disturbed.

2. Timothy Kennedy Intended To Fulfill His Personal Guaranty By Way Of The Loan Purchase Agreement

In its brief, Appellant states that "the intent of the parties was clear: to sell the underlying debt to [Columbia Asset] for purposes of collection against the Phillips Estate and/or the Bank's collateral." Br. of Appellant at 8. Appellant also states that "[t]here is no evidence...that [Columbia Asset] was making a gift of discharge to the Estate when it paid the Bank to acquire the Bank's rights under the Note and Agreement." Appellant's arguments are misguided for at least two reasons.

First, Mr. Kennedy and his counsel previously made it abundantly clear to other courts and the Phillips Estate that the Loan Purchase Agreement was designed to fulfill Mr. Kennedy's Guaranty of the AFH Loan. Mr. Kennedy formed Columbia Asset with the intention that it would serve as the vehicle through which Mr. Kennedy would satisfy his personal Guaranty. The Loan Purchase Agreement itself recites that Mr. Kennedy unconditionally guaranteed all of AFH's and Phillips' obligations to the Bank. Moreover, on numerous occasions, Mr. Kennedy through counsel confirmed that he had satisfied his personal guaranty of the loan. Mr. Kennedy has also made representations to other courts that he fulfilled his guaranty. Indeed, in the Washington Federal Action, Mr. Kennedy provided a sworn declaration stating "[s]ince the filing of the Complaint, I have been required to make good on my guarantee of that debt by Columbia State Bank." CP 886. Thus, Appellant's argument that the intention of the parties was not to discharge the loan thus runs contrary to the undisputed facts established and accepted as true in the trial court.

Second, the Phillips Estate has never put forth the argument that Columbia Asset was "making a gift of discharge to the Estate." Br. of Appellant at 9. Rather, the Phillips Estate has consistently argued that the Loan Purchase Agreement served to fulfill Mr. Kennedy's personal

Guaranty, which had the legal effect of discharging the AFH Loan Agreement and all rights and obligations arising thereunder.

3. Fulfillment of Mr. Kennedy's Personal Guaranty Discharged the AFH Loan Agreement

Appellant argues that the Loan Purchase Agreement did not discharge the AFH Loan Agreement. Specifically, Appellant argues that the AFH Loan Agreement and Note are contracts, that all contracts are assignable, and that through the Loan Purchase Agreement, Columbia Bank assigned its rights to Columbia Asset and did not discharge the rights and obligations arising under the AFH Loan Agreement. Appellant's argument, however, is misguided.

As noted in the Phillips Estate's dismissal motion in the trial court, suretyship arises as a matter of law when one assumes an obligation to pay the debt of another. *Revocable Living Trust of Strand v. Wel-Co Group, Inc.*, 120 Wn. App. 828, 836 (2004). The note holder (here, Columbia Bank) is entitled to only one performance. *Id.* It is a long-established principle in Washington that where, as here, a contract to loan money is not governed by the Uniform Commercial Code,¹² the payment or

¹² The AFH Loan Agreement is not a negotiable instrument under Article 3 of the UCC because it is not an unconditional promise to pay a fixed amount of money. To the contrary, the Business Loan Agreement specifically identifies six conditions precedent, and contains several other conditions. To the extent that Columbia Asset argues that the Business Loan Agreement's conditions do not apply to the Credit Agreement and Note, neither does the Business Loan Agreement's jurisdiction provision. CP 18. Columbia Asset has alleged that the Business Loan Agreement and the Credit Agreement and Note

discharge of the monetary obligation set forth in the contract relieves all parties to the contract from any obligations assumed thereunder. *E.g.*, *Duke v. Benson*, 134 Wash. 493, 499 (1925).

Columbia Bank has received its one performance—Mr. Kennedy fulfilled the Guaranty by way of the Loan Purchase Agreement. In doing so, he discharged the AFH Loan Agreement and all obligations assumed thereunder, including its venue clause.

4. Assignment of Columbia Bank’s Claim Discharged the AFH Loan Agreement

Where an assignment of a claim is made from a creditor to a debtor, this has the legal effect of a satisfaction and payment of that claim. *Home Indem. Co. v. McClellan Motors, Inc.*, 77 Wn.2d 1, 5 (1969) (“An assignment of a claim from a creditor to the debtor is, in legal effect, a satisfaction and payment of that claim.”). Therefore, “[t]o the extent that a claim is thus assigned, the debt and rights based upon it are extinguished[,]” thereby “precluding any claim based upon it.” *Id.* (reversing trial court’s judgment because the trial court erred in allowing a claim against the assigned bond). Here, Columbia Bank’s (creditor)

are fully integrated. Columbia Asset makes this allegation to benefit from the jurisdiction provision of the Business Loan Agreement and the payment provision of the Credit Agreement and Note. However, because Columbia Asset has alleged these documents are fully integrated, the payment conditions of the Business Loan Agreement are imparted upon the Credit Agreement and Note. Accordingly, the Credit Agreement is not a negotiable instrument. CP 840-41.

assignment of its claim to Mr. Kennedy (a debtor) satisfied the claim and extinguished any rights based upon it.

5. Appellant's Recitation of the Relevant Law is Misguided

Appellant argues that the Phillips Estate's reliance on *Home Indem. Co. v. McClellan Motors, Inc.*, 77 Wn.2d 1 (1969) and *McChord Credit Union v. Parrish*, 61 Wn. App. 8 (1991) is misplaced and that it ignores a guarantor's subrogation rights. Br. of Appellant at 9. However, Appellant cites no authority that mentions, overrules, or otherwise addresses either *Home Indem. Co.* or *McChord Credit Union*. In fact, both of these cases remain good law and apply to the facts and circumstances at issue here, no matter how narrowly Columbia Asset tries to characterize their holdings or distinguish their facts.

Home Indem. Co. v. McClellan Motors, Inc., 77 Wn.2d 1, articulates the governing law on discharge and, applied to the facts of this case, establishes that Mr. Kennedy fully discharged the AFH Loan Agreement and all obligations arising thereunder. See CP 16–19. Appellant's Brief does not cite any authority superseding *Home Indemnity*. Instead, Appellant unsuccessfully attempts to distinguish *Home Indemnity* by arguing that the two propositions for which *Home Indemnity* stands are inapplicable here. Appellant, however, misapprehends the law and

misconstrues the applicability of *Home Indemnity* to this case. *Home Indemnity* holds that where an assignment of a claim is made from a creditor to a debtor, this has the legal effect of a satisfaction and payment of that claim. *Home Indem. Co. v. McClellan Motors, Inc.*, 77 Wn.2d 1, 5 (1969). To the extent that a claim is thus assigned, the debt and the rights based upon it are extinguished[,]” thereby “precluding any claim based upon it.” *Id.*

Appellant argues that *Home Indemnity* does not apply because (according to Appellant) the holding in *Home Indemnity* is that “a debtor who satisfies a claim against him cannot rely on the claimant’s assignment, to him, of the claimant’s assignment of the claimant’s claim against the debtor’s *agent*.” Br. of Appellant at 11. But, as noted in the Phillips Estate’s Opposition to Motion for Reconsideration of the Court’s July 16, 2012 Order, *McChord Credit Union* unmistakably establishes that *Home Indemnity* applies in these circumstances because the term “debtor” as used in *Home Indemnity* applies to guarantors. See *McChord Credit Union v. Parrish*, 61 Wn. App. 8, 12 (1991) (“Although Washington law is silent on this issue, we are satisfied by the wealth of case law from other jurisdictions that a guarantor is a debtor within the meaning of Article 9 of the U.C.C.”.) Appellant concedes that a guarantor is a type of debtor.

See Br. of Appellant, at 13.¹³ Therefore, *Home Indemnity*'s principle does apply to the facts and circumstances of this case, and correctly establishes that Mr. Kennedy, through the Loan Purchase Agreement, fully discharged the AFH Loan Agreement and all rights and obligations arising thereunder.

6. Subrogation Does Not Apply Here

Finally, Appellant argues that it is immaterial whether the assignment or subrogation analysis is applied to the facts of this case. This argument is entirely misguided, however, because any such subrogation is irrelevant here since Mr. Kennedy is not a party to the case. Moreover, Appellant's contention that Mr. Kennedy has a subrogation claim through Columbia Asset is inapposite to its contention all along that Appellant has contractual jurisdiction, as well as repugnant to the principles of equity and the policy underlying the alter ego doctrine. First, Appellant cannot have it both ways and its "catch-all" argument does

¹³ Appellant misconstrues the Phillips Estate's reliance on *McChord Credit Union*. Contrary to Appellant's assertions, the Phillips Estate has never argued that a "debtor and his guarantor are one and the same," or that "'guarantor' and 'debtor' are synonyms." Br. of Appellant at 12-13. Whether guarantor is a synonym for debtor is beside the point, which is that a guarantor is a type of debtor, as explained by the court in *McChord*. See also Black's Law Dictionary (9th ed. 2009) (defining "debtor" as "One who owes an obligation to another, esp. an obligation to pay money."). Debtor as used in *Home Indemnity* applies equally to guarantors, and *Home Indemnity* provides that any rights flowing from the Loan Purchase Agreement, including the jurisdiction provision of the AFH Loan Agreement, were extinguished because any purchase amounted to an assignment from the creditor to the debtor. Accordingly, the Court did not commit the alleged clear error of law asserted by Columbia Asset.

nothing to circumvent the fact that the Loan Purchase Agreement served to discharge the AFH Loan Agreement and all rights and obligations arising thereunder, including the jurisdiction provision. Second, the equity-based alter-ego doctrine, once applied, should not be used to further the pierced party's legal interests. *Walsh v. Wescoatt*, 131 Wn. 314, 317, 230 P. 160, 161 (1924) ("he who seeks equity must do equity"). The doctrine only applies to correct a fraud or injustice; it would violate principles of equity to allow the pierced party to use such a finding to its advantage. *See Dickens v. Alliance Analytical Laboratories, LLC*, 127 Wn. App. 433, 440 (2005) (holding that piercing the corporate veil is an equitable remedy imposed to rectify an abuse of the corporate privilege). In a similar vein, subrogation is not available for Mr. Kennedy (or Columbia Asset) because it is an equitable doctrine, and thus is only available to prevent fraud or correct an injustice, not to advance the fraud or injustice. *See Nat'l Bank of Washington v. Equity Investors*, 86 Wn.2d 545, 556 (1976); *see also Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn. App. 474, 499-500 (2011) (holding that equitable remedies are not granted where it would produce injustice and upholding the trial court's decision not to apply equitable subrogation).

7. Appellant’s New Argument that Sending Payment to Seattle Washington is Sufficient to Establish Specific Jurisdiction Fails

Columbia Asset alleges that because “performance of the obligations under the Note and Agreement were due in Seattle WA[,] [t]here was therefore, specific jurisdiction for enforcement of the obligations in Seattle even in the absence of the contractual venue and jurisdiction provisions.” Br. of Appellant at 3-4. However, Columbia Asset appears to raise this argument for the first time in its Brief of Appellant. Because this argument does not appear anywhere in the appellate record, this Court should not consider it. To the extent the Court does consider this argument, it nonetheless fails. A single provision requiring payment to be sent to Seattle, Washington is insufficient to establish specific jurisdiction. Moreover, simply because Columbia Bank signed in Washington, specific jurisdiction is not automatically conferred, even under a review of the entire transaction, there is no specific jurisdiction. *See MBM Fisheries, Inc. v. Bollinger Mach. Shop & Shipyard, Inc.*, 60 Wn. App. 414, 423 (1991) (“the mere execution of a contract with a resident of the forum state does not alone automatically fulfill the ‘purposeful act’ requirement. Instead, the *entire* business transaction, including prior negotiations, contemplated future consequences, the terms of the contract and the parties’ actual course of

dealing, must be evaluated in determining whether the defendant purposefully established minimum contacts by entering into a contract with a resident of the forum state.”) (emphasis added).

V. CONCLUSION

Mr. Kennedy fulfilled his Guaranty of the AFH Loan by way of the Loan Purchase Agreement, thereby fully discharging the AFH Loan Agreement and all obligations assumed thereunder, including the jurisdiction provision. Any rights flowing from the Loan Purchase Agreement, including the jurisdiction provision of the AFH Loan Agreement, were extinguished because the purchase amounted to an assignment from the creditor to the debtor. This Court should refrain from disturbing the trial court’s sound discretion in its factual findings. Accordingly, this Court should affirm the trial court’s ruling in its entirety and should uphold the trial court’s dismissal of Columbia Asset Recovery Group, LLC’s Complaint.

RESPECTFULLY SUBMITTED this 10th day of January, 2013.

DLA PIPER LLP (US)

By: 

Andrew R. Escobar, WSBA No. 42793
Stephen Hsieh, WSBA No. 45413

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 10th day of January, 2013, I caused a true and correct copy of the foregoing **MOTION TO DISMISS APPEAL FOR MOOTNESS AND, IN THE ALTERNATIVE, BRIEF OF RESPONDENT** to be delivered in the manner indicated below to the following counsel of record:

<p>Scott B. Henrie, WSBA No. 12673 Manish Borde, WSBA No. 39503 Hunter Abell, WSBA No. 37223 WILLIAMS, KASTNER & GIBBS PLLC 601 Union Street, Suite 4100 Seattle, Washington 98101-2380 E-mail: shenrie@williamskastner.com E-mail: habell@williamskastner.com E-mail: mborde@williamskastner.com</p> <p><i>Counsel for Appellant</i></p>	<p><input type="checkbox"/> Fax <input checked="" type="checkbox"/> Hand Delivered via Legal Messenger <input type="checkbox"/> Express Mail <input type="checkbox"/> Regular Mail <input checked="" type="checkbox"/> E-mail</p>
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Andrew R. Escobar, WSBA No. 42793

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STATE OF WASHINGTON
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APPENDIX A

TIMELINE OF RELEVANT EVENTS AND REPRESENTATIONS

Date	Event or Representations Made By Mr. Kennedy and His Counsel	Source
April 20, 2011	Mr. Kennedy forms plaintiff Columbia Asset Recovery Group (CARG)	CP 98-101
July 25, 2011	Mr. Kennedy files a counterclaim for indemnity against the Estate in Delaware Chancery Court: “Kennedy, as guarantor, is entitled to be indemnified for any amounts he is required to pay Columbia Bank.”	CP 143
July 25, 2011	Mr. Kennedy files an action in Washington federal court (assigned to Judge Pechman), in which he asserts a claim for indemnity against the Estate based on his guaranty of the AFH Loan: “Kennedy, as guarantor, is entitled to be indemnified for any amounts he is required to pay Columbia Bank.”	CP 880
Aug. 4, 2011	Columbia Bank, CARG and Mr. Kennedy enter into the Loan Purchase Agreement. <ul style="list-style-type: none"> • Mr. Kennedy executes the agreement as CARG’s “sole member” 	CP 151
Nov. 15, 2011	Mr. Kennedy represents to Judge Pechman in a sworn declaration that: “Since the filing of the Complaint, I have been required to make good on my guarantee of that debt by Columbia State Bank.”	CP 886
Feb. 3, 2012	Mr. Kennedy’s counsel represents that Mr. Kennedy had been “forced to honor his personal guaranty of an obligation owed by William D. Phillips to Columbia Bank related to the vessel Atlantic Frost.”	CP 179
Feb. 10, 2012	The Estate’s counsel sends a letter asking Mr. Kennedy’s counsel to confirm his prior representation that CARG’s Loan Purchase “satisfied Mr. Timothy’s Kennedy’s personal guarantee of that loan” because <i>“the Estate is relying upon [the accuracy of that representation.]”</i>	CP 183
Feb. 10, 2012	Columbia Bank provides Mr. Kennedy with a letter, which states: “[Y]our purchase of the loan for full face value certainly satisfied all of your obligations to the Bank under your personal guaranty, and we therefore view you to have honored your guaranty in full.” Mr. Kennedy’s counsel forwards this letter to the Estate’s counsel.	CP 185, 187
Mar. 14, 2012	Mr. Kennedy’s counsel represents to Vice Chancellor Laster of the Delaware Chancery court that “Mr. Kennedy used [CARG] as the vehicle to satisfy his personal guaranty.”	CP 195

NO. 69365-4-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

COLUMBIA ASSET RECOVERY GROUP, LLC
a Washington limited liability corporation,

Appellant,

v.

JOSEPH R. KELLY, as the Successor Personal Representative of
THE ESTATE OF WILLIAM D. PHILLIPS,

Respondent.

DECLARATION OF ANDREW R. ESCOBAR IN SUPPORT OF
THE ESTATE OF WILLIAM D. PHILLIPS' MOTION TO DISMISS
APPEAL FOR MOOTNESS AND, IN THE ALTERNATIVE, BRIEF OF
RESPONDENT

Andrew R. Escobar, WSBA No. 42793
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STATE OF WASHINGTON
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Attorneys for Respondent

I, Andrew R. Escobar, declare as follows:

1. I am an attorney admitted to practice in the State of Washington and am an attorney with the law firm of DLA Piper LLP (US), counsel of record for Defendant the Estate of William D. Phillips.

2. I have personal knowledge of the matters set forth herein and, if called as a witness, I could and would testify competently thereto.

3. This Declaration is filed in support of Defendant the Estate of William D. Phillips' Motion to Dismiss Appeal for Mootness and, in the Alternative, Brief of Respondent.

4. Attached as Exhibit A to this Declaration is a true and correct copy of the Complaint, *Columbia Asset Recovery Group, LLC v. The Estate of William D. Phillips*, Case No. V367943, Circuit Court for Montgomery County, Maryland, which was subsequently removed to the District Court for the District of Maryland, Civil No. PJM 12-cv-3191 (the "Maryland Action").

5. Attached as Exhibit B to this Declaration is a true and correct copy of an e-mail from Brad Bloodworth to Sean Bellew, dated September 27, 2012, filed at docket number 17-24 in the Maryland Action on November 20, 2012.

6. Attached as Exhibit C to this Declaration is a true and correct copy of the Estate of William D. Phillips' Motion to Stay the Proceeding Pending Appeal, filed in the Maryland Action on November 20, 2012.

7. Attached as Exhibit D to this Declaration is a true and

correct copy of Columbia Asset Recovery Group, LLC's Opposition to the Motion to Stay the Proceeding Pending Appeal, filed in the Maryland Action on November 27, 2012.

8. Attached as Exhibit E to this Declaration is a true and correct copy of the Estate of William D. Phillips' Reply in Support of the Motion to Stay the Proceeding Pending Appeal, filed in the Maryland Action on November 28, 2012.

9. Attached as Exhibit F to this Declaration is a true and correct copy of an e-mail from Brad Bloodworth to Sean Bellew, dated December 11, 2012, filed at docket number 20-3 in the Maryland Action on December 12, 2012.

10. Attached as Exhibit G to this Declaration is a true and correct copy of the Order Denying the Motion to Stay the Proceeding Pending Appeal, filed in the Maryland Action on December 20, 2012.

11. Attached as Exhibit H to this Declaration is a true and correct copy of Columbia Asset's Motion for Summary Judgment, filed in the Maryland Action on January 7, 2013.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 10th day of January, 2013, in Seattle, Washington.

DLA BIPER LLP (US)



Andrew R. Escobar, WSBA No. 42793

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 10th day of January, 2013, I caused a true and correct copy of the foregoing **DECLARATION OF ANDREW R. ESCOBAR IN SUPPORT OF THE ESTATE OF WILLIAM D. PHILLIPS' MOTION TO DISMISS APPEAL FOR MOOTNESS AND, IN THE ALTERNATIVE, BRIEF OF RESPONDENT** to be delivered in the manner indicated below to the following counsel of record:

Scott B. Henrie, WSBA No. 12673 Manish Borde, WSBA No. 39503 Hunter Abell, WSBA No. 37223 WILLIAMS, KASTNER & GIBBS PLLC 601 Union Street, Suite 4100 Seattle, Washington 98101-2380 E-mail: shenrie@williamskastner.com E-mail: habell@williamskastner.com E-mail: mborde@williamskastner.com <i>Counsel for Appellant</i>	<input type="checkbox"/> Fax <input checked="" type="checkbox"/> Hand Delivered via Legal Messenger <input type="checkbox"/> Express Mail <input type="checkbox"/> Regular Mail <input checked="" type="checkbox"/> E-mail
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Andrew R. Escobar, WSBA No. 42793

EXHIBIT A

COLUMBIA ASSET RECOVERY GROUP, LLC, a Washington Limited Liability Corporation, c/o Tim Kennedy 7643 NE Champagne Point Place Kirkland, WA 98034

Plaintiff,

v.

JOSEPH R. KELLY, as the Successor Personal Representative of THE ESTATE OF WILLIAM D. PHILLIPS, SR., deceased,

SERVE ON:

Brad Bloodworth, Esquire DLA Piper 500 Eight Street, NW Washington, DC 20004

Defendant.

* IN THE * CIRCUIT COURT * FOR * MONTGOMERY COUNTY, * MARYLAND

Case No.: 1367943

* DEMAND FOR JURY TRIAL

* * * * *

COMPLAINT

Plaintiff Columbia Asset Recovery Group, LLC, ("CARG"), as successor in interest to Columbia State Bank ("CSB"), by its undersigned counsel, hereby sues Defendant, Joseph R. Kelly, as the Successor Personal Representative of the Estate of William D. Phillips Sr., and states as follows:

Parties

1. Plaintiff CARG is a Washington limited liability company that holds, by way of assignment, a Commercial Line of Credit Agreement and Promissory Note (the "Note"), originally in favor of CSB. True and accurate copies of the Loan Documents are attached hereto as **Exhibit A** and are incorporated herein by reference.

2. There are two co-obligators on the Note.

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Clerk of the Circuit Court
Montgomery County, Md.

3. The first co-obligor is Atlantic Frost Holdings, LLC ("AFH") a Delaware limited liability company. Leslie R. Raber has been appointed the liquidating trustee of AFH. AFH is currently being dissolved before a Delaware Court.

4. The Second co-obligor is Defendant Joseph R. Kelly (the "Defendant"), as successor to Janet Phillips, the Personal Representative of the Estate of William D. Phillips, Sr., deceased (the "Estate"). The Estate is subject to probate in Montgomery County, Maryland, Probate Estate Case No. W66354.

5. Marc R. Feinberg, Esquire, as Registered Agent for the Estate, is located at c/o West and Feinberg, 4550 Montgomery Avenue, Suite 775N, Bethesda, Maryland 20814.

6. On November 12, 2010, CSB filed a timely notice of its claim on the Note in Maryland Probate under MD. Estates and Trusts Code Ann. §§ 8-102 through 8-104. The claim was disallowed on July 13, 2012.

7. This action is brought to liquidate that claim and reduce it to judgment.

Jurisdiction

8. This Court has subject matter jurisdiction over the dispute pursuant to §4-402(d) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland because it involves an action in contract where the amount in controversy exceeds \$5,000, exclusive of interest, costs and attorneys' fees.

9. The Court may exercise personal jurisdiction over the Defendant pursuant to §6-103 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland because the Defendant is the Personal Representative of The Estate which is subject to probate in Montgomery County, Maryland.

10. Venue is appropriate pursuant to §6-201(a) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland because the Defendant resides in Montgomery County, Maryland.

Factual Background

11. Pursuant to a Business Loan Agreement (the "Loan") dated as of June 1, 2009, CSB, as lender, extended a \$1,000,000 line of credit to AFH and William D. Phillips, Sr. ("Phillips"), as co-borrowers under Loan Number 906002177. The Loan was the last of a series of renewals and restatements of a line of credit originally extended by the bank to AFH in June 2005.

12. The indebtedness of AFH and Phillips to CSB for the Loan is evidenced, in part, by the Note also dated as of June 1, 2009.

13. The Note recites that the Loan is secured, in part, by a Commercial Security Agreement ("Security Agreement"), also dated as of June 1, 2009.

14. A UCC financing statement relating to the Security Agreement and predecessor security agreements was filed with the Delaware Secretary of State, under Initial Filing No. 5292470, which was subsequently amended by Amendment Filing Nos. 2009 2080080 and 2010 1053556.

15. The Note also recites that the Loan is secured, in part, by a Preferred Mortgage dated as of June 29, 2005 against the fishing vessel Atlantic Frost, Official Number 282733. The Preferred Mortgage was amended on September 14, 2005 and August 16, 2006.

16. The Preferred Mortgage was filed with the Vessel Documentation Office of the United States Coast Guard on July 5, 2005 at 10:41 a.m. in Batch 387509 as Document ID 3955489.

17. The September 14, 2005 Amendment was filed on September 29, 2005 at 10:50 a.m. in Batch 41473 as Document ID 4328084.

18. The August 16, 2006 Amendment was filed on September 1, 2006 at 10:40 a.m. in Batch 530353 as Document ID 5993214.

19. Pursuant to a Change in Terms Agreement dated as of June 1, 2010, the original June 1, 2010 maturity date of the Loan was extended to September 1, 2010.

20. Phillips died in a plane crash on August 10, 2010.

21. Janet Phillips was thereafter appointed Personal Representative of the Estate on September 21, 2010. In her capacity as Personal Representative, Janet Phillips twice signed loan extensions.

22. Pursuant to an Extension Agreement, signed by Janet Phillips and dated as of October 22, 2010, the maturity date of the Loan was further extended to January 1, 2011.

23. Pursuant to an Additional Extension Agreement, signed by Janet Phillips and dated as of January 21, 2011, the maturity date of the Loan was further extended to April 1, 2011.

24. The Loan is now in default, by virtue of the co-borrowers' failure to repay the Loan by the extended maturity date of April 1, 2011. Default interest applies and a 5% default penalty applies under Loan and Note.

25. Through August 1, 2011, CSB has verified the following amounts are due and owing to CSB under the Loan:

Outstanding Principal:	\$928,000.00
Accrued Interest:	\$37,648.45
Legal Fees and Expenses:	\$60,423.61
Total Through 8/1/11:	\$1,026,071.94

26. Interest has accrued on the Loan from August 1, 2011 forward at the per diem rate of \$270.66, a 5% default penalty is owed, the default interest rate applies, and both CSB and its assignee, CARG, have incurred and continue to incur additional legal fees and expenses in connection with the Loan.

27. On August 4, 2011, CSB and CARG executed the Loan Purchase and Assignment Agreement whereby CSB agreed to sell, and CARG agreed to purchase, the entirety of the Loan, including CSB's interest as lender under the Loan, Note, Guaranty, Security Agreement and Preferred Mortgage. A true and accurate copy of the Loan Purchase and Assignment Agreement is attached hereto as Exhibit B.

Count I

28. The allegations contained in Paragraphs 1 through 27 are incorporated by reference herein.

29. The Estate has materially breached the Loan and Note by failing to pay amounts due and owing Plaintiff CARG, as successor in interest to CSB.

30. Pursuant to the Loan and Note, the Estate owes CARG not less than \$1,087,349.84 for payments due, a 5% default penalty, interest and attorneys' fees and costs which continue to accrue.

WHEREFORE, Plaintiff Columbia Asset Recovery Group, LLC, as successor in interest to CSB, respectfully prays for judgment in favor of Plaintiff and against Defendant Joseph R. Kelly, as the Successor Personal Representative of the Estate of William D. Phillips, Sr., in the amount of no less than \$1,087,349.84, plus the 5% default penalty, interest from the date of judgment, plus attorneys' fees and costs.

Dated: September 5, 2012

Respectfully submitted,

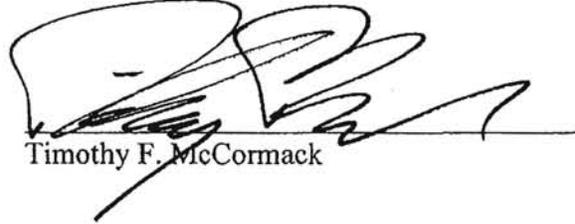
A handwritten signature in black ink, appearing to read 'Timothy F. McCormack', written over a horizontal line.

Timothy F. McCormack
Ballard Spahr LLP
300 East Lombard Street, 18th Floor
Baltimore, Maryland 21202
Telephone: 410.528.5600
Facsimile: 410.528.5650

*Attorney for Columbia Asset Recovery
Group, LLC*

JURY DEMAND

Plaintiff Columbia Asset Recovery Group, LLC demands trial by jury of all issues
so triable.



Timothy F. McCormack

BUSINESS LOAN AGREEMENT

Columbia State Bank - Seattle CSC #1 Office
719 2nd Ave., Ste 500
Seattle, Washington 98104

960903177	June 1, 2009	960903177
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BORROWER INFORMATION

Alexis Frost Holdings LLC
PO Box 2660
7th Flr Bldg, MA 02722-2660

Type of Business Entity: Limited Liability Company
State of Organization/Formation: Delaware

William D Phillips
13391 Manor Stone Dr
Germansville, MD 20874

Type of Entity: Individual
State of Residence: Maryland

RECEIVED OCT 16 2009

GUARANTOR INFORMATION

Timothy J Kennedy
7643 NE Champagne Point Place
Kirkland, WA 98034

Type of Entity: Individual
State of Residence: Washington

AGREEMENT. This Business Loan Agreement will be referred to in this document as the "Agreement." This Agreement is made by Columbia State Bank - Seattle CSC #1 Office (Lender), Borrower and Guarantor. The consideration is the premises, representations, and warranties made in this Agreement and the Related Documents.

DEFINITIONS. These definitions are used in this Agreement.

"Collateral" means the Property that all Obligors pledge, mortgage, or give Lender a security interest in, regardless of where the Property is located and regardless of when it was or will be acquired, together with all replacements, substitutions, proceeds, and products of the Property.

"Events of Default" means any of the events described in the "Events of Default" section of this Agreement.

"Financial Statements" means the balance sheets, earnings statements, and other financial information that Obligors have, are, or will be giving to Lender.

"Indebtedness" means the Loan and all other loans and indebtedness of Borrower to Lender, including but not limited to Lender's payments of insurance or taxes, all amounts Lender pays to protect its interest in the Collateral, overdrafts in deposit accounts with Lender, and all other indebtedness, obligations, and liabilities of Borrower to Lender, whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, joint or several, due or to become due, now existing or hereafter arising.

"Loan" means the loan or loans Lender makes to Borrower under the note or notes dated the same date as this Agreement that Borrower gives to Lender and all amendments, extensions, renewals, and refinancings.

"Obligor" means any person having any obligation to Lender, whether for the payment of money or otherwise, under this Agreement or under the Related Documents, including but not limited to Guarantor and any other guarantors of the Indebtedness.

"Party" means all Borrowers, Guarantors, and Non-Borrower Debtors signing this Agreement.

"Party" means any Borrower, Guarantor, and Non-Borrower Debtor signing this Agreement.

"Property" means the Parties' assets, regardless of what kind of assets they are.
"Related Documents" means all documents, promissory notes, security agreements, leases, mortgages, construction loan agreements, assignments of leases and rents, guaranties, pledges, and all other documents or agreements executed in connection with this Agreement. This term includes both documents existing at the time of execution of this Agreement and documents executed after the date of this Agreement.

"Definition of Obligor is amended and" means any person or legal entity having any obligation to Lender, whether for the payment of money or otherwise, under this agreement or under the Related Documents, including but not limited to Guarantor and any other guarantors of the Indebtedness. Further, Non-Borrower Debtors are parties that provide security to the Bank but are not obligated to the Bank as a Borrower or Guarantor.

"Definition of Indebtedness is amended and" means all borrower debts to the Bank are covered by this Business Loan Agreement as defined in the "Definitions" section under "Indebtedness" in this document. The current loan transactions outlined in the "Identification of Indebtedness" section is there solely to identify the current loan transaction and does not limit the definition of "Indebtedness" included in the "Definitions" clause.



IDENTIFICATION OF INDEBTEDNESS. The following loan and any amendments, extensions, renewals or refinancing (the "Loans") thereof is subject to this Agreement:

- Loan number 966002177 with a principal amount of \$1,000,000.00

BORROWER'S REPRESENTATIONS AND WARRANTIES. Obligors represent and warrant to Lender the accuracy of the description of Borrower and Guarantor, the nature of Borrower's business shown above, and the statements made in this section. The representations and warranties will continue and remain in effect until all of the indebtedness is fully paid to Lender and Obligors' obligations are fully performed.

Borrower's Existence and Authority. Borrower is duly formed and in good standing under all laws governing Borrower and Borrower's business, and the person or persons executing this Agreement have the power and authority to execute this Agreement and the Related Documents and to bind Borrower to the obligation created in this Agreement and the Related Documents.

Financial Information and Filing. All Financial Statements provided to Lender have been prepared and will continue to be prepared in accordance with generally accepted accounting principles, consistently applied, and fully and fairly present the financial condition of Obligors, and there has been no material adverse change in Obligors' business, Property, or condition, either financial or otherwise, since the date of Obligors' latest Financial Statements. Obligors have filed all federal, state, and local tax returns and other reports and filings required by law to be filed before the date of this Agreement and have paid all taxes, assessments, and other charges that are due and payable prior to the date of this Agreement. Obligors have made reasonable provision for these types of payments that are accrued but not yet payable. Borrower does not know of any deficiency or additional assessment not disclosed in Borrower's books and records.

Title and Encumbrances. Obligors have good title to all of Obligors' assets. All encumbrances on any part of the Property were disclosed to Lender in writing.

Compliance with General Law. Borrower is in compliance with and will conduct its business and use its assets in compliance with all laws, regulations, ordinances, directives, and orders of any level of governmental authority that has jurisdiction over Borrower, Borrower's business, or Borrower's assets.

Environmental Compliance. Obligors are in compliance with all applicable laws and rules of federal, state, and local authorities affecting the environment, as all have been or are amended.

No Litigation/No Misrepresentations. There are no existing or pending suits or proceedings before any court, government agency, arbitration panel, administrative tribunal, or other body, or threatened against Borrower that may result in any material adverse change in Borrower's business, property, or financial condition, and all representations and warranties in this Agreement and the Loan Documents are true and correct and no material fact has been omitted.

COVENANTS: On the date of this Agreement and continuing until the indebtedness is repaid and Borrower's obligations are fully performed, Borrower covenants as follows:

Notices of Claims and Litigation/Notices of Adversus Events. Borrower will promptly notify Lender in writing of all threatened and actual litigation, governmental proceeding, default, and every other occurrence that may have a material adverse effect on Borrower's business, financial condition, or the Property.

Insurance. Borrower will maintain adequate fire and extended risk insurance coverage, business interruption, workers' compensation, commercial general liability, and other insurance required by law or as may be required by Lender. All insurance policies will be in amounts, upon terms, and in a form acceptable to Lender. All policies must be carried with insurers acceptable to Lender. Borrower will provide evidence satisfactory to Lender of all insurance and that the policies are in full force and effect and all insurance on the Collateral will name Lender as a mortgagee and loss payee, will include a lender's loss payable endorsement, and will require thirty days advance written notice to Lender of any cancellation of coverage. If the Borrower fails to maintain required insurance, the absence of the required insurance will be an Event of Default. If this happens, Lender may buy the insurance, but will have no obligation to buy it. These amounts paid by Lender will be added to the indebtedness or will be payable on demand, at Lender's option.

Confirmatory Documents and Actions. Borrower agrees that on Lender's request, Borrower will do any act or execute any additional documents that are or may be required to make the terms of the Loan conform to the conditions contained in Lender's commitment to Borrower. Within five days of Lender's request, Borrower will furnish an estoppel certificate in a form Lender approves.

Payment of Taxes. Borrower will pay all taxes, levies, and assessments required by all local, state, and federal agencies. Borrower will make these payments when the amounts are due but before any penalty for late payment is imposed. Borrower's failure to promptly pay any tax, levy, or assessment due will be an Event of Default unless Borrower is diligently disputing the amount and Borrower has established a reserve account for the payment of the taxes if Borrower does not prevail in the dispute.

Business Existence and Operations. Borrower will keep Borrower's existence in its current organizational form in full force and effect unless Lender gives prior written consent to Borrower's proposed change. Borrower will not sell or merge Borrower's business or any part of Borrower's business without the Lender's prior written consent. Borrower will continue its business as currently conducted. Borrower will not change its name, its identification number, or its place of organization without Lender's prior written consent. Borrower will keep its books and records at the address in this Agreement. Borrower will promptly notify Lender in writing of any planned change in Borrower's principal place of business. The Borrower is to maintain executive and

management personnel with substantially the same qualifications and experience as the present executive and management personnel, and the Borrower will inform the bank of any change in such executive management and personnel.

Environmental Compliance. Borrower will comply with all laws affecting the environment. Borrower will notify Lender within ten days after Borrower receives a summons, notice, citation, letter, or any other type of notice from any federal, state, or local authority, or any other person that claims Borrower is in violation of any law affecting the environment. Obligors indemnify and hold Lender harmless from all violations of any environmental laws. This indemnity includes all costs and expenses incurred by Lender, including reasonable attorney's fees, that are related to a violation of any environmental laws, even if the indebtedness has been paid at the time any proceeding, claim, or action is started against Lender. Lender may itself or through Borrower arrange for an environmental audit prepared by a qualified environmental engineering firm acceptable to Lender to confirm the continued accuracy of Borrower's environmental representations and warranties. Borrower will pay for the environmental audit.

Use of Proceeds. Borrower will use the loan proceeds in its business.

Pay Limitations. Borrower will not draw, permit, or pay anyone more than is reasonable for services provided to Borrower.

No Borrowings, Guarantees, or Loans. Borrower will not incur debt, borrow money, or guaranty any loan or other obligation. Borrower will not lend any money or sell any of Borrower's accounts receivable without Lender's prior written permission.

No Encumbrances or Transfer of Assets. Borrower will not mortgage, assign, hypothecate, or consume any of the Property except to Lender without Lender's prior written permission. Borrower will not sell, transfer, or assign any of the Property without Lender's prior written permission. Borrower will not merge, consolidate, sell, transfer, license, lease, escheat or otherwise dispose of Borrower's Property or Borrower's business.

No Dividends, Distributions and Redemptions. Borrower will not pay or declare any dividend, or make any other distribution on account of any share of any class of its stock or other ownership interest, or redeem, purchase, or otherwise acquire directly or indirectly, any share of any class of its capital stock or other ownership interest.

No Loans or Investments. Borrower will not make any loan or advance to, or investments in, other persons, corporations or entities.

Conditions Precedent to Each Advance. Lender's obligation to make any Advance to or for the account of Borrower under this Agreement is subject to the following conditions precedent, with all documents, instruments, opinions, reports and other items required under this Agreement to be in form and substance satisfactory to Lender:

1) Lender shall have received evidence that this Agreement and all Related Documents have been duly authorized, executed, and delivered by Borrower to Lender; 2) Lender shall have received such opinions of counsel, supplemental opinions, and documents as Lender may request; 3) The security interests in the Collateral shall have been duly perfected, created, and perfected with first lien priority and shall be in full force and effect; 4) All guarantees required by Lender for the credit facility(ies) shall have been executed by each Guarantor, delivered to Lender, and be in full force and effect; 5) Borrower shall have paid to Lender all fees, costs, and expenses specified in the Agreement and the Related Documents or more than due and payable; 6) There shall not exist at this time of any Advances a condition which would constitute an Event of Default under this Agreement.

EVENTS OF DEFAULT. The occurrence of any of the following events will be an Event of Default.

Noncompliance with Lender Agreements. Default by Borrower or Guarantor under any provision of this Agreement, the Related Documents, or any other agreement with Lender.

False Statements. If an Obligor made or makes a false or misleading misrepresentation in the Related Documents, in any supporting material submitted to Lender or to third parties providing reports to Lender, or in Financial Statements given or to be given to Lender.

Material Adverse Change. Any material adverse change in the Borrower's business, financial condition, or the Property has occurred or is imminent; if the full performance of the obligations of any Obligor is materially impaired; or if the Collateral and its value or Lender's rights with respect thereto are materially impaired in any way. The existence or reasonable likelihood of litigation, governmental proceeding, default, or other event that may materially and adversely affect an Obligor's business, financial condition, or the Property.

Insolvency or Liquidation. An Obligor voluntarily accepts reorganization of its business or does not generally pay debts as they mature. If an Obligor has or will make a general assignment for the benefit of creditors or will file, or have filed against it, any petition under federal bankruptcy law or under any other state or federal law providing for the relief of debtors if the resulting proceeding is not discharged within thirty days after filing. If a receiver, trustee, or custodian is or will be appointed for an Obligor.

Default as Unraveled Debt. If Borrower or Guarantor materially defaults under a provision of an agreement with a third party or if the indebtedness under such an agreement is accelerated.

Judgments or Attachments. If there is entered against an Obligor a judgment that materially affects the Borrower's business, financial condition, or the Property, or if a tax lien, levy, writ of attachment, garnishment, execution, or similar lien is or will be issued against the Collateral or which materially affects Borrower's business, financial condition, or the Property, and which remains unpaid, unsatisfied on appeal, undischarged, unbonded, or undischarged for thirty days after its issue.

Collateral Impairment. Lender has a good-faith belief that Lender's rights in the Collateral are or will soon be impaired or that the Collateral itself is or soon will be impaired.

Termination of Existence or Change in Control. If Borrower or Borrower's business is sold or merged or if Borrower or Borrower's business suspends business or ceases to exist.

Insolvency. If Lender has a good-faith belief that any Party is unable or will soon be unable to perform that Party's duties under this Agreement or under the Related Documents.

Death. The death of an individual who is an Obligor, a partner in a partnership that is an Obligor, a member in a limited liability company that is an Obligor, an officer of a corporation that is an Obligor, or an individual of similar position in any other type of business organization that is an Obligor.

REMEDIES ON DEFAULT.

Remedies, No Waiver. The remedies provided for in this Agreement, the Related Documents, and by law are cumulative and not exclusive. Lender reserves the right to exercise some, all, or none of its rights and reserves the right to exercise any right at any time that Lender has the right, without regard to how much time has passed since the right arose. Lender may exercise its rights in its sole, absolute discretion.

Acceleration, Before. Upon an Event of Default, the Loan and the Indebtedness may, at Lender's sole option, be declared immediately due and payable. Lender may apply Obligor's bank accounts and any other property held by Lender against the Indebtedness.

CROSS-DEFAULT AND CROSS COLLATERALIZATION. The default of any Party under this Agreement, the Related Documents, or under any other obligation to Lender is a default under this Agreement. The Collateral secures all obligations of the Parties to Lender.

ATTORNEYS' FEES AND OTHER COSTS. If legal proceedings are instituted to enforce the terms of this Agreement, Borrower agrees to pay all costs of the Lender in connection therewith, including reasonable attorney's fees, to the extent permitted by law.

EXPENSES. Obligor agrees to pay all of Lender's reasonable expenses incidental to perfecting Lender's security interests and liens, all loanmaking premiums, Uniform Commercial Code search fees, and all reasonable fees incurred by Lender for mailing, inspection, and copying of the Obligor's books and records. Obligor also agrees to pay all reasonable costs and expenses of Lender in connection with the enforcement of Lender's rights and remedies under this Agreement, the Related Documents, and any other agreement between one or more Obligor and Lender, and in connection with the preparation of all amendments, modifications, and waivers of consent with respect to this Agreement, including reasonable attorney's fees.

GOVERNING LAW/JURISDICTION. This Agreement and the Related Documents are and will be governed by, and the rights of the Parties will be determined by, the laws of the state of Washington except to the extent that Federal law controls. If any part, term, or provision of this Agreement is determined to be illegal or in conflict with state or Federal law, the validity of the remaining portion or provisions of this Agreement will not be affected, unless the stricten portion or provision expressly affects Lender's right of receiving Lender's undeposited return, in which case Lender may, in its sole discretion, deem the Loan unsecured.

NOTICES. All notices required under this Agreement must be in writing and will be considered given: (i) on the day of personal delivery, or (ii) one business day after deposit with a nationally recognized overnight courier service, or (iii) three business days after deposit with the United States Postal Service sent certified mail, return receipt requested. Any of these methods may be used to give notice. All notices must be sent to the party or parties entitled to notice at the addresses first set forth in this Agreement. Any Party may change its address for notice purposes on five days prior written notice to the other Parties.

INTEGRATION AND AMENDMENT. This Agreement and other written agreements among the Parties, including but not limited to the Related Documents, set the entire agreement of the Parties and will be interpreted as a group, one with the others. None of the Parties will be bound by anything not expressed in writing, and this Agreement cannot be modified except by a writing executed by those Parties bound by the modification.

FURTHER ACTION. Obligor will, upon request of Lender, make, execute, acknowledge, and deliver to Lender the modified and additional instruments, documents, and agreements, and will take the further action that is reasonably required, to carry out the intent and purpose of this transaction.

CONTINUING EFFECT. Unless superseded by a later Business Loan Agreement, this Agreement will continue in full force and effect until all of the Obligor's obligations to Lender are fully satisfied and the Loan and Indebtedness are fully repaid.

HEADINGS. All headings in this Agreement are included for reference only and do not have any effect on the interpretation of this Agreement. COUNTERPARTS. This Agreement may be executed by the Parties using any number of copies of the Agreement. All executed copies taken together will be treated as a single Agreement.

TIME IS OF THE ESSENCE. Time is of the essence in the performance of this Agreement.

TRANSFERS. Borrower may not assign or transfer its rights or obligations under this Agreement without Lender's prior written consent. Lender may transfer its interest in Lender's sole discretion. Borrower waives all rights of offset and counterclaim. Borrower has against Lender. The purchaser of a participation in the loan may enforce its interest regardless of any claims or defenses Borrower has against Lender.

JURISDICTION. Obligors agree to waive any objection to jurisdiction or venue on the ground that Obligors are not residents of Lender's locality. Obligors authorize any action brought to enforce Obligor's obligations to be instituted and prosecuted in any state court having jurisdiction or in the United States District Court for the District that includes Lender's location as set forth at the beginning of this Agreement. Obligors authorize Lender to elect the court at Lender's sole discretion.

WAIVER OF JURY TRIAL. All parties to this Agreement knowingly and voluntarily waive, to the fullest extent permitted by law, any right to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, between them arising out of, in connection with, related to, or incidental to the relationship established in connection with this Agreement or any other instrument, document, or agreement executed or delivered in connection with this Agreement or the related transactions.

ORAL AGREEMENTS DISCLAIMED. Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

ADDITIONAL PROVISIONS. Financial Statements. Furnish Lender with the following:

Annual Tax Returns of Atlantic Frost Holdings LLC. Annually upon completion, but in no event later than November 1st of each year, Federal and other governmental tax returns, prepared by a Certified Public Accountant in a form satisfactory to Lender.

Interim Statements of Atlantic Frost Seafoods LLC. As soon as available, but in no event later than thirty (30) days after the end of each quarter, Company's balance sheet and profit and loss statement for the period ended, prepared by Company in a form satisfactory to Lender.

Annual Tax Returns of Atlantic Frost Seafoods LLC. Annually upon completion, but in no event later than November 1st of each year, Federal and other governmental tax returns, prepared by a Certified Public Accountant in a form satisfactory to Lender.

Annual Personal Financial Statements of William D. Phillips. As soon as available, but within sixty (60) days of the one year anniversary of the previous statement in this Borrower's personal financial statement, prepared by Borrower in a form satisfactory to Lender.

The Returns of William D. Phillips. Annually upon completion, but in no event later than November 1st of each year, Federal and other governmental tax returns, prepared by a Certified Public Accountant in a form satisfactory to Lender.

By signing this Agreement, Borrower acknowledges reading, understanding and agreeing to all its provisions.

WILLIAM D PHILLIPS
Individual

Date:

Atlantic Frost Holdings LLC

By: WILLIAM D PHILLIPS
Its Member

Date:

AGREEMENT OF GUARANTOR

Guarantor (i) acknowledges reading and understanding this Agreement; (ii) consents to the provisions of this Agreement relating to Borrower; (iii) agrees to furnish the Financial Statements to Lender that Lender reasonably requests; (iv) agrees to those portions of this Agreement that apply to Guarantor; (v) acknowledges that this Agreement has been freely executed without duress and after an opportunity to consult with counsel; and (vi) confirms that Guarantor received a copy of this Agreement, the Quarterly, and the other documents Guarantor requested.

TIMOTHY J KENNEDY
Individually

Date:

RECEIVED OCT 16 2009

COMMERCIAL LINE OF CREDIT AGREEMENT AND NOTE

Columbia State Bank - Seattle CBC #1 Office
719 2nd Ave., Ste 500
Seattle, Washington 98104

906002177	June 1, 2009	12 months	\$1,000,000.00	June 1, 2010
LOAN PURPOSE: Term Out Line of Credit				

BORROWER INFORMATION

Athletic Frost Holdings LLC
PO Box 2640
Fall River, MA 02722-2640

William D Phillips
13301 Manor Stone Dr
Germantown, MD 20874

LINE OF CREDIT AGREEMENT AND NOTE. This Commercial Line of Credit Agreement and Note will be referred to in this document as the "Agreement".

LENDER. "Lender" means Columbia State Bank - Seattle CBC #1 Office whose address is 719 2nd Ave., Ste 500, Seattle, Washington 98104, its successors and assigns.

BORROWER. "Borrower" means each person or legal entity who signs this Agreement.

PROMISE TO PAY. For value received, receipt of which is hereby acknowledged, on or before the Maturity Date, the Borrower promises to pay the principal amount of One Million and 00/100 Dollars (\$1,000,000.00) or such lesser amount as shall have been advanced by Lender, from time to time, to or on behalf of Borrower under this Agreement, and all interest and any other charges, including service charges, to the order of Lender at its office at the address noted above or at such other place as Lender may designate in writing. The Borrower will make all payments in lawful money of the United States of America.

PAYMENT SCHEDULE. This Agreement will be paid according to the following required payment schedule: Beginning on July 1, 2009, monthly payments of accrued and unpaid interest. All payments received by the Lender from the Borrower for application to the Line of Credit may be applied to the Borrower's obligations under the Line of Credit in such order as determined by the Lender.

ADVANCES BY LENDER. Advances of principal, repayment, and readvances may be made under this Agreement from time to time, but Lender, in its sole discretion and subject to provisions related to obligatory and discretionary advances, may refuse to make advances or readvances hereunder during any period(s) this Agreement is in default. All advances made will be charged to a loan account in Borrower's name on Lender's books, and the Lender shall debit such account for the amount of each advance made to, and credit to such account the amount of each repayment made by Borrower. If the Lender furnishes the Borrower with a statement of Borrower's loan account, such statement shall be deemed to be correct, accepted by, and binding upon Borrower, unless Lender receives a written statement exception from Borrower within 10 days after such statement has been furnished.

INTEREST RATE AND SCHEDULED PAYMENT CHANGES. The initial variable interest rate on this Agreement will be 4.750% per annum. This interest rate may change on June 2, 2009, and every day thereafter. Each date on which the interest rate may change is called the "Change Date." Beginning with the first Change Date, Lender will calculate the new interest rate based on Columbia Bank Base Rate, as published on Columbia Bank's website www.columbiabank.com in effect on the Change Date (the "Index") plus 1.500 percentage points (the "Margin"). If the Index is not available at that time, Lender will choose a new Index which is based on comparable information. The Index is used solely to establish a base from which the actual rate of interest payable under this Agreement will be calculated, and is not a reference to any actual rate of interest charged by any lender to any particular borrower. The interest rate will never be less than 5.500%.

Nothing contained herein shall be construed as to require the Borrower to pay interest at a greater rate than the maximum allowed by law. If, however, from any circumstances, Borrower pays interest at a greater rate than the maximum allowed by law, the obligation to be fulfilled will be reduced to an amount computed at the highest rate of interest permissible under applicable law and if, for any reason whatsoever, Lender ever receives interest in an amount which would be deemed unlawful under applicable law, such interest shall be automatically applied to amounts owed, in Lender's sole discretion, or as otherwise allowed by applicable law. An increase in the interest rate will result in a higher payment amount. Interest on this Agreement is calculated on a 365/360 day basis. The unpaid balance of this loan shall, while any Event of Default exists under this Agreement or any other agreement related to the loan, be subject to a Default Rate of interest equal to 5.000 percentage points over the applicable interest rate in effect at time of Default, and after Maturity, whether by acceleration or otherwise, shall be subject to a Post-Maturity Rate of interest equal to the same fixed or variable rate in effect before maturity.

LATE PAYMENT CHARGE. If any required payment is more than 10 days late, then at Lender's option, Lender will assess a late payment charge of \$5.00 or 5% of the amount past due, whichever is greater.

LINE OF CREDIT TERMS. This Agreement is discretionary. The Borrower acknowledges and agrees that although the Borrower may from time to time request an advance under this Agreement up to a maximum amount equal to the Line of Credit Limit, the Lender in no way is obligated to make such advance and all advances will be made by Lender in its sole and absolute discretion and subject to the terms and conditions of this Agreement.

Initials: *WDP*

Advances.

- Advances under this Agreement may be requested orally or in writing by the Borrower or by an authorized person.
- The total of any advance requested and unpaid principal cannot exceed One Million and 00/100 Dollars (\$1,000,000.00).
- All advances made will be charged to a loan account in Borrower's name on Lender's books, and the Lender shall debit such account the amount of such advance made to, and credit to such account the amount of each repayment made by Borrower. Lender shall provide to Borrower periodic statements of Borrower's loan account, which shall be deemed to be correct, accepted by, and binding upon Borrower unless Lender receives a written statement of exception from Borrower within 10 days after such statement is furnished.

Suspension and Termination. Advances under this Agreement will be available until the earlier to occur of (a) June 1, 2010; (b) the date the Line of Credit is cancelled by Borrower; or (c) the date the Line of Credit is cancelled by Lender due to an occurrence of an Event of Default (the "Maturity Date"). From and after the Maturity Date, no further advances will be made available to Borrower.

Loan Type Conversion. Provided no default or event of default shall have occurred, the Borrower may, at its option, apply for conversion of this Agreement into a Term loan 30 days prior to the Maturity Date. However, the Lender shall have no obligation to approve the Borrower's application.

SECURITY TO NOTE. Security (the "Collateral") for this Agreement is granted pursuant to the following security document(s):

- Security Agreement dated June 1, 2009 evidencing security interest in ATLANTIC FROST (Official Number 282733), together with all the engines, boilers, machinery, hardware, tools, riggings, boats, anchors, chains, tackle, apparel, furniture, fittings, tools, pumps, pipe, equipment including but not limited to electronic communication and navigational equipment, and all other appurtenances thereto appertaining and belonging, and all additions and improvements whether any of the foregoing is owned now or acquired later; all accessories, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance; general intangibles and accounts receivable).
- Preferred Ship Mortgage - #77 Atlantic Frost, Reg# 282733, ID# 282733 at Bath, ME in the amount of \$1,000,000.00, dated June 29, 2008.

GUARANTY. In support of this transaction, a Guaranty dated June 1, 2009 has been executed by Timothy J. Keasidy.

RIGHT OF SET OFF. To the extent permitted by law, Borrower agrees that Lender has the right to set off any amount due and payable under this Agreement, whether matured or unmatured, against any amount owing by Lender to Borrower including any or all of Borrower's accounts with Lender. This shall include all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. Such right of set off may be exercised by Lender against Borrower or against any assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor of Borrower, or against anyone else claiming through or against Borrower of such assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor, notwithstanding the fact that such right of setoff has not been exercised by Lender prior to the making, filing or issuance or service upon Lender of, or of notice of, assignment for the benefit of creditors, appointment or application for the appointment of a receiver, or issuance of execution, subpoena or order or warrant.

DISHONORED ITEM FEE. If Borrower makes a payment on the loan with a check or preauthorized charge which is later dishonored, a fee in the amount of \$29.99 will be charged.

DEFAULT. Upon the occurrence of any one of the following events (such as "Event of Default" or "Default" or "event of default"), Lender's obligations, if any, to make any advances will, at Lender's option, immediately terminate and Lender, at its option, may declare all indebtedness of Borrower to Lender under this Agreement to be immediately due and payable without further notice of any kind notwithstanding anything to the contrary in this Agreement or any other agreement: (a) Borrower's failure to make any payment on time or in the amount due; (b) any default by Borrower under the terms of this Agreement or any other agreement, security agreement executed in connection with this Agreement (individually, a "Loan Document" and collectively, the "Loan Documents"); (c) any default by Borrower under the terms of any other loan agreement, security agreement, mortgage or other document in favor of Lender; (d) the death, dissolution, or termination of existence of Borrower or any guarantor; (e) Borrower is generally not paying Borrower's debts as such debts become due; (f) the commencement of any proceeding under bankruptcy or insolvency laws by or against Borrower or any guarantor or the appointment of a receiver; (g) any default under the terms of any other indebtedness of Borrower to any other creditor; (h) any writ of attachment, garnishment, execution, tax lien or similar instrument is issued against any collateral securing the loan, if any, or any of Borrower's property or any judgment is entered against Borrower or any guarantor; (i) any part of Borrower's business is sold to or merged with any other business, individual, or entity; (j) any representation or warranty made by Borrower to Lender in any of the Loan Documents or any financial statement delivered to Lender proves to have been false in any material respect as of the time when made or given; (k) if any guarantor, or any other party to any agreement or instrument with or in favor of Lender entered into or delivered in connection with the Loan Documents, attempts to terminate or default under any such agreement or instrument; (l) Lender has deemed itself insecure or there has been a material adverse change of condition of the financial prospects of Borrower or any collateral securing the obligations owing to Lender by Borrower.

OTHER APPLICABLE AGREEMENTS. If this Agreement is secured by a security agreement, mortgage, deed of trust, trust deed, security deed or loan agreement or even or previous date, it is subject to all the terms thereof.

GENERAL WAIVERS. To the extent permitted by law, the Borrower, severally waives any required notice of presentment, demand, acceleration, intent to accelerate, protest and any other notice and defenses due to extensions of time or other indulgence by Lender or to any substitution or release of collateral. No failure or delay on the part of Lender, and no course of dealing between Borrower and Lender, shall

COMMERCIAL SECURITY AGREEMENT

Columbia State Bank - Seattle, CRC #1 Office
719 2nd Ave., Ste 500
Seattle, Washington 98104

966902177	June 1, 2009
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BORROWER INFORMATION

Atlantic Frost Holdings LLC
PO Box 3640
Fall River, MA 02722-3640

William D Phillips
13301 Mainer Blvd Dr
Cermansett, MD 20674

COLLATERAL OWNER INFORMATION

Atlantic Frost Holdings LLC
PO Box 3640
Fall River, MA 02722-3640

RECEIVED OCT 1 6 2009

AGREEMENT: For purposes of this document, the term "Agreement" is used when reference is made to this Commercial Security Agreement. **LENDER:** "Lender" means Columbia State Bank - Seattle, CRC #1 Office whose address is 719 2nd Ave., Ste 500, Seattle, Washington 98104, its successors and assigns.

DEBTOR: For purposes of this Agreement, the term "Debtor" refers to any party who has an interest in the Collateral defined in the "DESCRIPTION OF COLLATERAL" provision below. The Debtor includes each party (Borrower) identified above as a Collateral Owner. Throughout this Agreement, references to Debtor are to be construed as specifically defined by Article 9 (or equivalent) of the Uniform Commercial Code.

OBLIATION: For purposes of this Agreement, the term "Obligor" refers to any party, with respect to an obligation secured by a security interest in the collateral, that: (i) owes payment or other performance of the obligation, or (ii) is otherwise accountable in whole or in part for payment or other performance of the obligation. Throughout this Agreement, references to Obligor are to be construed as specifically defined by Article 9 (or equivalent) of the Uniform Commercial Code.

SECURITY INTEREST GRANT: Debtor, in consideration of the Obligations to Lender, as defined in the "OBLIGATIONS" provision below, hereby agrees to all of the terms of this Agreement and further hereby specifically grants Lender a continuing security interest in the collateral described in the "DESCRIPTION OF COLLATERAL" provision below. Debtor further grants Lender a security interest in the proceeds of said collateral; the proceeds of hazard, insurance and cashiers' checks and all deposits or other funds as any time credited by or due from Lender to Debtor; and accessories to, such collateral or interests thereby may and all deposits or other funds as any time credited by or due from Lender to Debtor; and any and all instruments, documents, policies, and certificates of insurance, securities, goods, accounts receivable, choses in action, chattel paper, cash, property, and the proceeds thereof (whether or not the same are Collateral or proceeds thereof hereunder), owned by Debtor or in which Debtor has an interest which are now or at any time hereafter in possession or control of Lender, or in trust by mail or courier to or from Lender, or in possession of any third party acting on Lender's behalf, without regard to whether Lender received the same in pledge, for safekeeping, as agent or otherwise, or whether Lender has conditionally released the same. Debtor's grant of a continuing security interest in the foregoing described collateral secures to Lender the payment of all loans, advances, and extensions of credit from Lender to Borrower, including all renewals and extensions thereof, and any and all obligations of every kind whatsoever, whether beneficial, now, or hereafter existing or arising between Lender and Borrower and hereovers insured or evidenced, whether primary, secondary, contingent, or otherwise.

OBLIGATIONS: As used in this Agreement, the term "Obligations" shall mean any and all of Obligor's or Debtor's obligations to Lender, whether they arise under this Agreement or the Note, Loan Agreement, Guaranty, or other evidence of debt executed in connection with this Agreement; or under any other mortgage, trust deed, deed of trust, security deed, security agreement, note, lease, instrument, contract, document, or other similar writing heretofore, now, or hereafter executed by the Obligor or Debtor to Lender, including any renewals, amendments and modifications thereof, and including oral agreements and obligations arising by operation of law. The Obligations shall also include all expenditures that Lender may make under the terms of this Agreement or for the benefit of Obligor or Debtor; all interest, costs, expenses, and attorney's fees accruing to or incurred by Lender in enforcing the Obligations or in the protection, maintenance, preservation, or liquidation of the Collateral; and any of the foregoing that may arise after the filing of any petition by or against Obligor or Debtor under the Bankruptcy Code, irrespective of whether the obligations do not accrue because of the automatic stay under Bankruptcy Code Section 362 or otherwise.

DESCRIPTION OF COLLATERAL: The collateral covered by this Agreement (the "Collateral") is all of the Debtor's property described below which the Debtor now owns or may hereafter acquire or create and all proceeds and products thereof, whether tangible or intangible,

including proceeds of insurance and which may include, but shall not be limited to, any items listed on any schedule or list attached hereto. The Collateral described has the meanings contained in the Uniform Commercial Code as adopted in the state where the Lender is located.

Specific Collateral. "Specific" refers to the specific property, together with all related rights, described below.

SPECIFIC COLLATERAL DESCRIPTION: ATLANTIC FROST (Official Number 283733), together with all the engines, boilers, machinery, bowsprits, sails, rigging, boats, anchors, chains, tackle, apparel, furniture, fittings, tools, pumps, pipe, equipment including but not limited to electronic communication and navigational equipment, and all other appurtenances thereto appertaining and belonging, and all additions and improvements; whether any of the foregoing is owned now or acquired later; all accretions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and accounts proceeds).

WARRANTIES. The Debtor warrants the following: Debtor has or will acquire free and clear title to all of the Collateral, unless otherwise provided herein; the security interest granted to the Lender shall be a first security interest, and the Debtor will defend same to the Lender against the claims and demands of all persons; the Debtor will fully cooperate in placing or maintaining Lender's lien or security interest; the Debtor agrees not to allow or permit any lien, security interest, adverse claim, charge, or encumbrance of any kind against the collateral or any part thereof, without the Lender's prior written consent; all of the Collateral is located in the state of the Debtor's address specified at the beginning of this Agreement, unless otherwise certified to and agreed to by the Lender, or, alternatively, is in possession of the Lender; the Debtor will not remove or change the location of any Collateral without the Lender's prior written consent; the Debtor will use the Collateral only in the conduct of its own business, in a careful and proper manner; the Debtor will not use the Collateral or permit it to be used for any unlawful purpose; except as otherwise provided in this Agreement with respect to inventory; Debtor will not, without the Lender's prior written consent, sell, assign, transfer, lease, charter, encumber, hypothecate, or dispose of the Collateral, or any part thereof, or any interest therein, nor will Debtor offer to sell, assign, transfer, lease, charter, encumber, hypothecate, or dispose of the Collateral, or any part thereof, or any interest therein; the Debtor will not conduct business under any name other than that given at the beginning of this Agreement, nor change, nor reorganize the type of business entity as described, except upon the prior written approval of the Lender, in which event the Debtor agrees to execute any documentation of whatsoever character or nature demanded by the Lender for the filing or recording, at the Debtor's expense, before such change occurs; the information regarding Debtor's state of organization or formation as set forth at the beginning of this Agreement is correct, and Debtor further warrants that Debtor will not change Debtor's state of organization or formation without Lender's prior written consent and will assist Lender with any changes to any documents, filings, or other records resulting or required therefrom; the Debtor will keep all records of account, documents, evidence of title, and all other documentation regarding its business and the Collateral at the address specified at the beginning of this Agreement, unless notice thereof is given to the Lender at least ten (10) days prior to the change of any address for the keeping of such records; the Debtor will, at all times, maintain the Collateral in good condition and repair and will not sell or remove same except as to inventory in the ordinary course of business; the Debtor is a legally created business entity, as described below, and it has the power, and the person signing is duly authorized, to enter into this Agreement; the execution of this Agreement will not create any breach of any provision of the Debtor's organizational documents (Articles of Incorporation and By-Laws if the Debtor is a corporation, Articles of Organization and Operating Agreement if the Debtor is a limited liability company, or Certificate of Limited Partnership (if applicable) or Partnership Agreement if the Debtor is a partnership), or any other agreement to which the Debtor is or may become a party; all financial information and statements delivered by the Debtor to the Lender to obtain loans and extensions of credit are true and correct and are prepared in accordance with generally accepted accounting principles; there has been no material adverse change in the financial condition of the Debtor since it last submitted any financial information to the Lender; there are no actions or proceedings, including set-off or counterclaims, which are threatened or pending against the Debtor, which may result in any material adverse change in the Debtor's financial condition or which might materially affect any of the Debtor's assets; and the Debtor has duly filed all federal, state, municipal, and other governmental tax returns, and has obtained all licenses, permits, and the like which the Debtor is required by law to file or obtain, and all such taxes and fees for such licenses and permits required to be paid, have been paid in full.

INSURANCE. The Debtor agrees that it will, at its own expense, fully insure the Collateral against all loss or damage for any risk of whatsoever nature in such amounts, with such companies, and under such policies as shall be satisfactory to the Lender. All policies shall expressly provide that the Lender shall be the loss payee or, alternatively, if requested by Lender, mortgagee. The Lender is granted a security interest in the proceeds of such insurance and may apply such proceeds as it may receive toward the payment of the Obligations, whether or not due, in such order as the Lender may in its sole discretion determine. The Debtor agrees to maintain, at its own expense, public liability and property damage insurance upon all its other property, to provide such policies in such form as the Lender may approve, and to furnish the Lender with copies of other evidence of such policies and evidence of the payments of the premiums thereon. All policies of insurance shall provide for a minimum 10 days' written notice of cancellation to Lender. At the request of Lender, such policies of insurance shall be delivered to and held by Lender. Debtor agrees that Lender is authorized to act as attorney for Debtor in obtaining, adjusting, settling, and canceling such insurance and endorsing any drafts or instruments issued or connected with such insurance. Debtor specifically authorizes Lender to disclose information obtained in conjunction with this Agreement and from policies of insurance to prospective insurers of the Collateral. If the Debtor at any time fails to obtain or to maintain any of the insurance required above, other than insurance for loss or damage to Collateral which is a motor vehicle or vessel purchased with the proceeds of a loan secured by this Agreement, or pay any premium in whole or in part relating thereto, the Lender, without waiving any default hereunder, may make such payment or obtain such policies as the Lender, in its sole discretion, deems advisable to protect the Debtor's property. All costs incurred by the Lender, including reasonable attorneys' fees, court costs, expenses, and other charges thereby incurred, shall become a part of the Obligations and shall be payable on demand.

ADDITIONAL COLLATERAL. In the event that Lender should, at any time, determine that the Collateral or Lender's security interest in the Collateral is impaired, insufficient, or has declined or may decline in value, or if Lender should deem that payment of the Obligations is insecure, time being of the very essence, then Lender may require, and Debtor agrees to furnish, additional Collateral that is satisfactory to Lender. Lender's request for additional collateral may be oral or in writing delivered by United States mail addressed to Debtor and shall not affect any other subsequent right of the Lender to request additional Collateral.

FINANCING STATEMENT(S) AND LIEN PERFECTION. Lender is authorized to file a conforming financing statement or statements to perfect its security interest in the Collateral, as provided in Revised Article 9, Uniform Commercial Code - Secured Transactions. Debtor agrees to provide such information, supplements, and other documents as Lender may from time to time require to supplement or amend such financing statement filings, in order to comply with applicable state or federal law and to preserve and protect the Lender's rights in the Collateral. The Debtor further grants the Lender a power of attorney to execute any and all documents necessary for the Lender to perfect or maintain perfection of its security interest in the Collateral, and to change or correct any error on any financing statement or any other document necessary for proper placement of a lien on any Collateral which is subject to this Agreement.

LANDLORD'S WAIVER. Upon request, Debtor shall furnish to Lender, in a form and upon such terms as are acceptable to Lender, a landlord's waiver of all liens with respect to any Collateral covered by this Agreement that is or may be located upon leased premises.

RELATIONSHIP TO OTHER AGREEMENTS. This Agreement and the security interests (and pledges and assignments, as applicable) herein granted are in addition to (and not in substitution, novation or discharge of) any and all prior or contemporaneous security agreements, security interest, pledges, assignments, mortgages, liens, rights, titles, or other interests in favor of Lender or assigned to Lender by others in connection with the Obligations. All rights and remedies of Lender in all such agreements are cumulative.

TAXES, LIENS, ETC. The Debtor agrees to pay all taxes, levies, judgments, assessments, and charges of any nature whatsoever relating to the Collateral or to the Debtor's business. If the Debtor fails to pay such taxes or other charges, the Lender, at its sole discretion, may pay such charges on behalf of the Debtor; and all sums so disbursed by the Lender, including reasonable attorneys' fees, court costs, expenses; and other charges relating thereto, shall become a part of the Obligations and shall be payable on demand.

ENVIRONMENTAL HAZARDS. Debtor certifies that as to any real estate which has been, is now, or will be in the future owned or occupied by Debtor, that such real estate has not in the past, nor will now or in the future be allowed in any manner to be exposed to or contain hazardous or environmentally harmful substances as may be defined or regulated by any state or federal law or regulation which impacts, in any way, such substances, except to the extent the existence of such substances has been previously disclosed in writing to Lender, and Debtor will immediately notify Lender in writing of any assertion made by any party to the contrary. Debtor indemnifies and holds Lender and Lender's directors, officers, employees, and agents harmless from any liability or expense of whatsoever nature, including reasonable attorneys' fees, incurred directly or indirectly as a result of Debtor's involvement with hazardous or environmentally harmful substances as may be defined or regulated as such under any state or federal law or regulation.

PROTECTION OF COLLATERAL. Debtor agrees that Lender may, at Lender's sole option, whether before or after any event of default, and without prior notice to Debtor, take the following actions to protect Lender's interest in the Collateral: (a) pay for the maintenance, preservation, repair, improvement, or testing of the Collateral; (b) pay any filing, recording, registration, licensing, certification, or other fees and charges related to the Collateral; or (c) take any other action to preserve and protect the Collateral or Lender's rights and remedies under this Agreement, as Lender may deem necessary or appropriate from time to time. Debtor agrees that Lender is not obligated and has no duty whatsoever to take the foregoing actions. Debtor further agrees to reimburse Lender promptly upon demand for any payment made or any expenses incurred by Lender pursuant to this authorization. Payments and expenditures made by Lender under this authorization shall constitute additional Obligations, shall be secured by this Agreement, and shall bear interest thereon from the date incurred at the maximum rate of interest, including any default rate, if one is provided, as set forth in the notes secured by this obligation.

INFORMATION AND REPORTING. The Debtor agrees to supply to the Lender such financial and other information concerning its affairs and the status of any of its assets as the Lender, from time to time, may reasonably request. The Debtor further agrees to permit the Lender, its employees, and agents, to have access to the Collateral for the purpose of inspecting it, together with all of the Debtor's other physical assets, if any, and to permit the Lender, from time to time, to verify Accounts as well as to inspect, copy, and to examine the books, records, and files of the Debtor.

CROSS-COLLATERALIZATION. Obligor and Debtor agree that any security interest provided in Collateral under this Agreement or any collateral provided in connection with any and all other indebtedness of Obligor or Debtor to Lender, whether or not such indebtedness is related by class or claim and whether or not contemplated by the parties at the time of executing each evidence of indebtedness, shall act as collateral for all said indebtedness. This cross-collateralization provision shall not apply to any Collateral that is a household goods or a principal dwelling.

CROSS-DEFAULT. Any default of the Obligor or Debtor in the terms of any indebtedness to Lender shall constitute a default under this Agreement.

DEFAULT. The occurrence of any of the following events shall constitute a default of this Agreement: (a) the non-payment, when due (whether by acceleration of maturity or otherwise), of any amount payable on any of the Obligations or any extension or renewal thereof; (b) the failure to perform any agreement of the Obligor or Debtor contained herein or in any other agreement Obligor or Debtor has or may have with Lender; (c) the publication of any statement, representation, or warranty, whether written or oral, by the Obligor or Debtor to the Lender, which at any time

is untrue in any respect as of the date made; (d) the condition that any Obligor or Debtor becomes insolvent or unable to pay debts as they mature, or makes an assignment for the benefit of the Obligor's or Debtor's creditors, or conveys substantially all of its assets, or in the event of any proceedings instituted by or against any Obligor or Debtor alleging that such Obligor or Debtor is insolvent or unable to pay debts as they mature (failure to pay being conclusive evidence of inability to pay), or makes application for appointment of a receiver or any other legal custodian, or in the event that a petition of any kind is filed under the Federal Bankruptcy Act by or against such Obligor or Debtor; (e) the entry of any judgment against any Obligor or Debtor, or the issue of any order of attachment, execution, sequestration, claim and delivery, or other order in the nature of a writ levied against the Collateral; (f) the death of any Obligor or Debtor who is a natural person, or of any partner of the Obligor or Debtor which is a partnership; (g) the dissolution, liquidation, termination of existence, business failure, merger, and consolidation or transfer of a substantial part of the property of any Obligor or Debtor which is a corporation or partnership; (h) the Collateral or any part of the Collateral declines in value in excess of normal wear, tear, and depreciation or becomes, in the judgment of Lender, impaired, unsatisfactory, or insufficient in character or value, including but not limited to the filing of a competing financing statement; breach of warranty that the Debtor is the owner of the Collateral free and clear of any encumbrances (other than those encumbrances disclosed by Debtor or otherwise made known to Lender, and which were acceptable to Lender at the time); sale of the Collateral (except in the ordinary course of business) without Lender's express written consent; failure to keep the Collateral insured as provided herein; failure to allow Lender to inspect the Collateral upon demand or at reasonable time; failure to make prompt payment of taxes on the Collateral; loss, theft, substantial damage, or destruction of the Collateral; and, when Collateral includes inventory, accounts, chattel paper, or instruments, failure of account debtors to pay their obligations in due course; or (i) the Lender in good faith, believes the Obligor's ability to repay the Obligor's indebtedness secured by this Agreement, any Collateral, or the Lender's ability to resort to any Collateral, is or soon will be impaired, time being of the very essence.

REMEDY. Upon the occurrence of an event of default, Lender, at its option, shall be entitled to exercise any one or more of the remedies described in this Agreement, in all documents evidencing the Obligations, in any other agreements executed by or delivered by Obligor or Debtor for benefit of Lender, in any third-party security agreement, mortgage, pledge, or guaranty relating to the Obligations, in the Uniform Commercial Code of the state in which Lender is located, and all remedies at law and equity, all of which shall be deemed cumulative. The Obligor agrees that, whenever a default exists, all Obligations may (notwithstanding any provision in any other agreement), at the sole option and discretion of the Lender and without demand or notice of any kind, be declared, and thereupon immediately shall become due and payable; and the Lender may exercise, from time to time, any rights and remedies, including the right to immediate possession of the Collateral, available to it under applicable law. The Debtor agrees, in the case of default, to assemble, at its own expense, all Collateral at a convenient place acceptable to the Lender. The Lender shall, in the event of any default, have the right to take possession of and remove the Collateral, with or without process of law, and in doing so, may peacefully enter any premises where the Collateral may be located for such purpose. Debtor waives any right that Debtor may have, in such instance, to a judicial hearing prior to such re-taking. The Lender shall have the right to hold any property then in or upon said Collateral at the time of repossession not covered by the security agreement until return is demanded in writing by Debtor. Obligor and Debtor agree to pay all reasonable costs of the Lender in connection with the collecting of the Obligations and enforcement of any rights connected with re-taking, holding, testing, repairing, improving, selling, leasing, or disposing of the Collateral, or like expenses. These expenses, together with interest thereon from the date incurred until paid by Obligor or Debtor at the maximum post-default rate stated in the notes secured hereby, which Obligor and Debtor agree to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement. The Lender may sell, lease, or otherwise dispose of the Collateral, by public or private proceedings, for cash or credit, without assumption of credit risk. Unless the Collateral is perishable or threatens to decline speedily in value or of a type customarily sold on a recognized market, Lender will send Debtor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition will be made. Any notification of intended disposition of the Collateral by the Lender shall be deemed to be reasonable and proper if sent United States mail, postage prepaid, to the Debtor at least ten (10) days before such disposition, and addressed to the Debtor either at the address shown herein or at any other address provided to Lender in writing for the purpose of providing notice. Proceeds received by Lender from disposition of the Collateral may be applied toward Lender's expenses and other obligations in such order or manner as Lender may elect. Debtor shall be entitled to any surplus if one results after lawful application of the proceeds. If the proceeds from a sale of the Collateral are insufficient to extinguish the Obligations of the Obligor hereunder, Obligor shall be liable for a deficiency. Lender shall have the right, whether before or after default, to collect and receipt for, compound, compromise, and settle, and give releases, discharges, and acquittances with respect to, any and all amounts owed by any person or entity with respect to the Collateral. Lender may remedy any default and may waive any default without waiving the default remedied and without waiving any other prior or subsequent default. The rights and remedies of the Lender are cumulative, and the exercise of any one or more of the rights or remedies shall not be deemed an election of rights or remedies or a waiver of any other right or remedy.

FUTURE ADVANCES AND AFTER-ACQUIRED PROPERTY. Future advances may be made by the Lender under this Agreement to the extent allowed by law. The security interest grant contained in this Agreement also applies to any Collateral of the type(s) identified in this Agreement that the Debtor acquires after this Agreement is executed, except that no security interest attaches to after-acquired consumer goods unless the Debtor acquires rights in such goods within 10 days of Lender giving value. In anticipation of future advances by Lender, the Obligor or Debtor authorizes Lender to file any necessary financing statements to protect Lender's security interest.

EXERCISE OF LENDER'S RIGHTS. Any delay on the part of the Lender in exercising any power, privilege, or right hereunder, or under any other document executed by Obligor or Debtor to the Lender in connection herewith, shall not operate as a waiver thereof, and no single or partial exercise thereof or any other power, privilege, or right shall preclude other or further exercise thereof. The waiver by the Lender of any default of the Obligor or Debtor shall not constitute a waiver of subsequent default.

CONTINUING AGREEMENT. This is a continuing agreement, and shall remain in full force and effect until the Obligations are paid in full. In the event that Lender should take additional Collateral, or enter into other security agreements, mortgages, guaranties, assignments, or similar

documents with respect to the Obligations, or should Lender enter into other such agreements with respect to other obligations of Obligor or Debtor, such agreements shall not discharge this Agreement, which shall be construed as cumulative and continuing and not alternative and exclusive.

The security interest (and pledge and assignment as applicable), hereby granted and all of the terms and provisions of this Agreement shall be deemed a continuing agreement and shall continue in full force and effect until the Obligations are paid in full. Any such revocation or termination shall only be effective if explicitly confirmed in a signed writing issued by Lender to such effect and shall in no way impair or affect any transactions entered into or rights created or liabilities incurred or arising prior to such revocation or termination, as to which this Agreement shall be truly operative until same are repaid and discharged in full. Unless otherwise required by applicable law, Lender shall be under no obligation to issue a termination statement or similar document unless Debtor requests same in writing, and providing further, that all Obligations have been repaid and discharged in full and there are no commitments to make advances, incur any obligations, or otherwise give value.

ABSENCE OF CONDITIONS OF LIABILITY. This Agreement is unconditional. Lender shall not be required to exhaust its remedies against Debtor, other collateral, or guarantors, or pursue any other remedies within Lender's power before being entitled to exercise its remedies hereunder. Lender's rights to the Collateral shall not be altered by the lack of validity or enforceability of the Obligations against Obligor, and this Agreement shall be fully enforceable irrespective of any counterclaim which the Obligor may assert on the underlying debt and notwithstanding any stay, modification, discharge, or extension of Obligor's Obligation arising by virtue of Debtor's insolvency, bankruptcy, or reorganization, whether occurring with or without Lender's consent.

NOTICES. Any notice or demand given by Lender to Obligor or Debtor in connection with this Agreement, the Collateral, or the Obligations, shall be deemed given and effective upon deposit in the United States mail, postage prepaid, addressed to Obligor or Debtor at the address designated at the beginning of this Agreement, or such other address as Obligor or Debtor may provide to Lender in writing from time to time for such purposes. Actual notice to Obligor or Debtor shall always be effective no matter how such notice is given or received.

WAIVERS. Debtor waives notice of Lender's acceptance of this Agreement, defenses based on suretyship, and to the fullest extent permitted by law, any defense arising as a result of any election by Lender under the Bankruptcy Code and the Uniform Commercial Code. Debtor and any maker, endorser, guarantor, surety, third-party pledgor, and other party executing this Agreement that is liable in any capacity with respect to the Obligations hereby waive demand, notice of intention to accelerate, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor, and any other similar notice whatsoever.

WAIVER OF JURY TRIAL. All parties to this Agreement hereby waive to the fullest extent permitted by law any right to trial by jury with respect to any disputes, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship established between them in this Agreement or any note or other instrument, document, or agreement executed or delivered in connection herewith or the transactions related hereto.

JOINT AND SEVERAL LIABILITY. If this Agreement is executed by more than one Party, it is understood and agreed that each such Party to this Agreement shall be jointly and severally bound and the word "Obligor" or "Debtor" as used herein shall be construed to be of such number as circumstances require.

SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but, in the event any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity and shall be severed from the rest of this Agreement without invalidating the remainder of such provision or the remaining provisions of this Agreement.

SURVIVAL. The rights and privileges of the Lender hereunder shall inure to the benefits of its successors and assigns, and this Agreement shall be binding on all heirs, executors, administrators, assigns, and successors of Obligor or Debtor.

ASSIGNABILITY. Lender may assign, pledge, or otherwise transfer this Agreement or any of its rights and powers under this Agreement without notice, with all or any of the Obligations, and in such event the assignee shall have the same rights as if originally named herein in place of Lender. Obligor or Debtor may not assign this Agreement or any benefit accruing to it hereunder without the express written consent of the Lender.

AUTHORIZATIONS. Debtor authorizes Lender, without notice or demand and without altering Debtor's liability or Lender's rights hereunder, from time to time to take acts which may alter the obligation of Obligor to Lender or Debtor's right to restitution or subrogation or both, including: (a) to renew, compromise, extend, or otherwise change the time for payment of, or otherwise change the terms of the Obligations or any part thereof, including increasing the rate of interest; (b) to extend additional credit to Obligor in any manner for any purpose; (c) to incur costs, including attorneys' fees, with respect to enforcing its rights with respect to the Obligations, and collateral securing the Obligations; (d) to exchange, enforce, waive, or release (whether intentionally or unintentionally) any security for the Obligations or any part thereof or purchase such security at private or public sale and to file any financing statements necessary for Lender to perfect or protect Lender's security interest; (e) to settle, release, compromise with, or substitute any one or more endorsers, guarantors, or other obligors of the Obligations; (f) to impair the value of Lender's interest in Collateral through failure to obtain or maintain protection, failure to obtain or maintain recordation of an interest, or through failure to perform a duty owed to Debtor to preserve the Collateral; and (g) to apply all monies received from Debtor and others or from Collateral in Lender's discretion without in any way being required to marshal assets.

GOVERNING LAW. This Agreement has been delivered in the state of Washington and shall be construed in accordance with the laws of that state.

HEADINGS AND GENDER. The headings preceding text in this Agreement are for general convenience in identifying subject matter, but have no limiting impact on the text which follows any particular heading. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require.

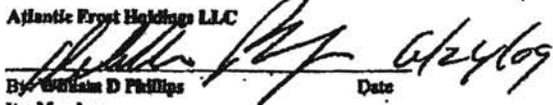
MISCELLANEOUS. This is of the essence of this Agreement. Except as otherwise defined in this Agreement, all terms herein shall have the meanings provided by the Uniform Commercial Code as it has been adopted in the state of Washington. All rights, remedies, and powers of the Lender hereunder are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all rights, remedies, and powers given hereunder or in or by any other instruments or by the provision of the Uniform Commercial Code as adopted in the state where the Lender is located, or any other laws, now existing or hereafter enacted. The Obligor specifically agrees that, if it has heretofore or hereafter executed any loan agreement in conjunction with the Agreement, any ambiguities between this Agreement and any such loan agreement shall be construed under the provisions of the loan agreement, to the extent that it may be necessary to eliminate any such ambiguity. Obligor and Debtor release Lender from any liability which might otherwise exist for any act or omission of Lender related to the collection of any debt secured by this Agreement or the disposal of any Collateral, except for the Lender's willful misconduct.

ORAL AGREEMENTS DISCLAIMER. Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

ACKNOWLEDGMENT. Debtor acknowledges agreeing to all of the provisions in this Agreement, and further acknowledges receipt of a true and complete copy of this Agreement.

IN WITNESS WHEREOF, Debtor has executed this Agreement on the date and year shown below.

Atlantic Frost Holdings LLC

By: 
William D Phillips

Date

Its: Member

COMMERCIAL LOAN GUARANTY

Columbia State Bank - Seattle CBC #1 Office
 719 2nd Ave., Ste 500
 Seattle, Washington 98104

LOAN NUMBER	PURCHASE DATE
986002177	June 1, 2009

GUARANTOR INFORMATION

Timothy J Kennedy
 7643 NE Champagne Point Place
 Kirkland, WA 98034

Type of Entity: Individual
 State of Residence: Washington

BORROWER INFORMATION

Atlantic Frost Holdings LLC
 PO Box 2640
 Fall River, MA 02722-2640

Type of Business Entity: Limited Liability Company
 State of Organization/Formation: Delaware

William D Phillips
 13301 Manor Stone Dr
 Germantown, MD 20874

Type of Entity: Individual
 State of Residence: Maryland

NOTICE TO GUARANTOR. Each undersigned Guarantor is being asked to guarantee all of Borrower's past, present and future obligations. If Borrower does not pay, any Guarantor may be required to do so. In addition, any Guarantor may be required to pay collection expenses and costs. Lender can require any Guarantor to pay without first attempting to collect from the Borrower or any other Guarantor.

UNLIMITED CONTINUING GUARANTY. The undersigned, jointly and severally hereafter called the "Guarantor" in order to induce Lender to extend or continue to extend financial accommodations to Borrower, hereby guarantees to Lender the full and prompt payment of all loans, drafts, overdrafts, notes, bills, and all other debts, obligations, and liabilities of every kind and description, whether now owing or hereafter arising out of credit previously, contemporaneously, or hereafter granted by Lender to Borrower, whether arising from dealings between Lender and Borrower, or from dealings by which Lender may become, in any manner whatever, a creditor of Borrower. The Guarantor also agrees to pay all interest, fees, charges, attorney fees, and collection costs.

This Guaranty is unconditional and absolute. It is understood that this Guaranty shall cover all obligations of Borrower to Lender. This shall be a continuing guaranty and shall not be affected by any payment made by Borrower to Lender, whether in the form of cash, property, renewal, or other consideration.

This is a guaranty of payment and not of collection.

JOINT AND SEVERAL LIABILITY. If this Guaranty is signed by more than one person, each person having executed the Guaranty acknowledges that his or her obligation hereunder shall be joint and several. Each Guarantor expressly authorizes the Lender to proceed, in its sole and absolute discretion, against each or any Guarantor, and further agrees that if the Lender proceeds against any one of them, the others waive any defense of election of remedies and agree to continue to be liable under the terms of this Guaranty for any amount remaining owing to Lender from Borrower.

CONSENT. The Guarantor consents to all extensions, renewals, and modifications made by the Lender for, or on account of, any indebtedness of Borrower to Lender. Lender may proceed directly against Guarantor in the event of any default by Borrower without resorting to any other persons, to the assets of Borrower, to any collateral security granted by Borrower to Lender, or the liquidation of any collateral security given hereunder to secure this Guaranty. Furthermore, to the extent permitted by law, Guarantor hereby agrees and consents that the Lender may from time to time without notice to Guarantor and without affecting the liability of Guarantor (a) release, impair, sell or otherwise dispose of any security or collateral, (b) release or agree not to sue any guarantor or surety, (c) fail to perfect its security interest in or realize upon any security or collateral, (d) fail to realize upon any of the obligations of Borrower or to proceed against Borrower or any guarantor or surety, (e) renew or extend the time of payment, (f) increase or decrease the rate of interest, (g) accept additional security or collateral, (h) determine the allocation and application of payments and credits and accept partial payments, (i) determine what, if anything, may at any time be done with reference to any security or collateral, and (j) settle or compromise the amount due or owing or claimed to be due or owing from any Borrower, guarantor or surety, which settlement or compromise shall not affect the undersigned's liability for the full amount of the guaranteed obligations. To the extent permitted by law, Guarantor expressly consents to and waives notice of all of the above.

REPRESENTATIONS. Guarantor acknowledges and agrees that Lender (a) has not made any representations or warranties with respect to, (b) does not assume any responsibility to Guarantor for, and (c) has no duty to provide information to the undersigned regarding, the enforceability of any of the indebtedness or the financial condition of any Borrower or any other guarantor. Guarantor has independently determined the

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

DELAWARE DEPARTMENT OF STATE
 U.C.C. FILING SECTION
 FILED 02:53 PM 03/26/2010
 INITIAL FILING # 5292470 3
 AMENDMENT # 2010 1033556
 SRV: 100322906

A. NAME & PHONE OF CONTACT AT FILER (optional)
 Corporation Service Company 8008385294

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

CORPORATION SERVICE COMPANY
 2711 CENTERVILLE ROAD
 SUITE 600
 WILMINGTON DE 19808

1a. INITIAL FINANCING STATEMENT FILE # 5292470 3

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. **ASSIGNMENT (all or partial):** Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 8.

5. **AMENDMENT PARTY INFORMATION:** This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes.
 Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name changed) in item 7a or 7b and/or new address (if address changed) in item 7c. **DELETE** name: Give record name to be deleted in item 6a or 6b. **ADD** name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g if applicable.

6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME
 Atlantic Frost Holdings, LLC

OR 6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. **CHANGED (NEW) OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME

OR 7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

7d. TYPE OF ORGANIZATION 7e. JURISDICTION OF ORGANIZATION

8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.
 Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. **NAME of SECURED PARTY of RECORD AUTHORIZING THIS AMENDMENT**
 Columbia State Bank

10. **OPTIONAL FILER REFERENCE DATA**
 [49214351] #906002177

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
 Diligence 9006585294

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

CORPORATION SERVICE COMPANY
 2711 CONEYVILLE ROAD
 SUITE 400
 WILMINGTON DE 19808

DELAWARE DEPARTMENT OF STATE
 U.C.C. FILING SECTION
 FILED 04:31 PM 06/29/2009
 INITIAL FILING # 5292470 3
 AMENDMENT # 2009 2080080
 SRV: 090658435

1a. INITIAL FINANCING STATEMENT FILE # 5292470 3

1b. This FINANCING STATEMENT AMENDMENT is to be filed for record (or recorded) in the REAL ESTATE RECORDS.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in Item 7a or 7b and address of assignee in Item 7c; and also give name of assignor in Item 8.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes.
 Also check one of the following three boxes and provide appropriate information in Item 6 and/or 7.

CHANGE name and/or address: Give current record name in Item 6a or 6b; also give new name (if name changed) in Item 7a or 7b and/or new address (if address changed) in Item 7c. DELETE name: Give record name to be deleted in Item 6a or 6b. ADD name: Complete Item 7a or 7b, and also Item 7c; also complete Items 7d-7f (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME
 Atlantic Frost Holdings Inc.

OR

6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

7d. TYPE OF ORGANIZATION 7e. JURISDICTION OF ORGANIZATION

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

ELECTRONIC COMMUNICATION AND NAVIGATIONAL EQUIPMENT

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT
 Columbia State Bank

10. OPTIONAL FILER REFERENCE DATA
 906002177 / 0209 [43446795]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
 Dena Behford 8008585294

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

DILIGENT, INC.
 6500 HARBOR HEIGHTS PARKWAY
 SUITE 400
 MCKINNEY WA 98275

DELAWARE DEPARTMENT OF STATE
 U.C.C. FILING SECTION
 FILED 05:27 PM 09/21/2005
 INITIAL FILING NUM: 5292470 3
 AMENDMENT NUMBER: 0000000
 SRV: 050774498

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
 ATLANTIC FROST HOLDINGS LLC

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

PO BOX 2640 FALL RIVER MA 02722-2640 US

1d. TYPE OF ORGANIZATION 1e. JURISDICTION OF ORGANIZATION

LTD LIABILITY COMPANY DE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TYPE OF ORGANIZATION 2e. JURISDICTION OF ORGANIZATION

3. SECURED PARTY'S NAME (or NAME or TOTAL ASSIGNEE of ASSIGNOR SRV) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
 COLONIA STATE BANK

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1102 BROADWAY FLAKA MS6100 TACOMA WA 98602 US

5. ALTERNATIVE IDENTIFICATION - 2004

6. This FINANCING STATEMENT is to be filed (or recorded) in the REAL ESTATE RECORDS. Attach Addendum If applicable

7. Check to REQUEST SEARCH REPORT(s) on Debtor(s) (ADDITIONAL FEE) (optional)

All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA
 201167667-1/MS 6208 [15004823]

UCC FINANCING STATEMENT ADDENDUM - COLLATERAL

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT		
1a. ORGANIZATION'S NAME		
ATLANTIC FROST HOLDINGS LLC		
OR	1b. INDIVIDUAL'S LAST NAME	
	FIRST NAME	MIDDLE NAME, SUFFIX

This FINANCING STATEMENT covers the following collateral:
ATLANTIC FROST (OFFICIAL NUMBER 282733), TOGETHER WITH ALL THE ENGINES,
BOILERS, MACHINERY, BOWSPRITS, SAILS,
RIGGINGS, BOATS, ANCHORS, CHAIRS, TACKLE, APPAREL, FURNITURE, FITTINGS,
TOOLS, PUMPS, PIPE, EQUIPMENT AND ALL OTHER
APPURTENANCES THEREUNTO APPERTAINING AND BELONGING, AND ALL ADDITIONS AND
IMPROVEMENTS; WHETHER ANY OF THE
FOREGOING IS OWNED NOW OR ACQUIRED LATER; ALL ACCESSIONS, ADDITIONS,
REPLACEMENTS, AND SUBSTITUTIONS RELATING TO
ANY OF THE FOREGOING; ALL RECORDS OF ANY KIND RELATING TO ANY OF THE FOREGOING;
ALL PROCEEDS RELATING TO ANY OF
THE FOREGOING (INCLUDING INSURANCE, GENERAL INTANGIBLES AND OTHER ACCOUNTS
PROCEEDS)

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

COLUMBIA STATE BANK
 LOAN OPERATIONS MS-8120
 1102 BROADWAY PLAZA
 TACOMA, WA 98402

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
ATLANTIC FROST HOLDINGS LLC

OR
 1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
PO BOX 2640 FALL RIVER MA 02722-2640 USA

1d. SEE INSTRUCTIONS ADDL INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any
LLC DE 3768699 NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR
 2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. SEE INSTRUCTIONS ADDL INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any
 NONE

3. SECURED PARTY'S NAME (or NAME OF TOTAL ASSIGNEE of ASSIGNOR OR) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
COLUMBIA STATE BANK

OR
 3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
719 2ND AVENUE, SUITE 500 SEATTLE WA 98104 USA

4. This FINANCING STATEMENT covers the following collateral:

ATLANTIC FROST (Official Number 282733), together with all the engines, boilers, machinery, bowsprits, sails, rigging, boats, anchors, chairs, tackle, apparel, furniture, fittings, tools, pumps, pipe, equipment and all other appurtenances thereunto appertaining and belonging, and all additions and improvements; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and accounts proceeds).

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOC BELLER/BUYER AD. LIEN NON-UCC FILING

6. THE FINANCING STATEMENT is to be filed (for record) (for recorded) in the REAL ESTATE RECORDS - Attach Address 7. Check to REQUEST SEARCH REPORT (on Debtor(s) (optional) (ADDITIONAL FEE) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

1a. ORGANIZATION'S NAME
ATLANTIC FROST HOLDINGS LLC

OR

1b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:
201167667-1 / 6208

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

11c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

11d. SEE INSTRUCTIONS | ADDL INFO RE ORGANIZATION DEBTOR | 11e. TYPE OF ORGANIZATION | 11f. JURISDICTION OF ORGANIZATION | 11g. ORGANIZATIONAL ID #, if any NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - Insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

12c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a future filing.

14. Description of real estate:

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.
 Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.
 Debtor is a TRANSMITTING UTILITY
 Filed in connection with a Manufactured-Home Transaction - effective 30 years
 Filed in connection with a Public-Finance Transaction - effective for 30 years

LOAN PURCHASE AND ASSIGNMENT AGREEMENT

THIS LOAN PURCHASE AND ASSIGNMENT AGREEMENT ("Agreement") is entered into this 4th day of August, 2011, by and among COLUMBIA STATE BANK, a Washington state banking corporation (the "Bank"), as Seller, COLUMBIA ASSET RECOVERY GROUP LLC, a Washington limited liability company d/b/a Atlantic Frost Asset Recovery ("NEWCO"), as Purchaser, and Timothy J. Kennedy, an individual ("Kennedy").

Recitals

A. Pursuant to a Business Loan Agreement dated as of June 1, 2009, the Bank, as lender, extended a \$1,000,000 line of credit to Atlantic Frost Holdings LLC, a Delaware limited liability company ("AFH"), and William D. Phillips, an individual ("Phillips"), as co-borrowers, under Loan Number 906002177 (hereinafter, the "Loan"). The Loan was the last of a series of renewals and restatements of a line of credit originally extended by the Bank to AFH in June of 2005.

B. The indebtedness of AFH and Phillips to the Bank for the Loan is evidenced, in part, by a Commercial Line of Credit Agreement and Note, also dated as of June 1, 2009.

C. The Commercial Line of Credit Agreement and Note recites that the Loan is secured, in part, by a Commercial Security Agreement, also dated as of June 1, 2009. A UCC financing statement relating to the Commercial Security Agreement and predecessor security agreements was filed with the Delaware Secretary of State, UCC Filing Section under Initial Filing No. 5292470, which was subsequently amended by Amendment Filing Nos. 2009 2080080 and 2010 1053556.

D. The Commercial Line of Credit Agreement and Note also recites that the Loan is secured, in part, by a Preferred Mortgage dated as of June 29, 2005 against the vessel ATLANTIC FROST, Official Number 282733. The Preferred Mortgage was amended by amendments dated September 14, 2005 and August 16, 2006. The Preferred Mortgage was filed with the Vessel Documentation Office of the United States Coast Guard on July 5, 2005 at 10:41 a.m. in Batch 387509 as Document ID 3955489. The September 14, 2005 amendment was filed on September 29, 2005 at 10:50 a.m. in Batch 414373 as Document ID 4328084. The August 16, 2006 amendment was filed on September 1, 2006 at 10:40 a.m. in Batch 530353 as Document ID 5993214.



E. Pursuant to a Commercial Loan Guaranty also dated as of June 1, 2009, Kennedy unconditionally guaranteed all of AFH's and Phillips' obligations to the Bank under the Loan.

F. Pursuant to a Change in Terms Agreement dated as of June 1, 2010, the original June 1, 2010 maturity date of the Loan was extended to September 1, 2010.

G. Phillips died in a plane crash on August 10, 2010.

H. Pursuant to an Extension Agreement dated as of October 22, 2010, the maturity date of the Loan was further extended to January 1, 2011.

I. Pursuant to an Additional Extension Agreement dated as of January 21, 2011, the maturity date of the Loan was further extended to April 1, 2011.

J. The Loan is now in default, by virtue of the co-borrowers' failure to repay the Loan by the extended maturity date of April 1, 2011.

K. Through August 1, 2011, the Bank has verified the following amounts are due and owing the Bank under the Loan:

Outstanding Principal:	\$ 928,000.00
Accrued Interest:	\$ 37,648.45
Legal Fees and Expenses:	\$ 60,423.61
Total through 8/1/11:	\$1,026,071.94

Interest continues to accrue on the Loan from August 1, 2011 forward at the per diem rate of \$270.66 per day, and the Bank may incur additional legal fees and expenses in connection with the Loan prior to closing of the transaction contemplated by this Agreement.

L. In 2004, the Bank agreed to co-guaranty a portion of a loan made by Eksportfinans ASA (the "Eksportfinans Loan") to Atlantic Frost Seafoods LLC ("AFS"), an affiliate of AFH, to finance AFS' purchase of certain seafood processing and packaging equipment from First Process AS, Norway. In connection with that guaranty, the Bank entered into a Cooperation Agreement dated November 30, 2004 (the "Cooperation Agreement") with the other co-guarantor of the Eksportfinans Loan, Garanti-Instituttet for Eksportfinans ("GIEK").

M. The Bank has made demand on Kennedy for payment of the amounts owing under the Loan pursuant to the Commercial Loan Guaranty. Kennedy has instead proposed to purchase the Loan through a new entity he has established for that purpose, NEWCO.

N. The Bank has agreed to sell, and NEWCO has agreed to purchase, the Loan on the terms and conditions set forth below.

Terms and Conditions

IT IS HEREBY AGREED:

1. Subject to the terms and conditions of this Agreement, the Bank hereby agrees to sell without warranty of any kind, and NEWCO hereby agrees to purchase, the entirety of the Loan, including the Bank's interest as lender under the Business Loan Agreement, the Commercial Line of Credit Agreement and Note, the Commercial Loan Guaranty and the Commercial Security Agreement, all dated as of June 1, 2009, and the Preferred Mortgage, dated June 29, 2005, as amended (collectively, the "Loan Documents").

2. As the purchase price for the Loan, NEWCO shall pay to the Bank at closing the total sum of One Million Twenty Six Thousand Seventy One and 94/100 Dollars (\$1,026,071.94), plus an amount equal to additional interest accrued and any additional legal fees and expenses incurred in connection with the Loan from August 1, 2011 through the date of closing. The purchase price will be funded by a loan from Bank to Kennedy, the proceeds of which Kennedy will loan to NEWCO.

3. Subject to the terms and conditions of this Agreement, the Bank also hereby agrees to assign to NEWCO all of the Bank's interest, rights and obligations under the Cooperation Agreement, and NEWCO hereby agrees to assume and be bound by the Cooperation Agreement and to perform any and all obligations of the Bank thereunder. NEWCO and Kennedy further agree to defend, indemnify and hold the Bank harmless from any and all claims, liabilities, obligations or expenses of any kind arising under or relating to the Cooperation Agreement, including without limitation any claim by GIEK thereunder. The obligations of NEWCO and Kennedy under this paragraph 3 shall survive the closing of this Agreement.

4. Without limiting the provisions of paragraph 3 of this Agreement, NEWCO and Kennedy also agree to defend, indemnify and hold the Bank harmless from any and all claims, demands, liabilities, obligations or expenses of any kind arising out of or relating to the Loan, any efforts to enforce the Loan, or the F/V ATLANTIC FROST, except claims, demands, liabilities, obligations or expenses attributable to the gross negligence or willful misconduct of the Bank. The obligations of NEWCO and Kennedy under this paragraph 4 shall also survive the closing of this Agreement.

5. At closing, the Bank shall deliver to NEWCO the following documents:
- a. An original Assignment of Loan in the form attached hereto as Exhibit A, duly executed by an authorized officer of the Bank;
 - b. An original Assignment of Preferred Mortgage in the form attached hereto as Exhibit B, duly executed by an authorized officer of the Bank;
 - c. An original Assignment and Assumption of Cooperation Agreement in the form attached hereto as Exhibit C, duly executed by an authorized officer of the Bank;
 - d. Copies of the Loan Documents;
 - e. A ledger history of the Loan reflecting the principal and interest the Bank contends are due and owing under the Loan through the date of this Agreement, as set forth in Recital K above; and
 - f. A copy of the Cooperation Agreement.

6. At closing, NEWCO shall deliver to the Bank an original Assignment and Assumption of Cooperation Agreement in the form attached hereto as Exhibit C, duly executed by an authorized member of NEWCO.

7. The closing of the transaction contemplated by this Agreement shall take place in the offices of the Bank by no later than August 12, 2011.

8. Should NEWCO require further information or cooperation from the Bank in connection with its subsequent efforts to collect the Loan, the Bank shall reasonably provide such information or cooperation, provided that nothing herein shall be interpreted to require the Bank to disclose any information or documents with respect to which the Bank may owe a duty to preserve the confidentiality of the same pursuant to any financial privacy laws or other applicable laws.

9. NEWCO and Kennedy hereby acknowledge that the Bank's verification of the amount of principal, interest, and legal fees and expenses due and owing to the Bank in connection with the Loan is provided solely to facilitate NEWCO's collection of the Loan from AFH and/or the Estate of Phillips. Such verification is made without warranty from or recourse to Bank and is not intended to establish any basis for liability on the part of the Bank to NEWCO, Kennedy, or any other person or entity.

10. This Agreement shall be governed and construed by the laws of the State of Washington.

11. This Agreement contains the entire agreement between the Bank, NEWCO, and Kennedy regarding the matters set forth herein. No party has entered into this Agreement based on any representation or consideration not stated in this Agreement. No change, modification or amendment of this Agreement shall be valid or binding, unless such change, modification or amendment is in writing and signed by the person(s) against whom the same is sought to be enforced.

12. In the event of any controversy, claim or dispute arising out of, or relating to, this Agreement or the method or manner of the performance thereof or the breach thereof, should any party file suit in order to enforce the terms of this Agreement, the prevailing party in such suit shall be entitled to recover, in addition to any other relief, a reasonable sum for attorneys' fees, costs and litigation expenses. If neither party wholly prevails, the party that substantially prevails shall be awarded a reasonable sum for attorneys' fees, costs and litigation expenses.

13. All terms and provisions of this Agreement have been expressly negotiated by Bank, NEWCO, and Kennedy, and each of the foregoing has had ample opportunity to consult with their respective legal counsel concerning the form and content of this Agreement. The rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the construction or interpretation of this Agreement or any documents related hereto.

DATED as of the date set forth above.

SELLER:

COLUMBIA STATE BANK

By: Barbara A. Hegstrom
Printed Name: Barbara A. Hegstrom
Its: Vice-President

PURCHASER:

COLUMBIA ASSET RECOVERY GROUP
LLC

By: Timothy J. Kennedy
Printed Name: Timothy J. Kennedy
Its: Sole Member

KENNEDY:

Timothy J. Kennedy

ASSIGNMENT AND ASSUMPTION OF COOPERATION AGREEMENT

1. **Assignment.** For valuable consideration, Columbia State Bank, a Washington state banking corporation ("Assignor"), hereby assigns, transfers, conveys and delegates to Columbia Asset Recovery Group LLC, a Washington limited liability company ("Assignee"), all of Assignor's interest, rights, obligations, duties, and liabilities of any kind under that certain Cooperation Agreement dated November 30, 2004 between Assignor and Garanti-Institutet for Eksportfinans, a copy of which is attached hereto.

2. **Assumption.** Assignee hereby accepts the assignment set forth in Section 1 above, and hereby assumes and agrees to be bound by the Cooperation Agreement and to fully perform and discharge all of Assignor's obligations, duties and liabilities thereunder. Assignee hereby agrees to indemnify, defend, and hold Assignor harmless from and against any and all claims, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, arising

3. **Counterparts.** This Assignment and Assumption may be executed in counterparts, each of which when so executed will be deemed an original and all of which when taken together constitute one and the same agreement.

4. **Attorneys' Fees.** In the event of any litigation brought to enforce or interpret or otherwise arising out of this Assignment and Assumption, the substantially prevailing party shall be entitled to an award of its reasonable attorneys' fees and

5. **Governing Law.** This Assignment and Assumption shall be governed by and construed in accordance with the Laws of the State of Washington without regard to conflicts-of-laws principles.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption to be effective as of the 4th day of August, 2011.

ASSIGNOR:

ASSIGNEE:

Columbia State Bank

Columbia Asset Recovery Group LLC

By: Barbara A. Hegstrom
Printed Name: Barbara A. Hegstrom
Its: Vice-President

By: Tim Kennedy
Printed Name: Timothy J. Kennedy
Its: Sole Member

3.1(b)(ix)

GIEK, Guarantee No. 100130

CO-OPERATION AGREEMENT

Whereas

Columbia State Bank ("the Bank") and Garant-Institutt for Eksportfinans ("GIEK") ("the Parties") have issued separate guarantees ("the Guarantees") to Eksportfinans ASA ("the Lender") for the latter's loan agreement dated November 23, 2004 ("Loan Agreement") with Atlantic Frost Seafoods LLC, U.S.A. ("the Debtor") for delivery of production/packing equipment for pelagic fish from FirstProcess AS, Norway ("the Exporter") to Atlantic Seafoods LLC, USA ("the Buyer").

The Parties hereby agree as follows:

1. INFORMATION

During the term of the Loan Agreement the Parties will exchange information concerning circumstances which have or may have relevance for the Guarantees.

2. CONSULTATION

If one of the Parties is planning to take steps against the Debtor, the Buyer, the Lender or the Exporter which possibly may have relevance for the Guarantees, the Parties shall consult with each other in advance.

3. CO-OPERATION IN CASE OF DEFAULT

In case the Debtor defaults on its obligations under the Loan Agreement or there is danger of such default, the Parties shall seek to co-operate for the purpose of averting losses and/or take steps for the purpose of recovering incurred losses.

If the Parties fail to reach an agreement as to what steps to take, they shall make a best effort to settle the claim against the Borrower between the Parties in accordance with their respective interests in the claim as set out in Clause 4 below.

4. DISTRIBUTION OF LIABILITY AND RECOVERY

During the term of the Loan Agreement the liability of the Parties under the Guarantees shall, at any time, be 30% for the Bank and 70% for GIEK. Recovered amounts shall be distributed in the same proportion.

In case one guarantor has special collateral etc., the proceeds of such collateral etc. shall be shared pro rata.

In case the Bank's claim against the Debtor is transferred to a third party, including but not limited to the Exporter, each party shall enter into and be bound by the provisions of this agreement.

CHIC, Guarantee No. 100190

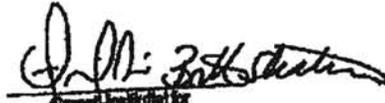
8. LAW AND JURISDICTION

This agreement shall be governed by and construed in accordance with Norwegian law and each Party hereby irrevocably submits to the jurisdiction of Oslo City Court.

November 23rd 2004

November 30th 2004


Colson State Bank


J.M. Zith
General Manager for
Eksportbank

16, 2006 amendment was filed on September 1, 2006 at 10:40 a.m. in Batch 530353 as Document ID 5993214.

6. Pursuant to a Commercial Loan Guaranty also dated as of June 1, 2009, Timothy J. Kennedy ("Kennedy") unconditionally guaranteed all of AFH's and Phillips' obligations to the Bank under the Loan.

7. Pursuant to a Change in Terms Agreement dated as of June 1, 2010, the original June 1, 2010 maturity date of the Loan was extended to September 1, 2010.

8. Phillips died in a plane crash on August 10, 2010.

9. Pursuant to an Extension Agreement dated as of October 22, 2010, the maturity date of the Loan was further extended to January 1, 2011.

10. Pursuant to an Additional Extension Agreement dated as of January 21, 2011, the maturity date of the Loan was further extended to April 1, 2011.

11. The Loan is now in default, by virtue of the co-borrowers' failure to repay the Loan by the extended maturity date of April 1, 2011.

12. As an authorized officer of the Bank, I can verify that through August 1, 2011, the following amounts are due and owing the Bank under the Loan:

Outstanding Principal:	\$ 928,000.00
Accrued Interest:	\$ 37,648.33
Legal Fees and Expenses:	\$ 60,423.61
Total through 8/1/11:	\$1,026,071.94

Interest continues to accrue on the Loan from August 1, 2011 forward at the per diem rate of \$270.66 per day.

13. Attached as Exhibit A is a true and correct copy of the ledger history on the Loan reflecting the outstanding principal balance and accrued interest due and owing the Bank under the Loan through August 1, 2011. This ledger also reflects some, but not all, of the \$60,423.61 in legal fees and expenses incurred by the Bank in connection with the Loan, as the Bank's policy is to post such fees and expenses to this ledger only once a loan is assigned to the special credits department of the Bank. The ledger also does not reflect \$11,427.50 for legal services

rendered and expenses incurred during the month of July, 2011, included in the total above, but not yet invoiced and paid.

Barbara A. Hegstrom
Barbara A. Hegstrom

SUBSCRIBED AND SWORN to before me this 4th day of August, 2011.



Cecilia A. Kakela
(Signature of Notary)

Notary Public in and for the State of
Washington, residing at Blaine, WA
My Commission expires 7-21-12

Exhibit A
Loan Ledger History

Columbia Bank Note
Interest Calculations Updating
Barbara Hergstrom Affidavit.

Balance Owing per Hergstrom Affidavit Verifying Balance Owed \$ 1,026,071.94

Verified Balance Date of Barbara Hergstrom Affidavit	8/1/2011
Hearing Date; July 12, 2012	7/12/2012
Number of Days	346.00

Per diem	270.66
Additional Interest Accrual	\$ 93,648.36

Total Obligation Owing with Updated Interest. \$ 1,119,720.30

Attorney Fees	to be determined
Costs	to be determined

EXHIBIT B

From: Bloodworth, Brad
Sent: Monday, October 01, 2012 5:02 PM
To: Gryce, Julie; Hinrichs, Diane
Subject: FW: Columbia Asset v. Kelly
FYI.

From: Bloodworth, Brad
Sent: Thursday, September 27, 2012 1:44 PM
To: Sean J. Bellew (bellews@ballardspahr.com)
Subject: Columbia Asset v. Kelly

Sean,

I understand that Columbia Asset noticed an appeal in Washington. Would Columbia Asset be willing to agree to a stay in Maryland pending resolution of the appeal in Washington? It seems to make sense considering the claims are identical.

Regards,
Brad

Brad Bloodworth
Of Counsel
T +1 202.799.4537
F +1 202.799.5537
M +1 202.617.0347
E brad.bloodworth@dlapiper.com



DLA Piper LLP (US)
500 Eighth Street, NW
Washington, DC 20004
United States
www.dlapiper.com

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**COLUMBIA ASSET RECOVERY
GROUP, LLC, a Washington Limited
Liability Corporation,**)
)
)
Plaintiff,)
)
)
v.)
)
)
**JOSEPH R. KELLY, as the Successor
Personal Representative of
THE ESTATE
OF WILLIAM D. PHILLIPS,**)
)
)
Defendant.)

Civil No. PJM 12-cv-3191

**DEFENDANT THE ESTATE OF WILLIAM D. PHILLIPS’
MOTION TO STAY THE PROCEEDINGS¹**

Defendant the Estate of William D. Phillips (the “Phillips Estate”), through undersigned counsel, hereby respectfully moves this Court to stay the proceedings pending the outcome of the litigation and appeal of a first-filed claim, identical to the claim here, in Washington.

I. INTRODUCTION

Plaintiff Columbia Asset Recovery Group, LLC (“Columbia Asset”) previously filed an identical claim in King County Washington. It was dismissed for lack of jurisdiction. The dismissal involved the merits of the case. In dismissing the complaint, the King County court implicitly found that Columbia Asset’s founder, through Columbia Asset, fulfilled his guaranty of the AFH Loan at issue by way of the Loan Purchase Agreement at issue, thereby fully

¹ The Defendant the Estate of William D. Phillips’ Motion to Stay the Proceedings was originally filed on October 3, 2012, in the Circuit Court for Montgomery County, and was submitted to this Court as part of Exhibit A to Docket Entry No. 11. The case caption has been re-styled to indicate the District Court for the District of Maryland. Other than the re-styled case caption, the current Motion to Stay the Proceedings is identical to the one filed in Montgomery County Circuit Court on October 3, 2012.

discharging the AFH Loan Agreement at issue and all obligations arising thereunder. The King County court also implicitly found that Columbia Asset's founder was an alter ego of Columbia Asset. Thus, the King County dismissal affects the merits of the claim. Columbia Asset has noticed appeal of the dismissal. This Court should abstain from exercising its jurisdiction to avoid conflicting and perhaps inconsistent rulings, since determination of the appeal in Washington affects the issues here.

II. BACKGROUND FACTS

On March 15, 2012, Columbia Asset filed in the Superior Court of King County Washington a complaint nearly identical to the instant Complaint.² (*See* King County Compl., Ex. A to Bloodworth Decl.) The King County court dismissed the complaint for lack of jurisdiction.³ (*See* Dismissal Order, July 16, 2012, Ex. B to Bloodworth Decl.; Dismissal Order, Sept. 5, 2012, Ex. C to Bloodworth Decl.) The dismissal involved the merits of the case. In dismissing the complaint, the King County court implicitly found that Timothy Kennedy, through Columbia Asset, fulfilled his guaranty of the AFH Loan at issue by way of the Loan Purchase Agreement at issue, thereby fully discharging the AFH Loan Agreement at issue and all obligations arising thereunder. (*See* Dismissal Motion, Ex. D to Bloodworth Decl.; Dismissal Opp'n, Ex. E to Bloodworth Decl.; Dismissal Reply, Ex. F to Bloodworth Decl.) The King

² Columbia Asset's sole founding member, Timothy Kennedy had previously filed a similar claim in the Western District of Washington and Delaware Chancery Court. (*See* Count XIX of W.D. Wash Compl., Ex. G to Bloodworth Decl.; Counterclaim Count XI of Del. Ch. Answer, Affirmative Defenses & Countercls., Ex. H to Bloodworth Decl.) The Western District of Washington complaint was dismissed for lack of jurisdiction. Summary Judgment was entered in favor of the Phillips Estate in Delaware Chancery Court because the claim was time-barred.

³ Columbia Asset moved for reconsideration of the King County court's initial dismissal. Upon reconsideration, the court changed the dismissal from with prejudice to without prejudice. While Columbia Asset was seeking reconsideration in Washington, Mr. Kennedy was contending in Delaware that "it has been determined that Maryland state court is the appropriate forum for [Columbia Asset] to assert its claim against Plaintiff to collect under the note." (*See* Columbia Asset's Reply in Support of its Mot. for Summ. J., at 2, 4, Ex I to Bloodworth Decl.)

County court implicitly found that Mr. Kennedy, who founded and managed Columbia Asset, was an alter-ego of Columbia Asset. (*Id.*)

On September 6, 2012, Columbia Asset filed the instant Complaint. Three weeks later, on September 26, 2012, Columbia Asset noticed an appeal of the King County court's dismissal. (*See* Notice of Appeal, Ex. J to Bloodworth Decl.) Thereafter, on October 2, 2012, Columbia Asset served the Phillips Estate with instant Complaint.

The Phillips Estate's counsel asked Columbia Asset's counsel whether Columbia Asset would agree to a stay in Maryland pending resolution of the appeal in Washington. (*See* E-mail from Brad Bloodworth to Sean Bellew (Sept. 27, 2012), Ex. K to Bloodworth Decl.) On October 2, 2012, Columbia Asset's counsel informed counsel for the Phillips Estate that Columbia Asset would not agree to a stay in Maryland pending resolution of the appeal in Washington.

III. AUTHORITY AND ARGUMENT

Whether to grant or deny a stay of proceedings is a matter within the discretion of the trial court, and only will be disturbed if the discretion is abused. *Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455, 460 (Md. Ct. Spec. App. 2011) (citing *Vaughn v. Vaughn*, 146 Md. App. 264, 279 (Md. Ct. Spec. App. 2002); *see also* *Dodson v. Temple Hill Baptist Church, Inc.*, 254 Md. 541, 546 (1969) and *Waters v. Smith*, 27 Md. App. 642, 652-53 (1975), *aff'd*, 277 Md. 189 (1976)).

It long has been held that when two courts have concurrent jurisdiction over the same subject matter, and the actions are materially the same, the court in which suit first was commenced should retain the case and another court should abstain from exercising its jurisdiction and interfering with the first proceeding. *See Vaughn v. Vaughn*, 146 Md. App. 264, 279 (Md. Ct. Spec. App. 2002) (citing *State v. 91st Street Joint Venture*, 330 Md. 620, 628 (1992) and *Wright v. Williams*, 93 Md. 66 (1901)).

“The objective of [this] rule, [is] to avoid conflicting and perhaps irreconcilable rulings in two cases addressing the same or overlapping issues . . . [and] in a proper case a court may stay proceedings before it pending the determination of another proceeding that may affect the issues raised.” See *Vaughn v. Vaughn*, 146 Md. App. 264, 279 (Md. Ct. Spec. App. 2002) (citing *Coppage v. Orlove*, 262 Md. 665, 666-67 (1971), which held that because it was “conceivable that as a result of the earlier action [pending between the parties] the debt sued upon m[ight] be satisfied ... in the interest of justice and orderly judicial processes this cause should have been stayed pending the conclusion of the earlier” action); see also *Dodson*, 254 Md. at 546; *Restivo v. Princeton Constr. Co.*, 223 Md. 516, 521 (1960); and *Resnick v. Kaplan*, 49 Md. App. 499, 512 (1981)).

Columbia Asset seeks appellate review of the King County court’s dismissal of a first-filed claim identical to the claim here. Accordingly, as in *Vaughn*, this Court should abstain from exercising its jurisdiction and interfering with the Washington proceeding. A stay is consistent with this rule’s objective of avoiding conflicting and perhaps inconsistent rulings because the King County court’s dismissal involves the merits of the claim and thus determination of the appeal affects the issues here.

IV. CONCLUSION

For the foregoing reasons, this Court should grant the Estate’s motion to stay the proceedings pending the outcome of the litigation and appeal in Washington.

[SIGNATURE ON FOLLOWING PAGE]

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

COLUMBIA ASSET RECOVERY)
GROUP, LLC, a Washington Limited)
Liability Corporation,)

Plaintiff,)

v.)

JOSEPH R. KELLY, as the Successor,)
Personal Representative of)
THE ESTATE)
OF WILLIAM D. PHILLIPS,)

Defendant.)
)
)
)

Civil No. PJM 12-cv-3191

**PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO STAY THE PROCEEDINGS¹**

Plaintiff Columbia Asset Recovery Group, LLC, ("CARG"), holds a Promissory Note and Commercial Loan Agreement as successor in interest to Columbia State Bank ("CSB"). Defendant Estate of William D. Phillips ("Defendant") is pending probate in Montgomery County, Maryland. Defendant has objected to the allowance of the Columbia Sate Bank probate claim.

By its undersigned counsel, CARG hereby responds to Defendant's Motion to Stay the Proceedings, and states as follows:

I. INTRODUCTION

¹ Plaintiff Columbia Asset Recovery Group, LLC's Response in Opposition to Defendant's Motion to Stay the Proceedings was originally filed on October 22, 2012, in the Circuit Court for Montgomery County, and was submitted to this Court, by Defendant, as Exhibit A to Docket Entry No. 12. The case caption has been re-styled to indicate the District Court for the District of Maryland. Other than the re-styled caption, the current Motion is identical to the one filed on October 22, 2012.

CARG previously filed its claim for allowance of the Columbia State Bank Note in King County, Washington. Following argument on motions, the case was dismissed, without prejudice, for lack of personal jurisdiction over the Defendant. CARG then brought suit to resolve the matter in Maryland where the probate estate is pending. CARG has noticed an appeal in Washington only to preserve its rights with regard to the attorney fee-shifting provision in the underlying loan documents.

Under Washington State law there were no "implicit" findings as the Washington court explicitly ruled that its dismissal was "without prejudice" and that is the limit of what a Washington State Court can do.² More so, there could be no implicit findings on the merits of the case as a practical matter as Defendants advanced different bases for dismissal. To reiterate, the case was dismissed on jurisdictional grounds alone without a ruling on the merits.

II. BACKGROUND FACTS

CARG is a Washington limited liability company that holds, by way of assignment, a Commercial Line of Credit Agreement and Promissory Note (the "Note"), originally in favor of Columbia State Bank. Defendant, the Estate of William D. Phillips, is co-obligor of the Note. This claim arises from Defendant's material breach by failing to pay amounts due and owing. CARG is the assignee of CSB and holder of the Note. As set forth above, the Defendant Estate is currently subject to probate in Montgomery County, Maryland.

² In *Housing Authority of the City of Everett v. Kirby*, 154 Wn. App. 842, 850-851, 226 P.3d 222 (2010) the court stated:

[I]n *State v. Northwest Magnesite Co.*, our Supreme Court held that dismissal without prejudice is the limit of what a court may do when it lacks personal jurisdiction over a party. There, the State of Washington filed an action against Northwest Magnesite Company, a Washington corporation, and two foreign corporations to recover royalties from the sale of minerals mined from public land leased to the company. Our Supreme Court concluded that the trial court lacked personal jurisdiction over the two foreign corporations and therefore "had no power to pass upon the merits of the state's case as against those parties" and could only dismiss the case without prejudice. (Emphasis added.)

CARG filed a complaint in the Superior Court of King County, Washington on March 15, 2012. On July 16, 2012, the King County court dismissed the complaint for lack of personal jurisdiction over the Estate. CARG then filed a Motion for Reconsideration. In response to CARG's Motion for Reconsideration, the King County court, on September 5, 2012, signed an order affirming the court's earlier dismissal of the case, without prejudice, for lack of personal jurisdiction. The parties to the King County lawsuit incurred significant legal fees. Therefore, CARG filed a Notice of Appeal to preserve its rights under the attorney fee provisions in the loan agreement and CARG filed the instant action to resolve the matter in the jurisdiction where the probate was pending and where Defendant insisted the matter should be resolved.

III. ARGUMENT

Where a court of concurrent jurisdiction over a particular subject matter has already exercised its jurisdiction, another court generally should abstain from interfering with that first proceeding. *State v. 91st Street Joint Venture*, 330 Md. 620, 628 (1991) (emphasis added). The rule is therefore not absolute and here the King County Court declined to exercise jurisdiction. "Whether to grant or deny a stay of proceedings is a matter within the discretion of the trial court, and only will be disturbed if the discretion is abused." *Dodson v. Temple Hill Baptist Church, Inc.*, 254 Md. 541, 546 (1969).

There is no danger of interference with King County's jurisdiction over this subject matter since the King County court has explicitly refused to exercise jurisdiction. Furthermore, there is no danger of inconsistent rulings as the outcome of the King County appeal will be limited to the issue of attorneys' fees, will take up to two years to resolve and will not affect the merits of the case currently before this Court. Defendant's vague references to suggested implicit findings are egregiously misleading and completely untenable under Washington State law. The argument should have no bearing on this Court's decision to stay or not stay the proceedings.

The appeal pertains to allocation of attorneys' fees incurred on the motions concerning jurisdiction rather than Defendant's breach of its obligations under the Note. That is, CARG is only prosecuting the appeal in King County because it needs a determination to help resolve a provision that governs the parties' responsibility for attorneys' fees. This appeal will likely take the good part of two years to resolve. Staying the underlying proceedings for the time necessary to resolve the attorneys' fees issue in Washington would place an extraordinary burden on CARG's ability to pursue its legal remedies in a forum ready, willing and able to exercise jurisdiction. It would also unduly delay the resolution of issues in the pending Montgomery County probate proceedings.

The King County dismissal, without prejudice, permits CARG to file this complaint in Maryland, where Defendant's liability on the Note should be resolvable in summary proceedings. Any further delay in this action, especially a delay that spans the lengthy appeal period in King County, will greatly prejudice CARG and delay administration of the probate. It is in the discretion of this Court to deny Defendant's motion, avoid delays in administration of the probate estate, and support an efficient disposition of the substantive claim on its merits. The Defendants avoided a timely resolution on the merits by asserting a lack of personal jurisdiction by the King County Court. Now that they are in the jurisdiction they desired they seek to further delay such a resolution. This Court has the absolute discretion to avoid greatly prejudicing CARG in its ability to swiftly and efficiently pursue its rights under the law.

IV. CONCLUSION

For the foregoing reasons, this Court should exercise its discretion to deny Defendant's motion to stay the proceedings pending the outcome of the appeal in Washington concerning the issue of attorney fees already incurred by the parties in that proceeding.

Dated: November 27, 2012

Respectfully submitted,

/s/
Timothy F. McCormack #03565
Ballard Spahr LLP
300 East Lombard Street, 18th Floor
Baltimore, Maryland 21202
Telephone: 410.528.5600
Facsimile: 410.528.5650

*Attorney for Columbia Asset Recovery
Group, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2012, I caused the *Plaintiff's Response in Opposition to Defendant's Motion to Stay the Proceedings* to be served via ECF electronic notification on the following:

Brad Bloodworth, Esq.
DLA Piper LLP
500 8th Street, NW
Washington, DC 20004
Attorney for Defendant

/s/ _____
Timothy F. McCormack

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**COLUMBIA ASSET RECOVERY
GROUP, LLC, a Washington Limited
Liability Corporation,**)

Plaintiff,)

v.)

**JOSEPH R. KELLY, as the Successor
Personal Representative of
THE ESTATE
OF WILLIAM D. PHILLIPS,**)

Defendant.)

Civil No. PJM 12-cv-3191

**DEFENDANT THE ESTATE OF WILLIAM D. PHILLIPS' REPLY
IN SUPPORT OF ITS MOTION TO STAY THE PROCEEDING PENDING APPEAL¹**

Defendant the Estate of William D. Phillips (the "Phillips Estate"), through undersigned counsel, hereby submits its Reply in Support of its Motion to Stay the Proceeding Pending Appeal (the "Reply").

I. INTRODUCTION

Columbia Asset Recovery Group, LLC's ("Columbia Asset") Opposition to the Estate's Motion to Stay (the "Opposition") is full of illogical arguments, contradicted claims, and misleading statements all designed to allow Columbia Asset to simultaneously litigate identical facts underlying two identical claims in two separate forums. Columbia Asset should not be

¹ The Defendant the Estate of William D. Phillips' Reply in Support of its Motion to Stay the Proceedings was originally filed on November 14, 2012, in the District Court for the District of Maryland as ECF No. 13. The Phillips Estate is re-filing the Reply per instructions from the Clerk's office. The Phillips Estate has updated the citations in the Reply to reflect the current ECF numbers of the Phillips Estate's Motion to Stay (re-filed in the District Court for the District of Maryland on November 20, 2012 as ECF No. 17) and the Plaintiff's Opposition to the Motion to Stay (re-filed in the District Court for the District of Maryland on November 27, 2012 as ECF No. 18). Other than the updated citations to the various docket entries, the current Reply in Support of the Motion to Stay the Proceedings is identical to the one filed in this Court on November 14, 2012.

permitted to litigate the merits of a claim here, while simultaneously appealing a dismissal that inherently involves the merits of an identical first-filed claim in Washington.

Any prejudice or burden that Columbia Asset contends would result from a stay is entirely of its own making. Columbia Asset alone decided to initially file suit in Washington, knowing full well that it was not the proper forum. Thereafter, Columbia Asset alone decided to appeal in Washington shortly after filing suit in Maryland.

Columbia Asset's actions in Washington contradict its claim here that it is merely pursuing an appeal in Washington on the narrow issue of attorneys' fees. Columbia Asset's own filings demonstrate that it is pursuing an appeal on the merits, even if it intends to use any favorable appeal decision only to recover attorneys' fees. The determination of the appeal in Washington affects the merits of this case, and Columbia Asset's stated purpose of seeking appeal only on the issue of attorneys' fees does not change this. Accordingly, the risk of conflicting or inconsistent rulings remains.

II. PROCEDURAL BACKGROUND

On October 3, 2012, the Phillips Estate moved to stay the proceeding in the Circuit Court for Montgomery County pending appeal of an identical first-filed claim in Washington (the "Motion"). (*See* Exhibit A to Local Rule 103.5 Certification, Nov. 20, 2012, ECF No. 16) (the Phillips Estate's Motion to Stay the Proceeding was re-filed in this Court on November 20, 2012, as ECF No. 17). On October 23, 2012, Columbia Asset opposed the Phillips Estate's Motion, arguing (1) that any stay of the proceeding would greatly prejudice Columbia Asset and (2) that there is no risk of inconsistent or contradictory rulings (the "Opposition").² (*See* Ex. B to Local Rule 103.5 Certification, Nov. 20, 2012, ECF No. 16) (Plaintiff re-filed its Opposition to the Phillips Estate's Motion to Stay the Proceeding on November 27, 2012, as ECF No. 18). On

² Plaintiff's Opposition is unsupported by any evidence, including a declaration.

October 31, 2012, the Phillips Estate removed the case from the Circuit Court for Montgomery County to the District Court for the District of Maryland. (*See* Notice of Removal, Oct. 31, 2012, ECF No. 1).

III. ARGUMENT

This Court should grant the Phillips Estate's Motion over Plaintiff's Opposition for two reasons: (1) any purported prejudice or burden to Columbia Asset resulting from a delay in the proceedings is entirely of Columbia Asset's own making; and (2) contrary to Columbia Asset's assertions, a stay in this matter will avoid the risk of conflicting and perhaps inconsistent rulings.

Columbia Asset argues that "staying the underlying proceedings ... would place an extraordinary burden on [Columbia Asset's] ability to pursue its legal remedies in a forum ready, willing and able to exercise jurisdiction[]" and that "any delay that spans the lengthy appeal period in King County will greatly prejudice [Columbia Asset] and delay administration of the probate." (Pl.'s Opp'n at 4, Nov. 27, 2012, ECF No. 18). However, any burden on or prejudice to Columbia Asset is entirely of its own making. Columbia Asset made the strategic decision to initially file suit in Washington, knowing full well that it was not the proper forum. Columbia Asset also made the strategic decision to notice an appeal in Washington shortly after bringing suit in Maryland. As established in the Motion, Columbia Asset cannot pursue legal remedies involving the exact same claims in two separate forums. As a result of Columbia Asset's attempt to do just that, the consequence of any stay of this proceeding is entirely of Columbia Asset's own making.

Columbia Asset concedes that its claim in Washington and its claim here are identical. (*See* Pl.'s Opp'n at 1, Nov. 27, 2012, ECF No. 18). However, Columbia Asset nonetheless opposes the Motion, asserting that its Washington appeal is unrelated to the merits of the case

and, instead, is related *only* to preserving its rights with regard to the attorney fee-shifting provision in the underlying loan documents. (See Pl.'s Opp'n at 1-2, Nov. 27, 2012, ECF No. 18). Columbia Asset therefore contends that there is no risk of inconsistent or contradictory rulings. (See Pl.'s Opp'n at 3, Nov. 27, 2012, ECF No. 18).

The trial court in Washington never addressed the issue of attorneys' fees.³ Columbia Asset raised the issue of preserving its rights with regard to attorneys' fees for the first and only time in its Opposition. Columbia Asset's Notice of Appeal in Washington makes no reference to seeking appeal for the sole purpose of preserving its rights with regard to the attorney fee-shifting provision of the loan documents. To the contrary, the Notice of Appeal states explicitly that it seeks appellate review "of the Order Granting the Estate of William D. Phillips' Motion to Dismiss the Complaint, filed on July 16, 2012, and the Order Granting Columbia Asset Recovery Group's Motion for Reconsideration, filed on September 5, 2012."⁴ (See Columbia Asset's Notice of Appeal, attached hereto as Ex. A Bloodworth Aff.)) Moreover, Columbia Asset's Designation (and Corrected Designation) of Clerk's Papers filed with the appellate court in

³ Plaintiff never raised the issue of attorneys' fees in either its dismissal opposition or reconsideration motion in Washington. (See Columbia Asset's Opp'n to the Phillips Estate's Mot. to Dismiss the Compl. and Columbia Asset's Motion for Recons., attached hereto as Exs. C & D to the Affidavit of Brad Bloodworth (hereinafter "Bloodworth Aff.")). Moreover, the trial court in Washington never addressed the issue of attorneys' fees in its Order Granting the Estate of William D. Phillips' Motion to Dismiss the Complaint, filed on July 16, 2012, nor did it address the issue of attorneys' fees in its Order Granting Columbia Asset Recovery Group's Motion for Reconsideration, filed on September 5, 2012. (See Ex. B to Mot. to Stay, Nov. 20, 2012, ECF No. 17; see also Ex. C to Mot. to Stay, Nov. 20, 2012, ECF No. 17). These two decisions are the rulings that Columbia Asset's Notice of Appeal is seeking the appellate court to review and neither address attorneys' fees.

⁴ The Phillips Estate advanced two basis for dismissal in Washington, each inherently involving the merits of the Washington action and, therefore, the merits of this case as well. (See Ex. D to Mot. to Stay, Nov. 20, 2012, ECF No. 17). As stated in the Phillips Estate's Motion, the dismissal of the Washington action involved the merits of the case because the King County Court necessarily found that Timothy Kennedy, through Columbia Asset, fulfilled his guaranty of the AFH Loan at issue by way of the Loan Purchase Agreement at issue, thereby fully discharging the AFH Loan Agreement at issue and any obligations arising thereunder, including the jurisdiction provision. (See Mot. to Stay at 1, Nov. 20, 2012, ECF No. 17). Alternatively, the dismissal of the Washington action involved the merits of the case because Timothy Kennedy, through Columbia Asset, fully paid the AFH Loan amount and, thus, the AFH Loan Agreement was fully discharged. (See Ex. D to Mot to Stay, Nov. 20, 2012, ECF No. 17). Therefore, under either dismissal theory advanced by the Phillips Estate, factual findings necessary to the Washington dismissal involve the merits of this case. (See Mot. to Stay at 2, Nov. 20, 2012, ECF No. 17).

Washington includes essentially the entire trial record, which suggests the appeal relates to the dismissal for lack of jurisdiction (and the underlying factual findings), not the narrow issue of attorneys' fees. (*See* Designation and Corrected Designation of Clerk's Papers, attached hereto as Exhibit B to Bloodworth Aff.)

Columbia Asset's arguments in its Opposition are inherently flawed and illogical. First, Columbia Asset did not timely file a claim against the Phillips Estate in Maryland Orphans' Court. Instead, it is relying upon Columbia State Bank's claim. However, Columbia State Bank's claim is only for the value of the AFH Loan, not attorneys' fees. (*See* Ex. E to Bloodworth Aff.) Accordingly, Columbia Asset has no logical reason to pursue the Washington appeal solely to recover attorney's fees. Moreover, even if it were true that Columbia Asset is appealing in Washington for this sole purpose, any such appeal would necessarily address the factual findings that underpin the trial court's dismissal. As such, the risk of inconsistent or contradictory rulings does, in fact, exist.

IV. CONCLUSION

For the foregoing reasons, and the reasons set forth in the Phillips Estate's initial moving papers, the Phillips Estate respectfully requests that this Court grant the Phillips Estate's Motion to Stay the Proceeding Pending Appeal.

Dated this 28th day of November, 2012

Respectfully Submitted,

/s/ Brad Bloodworth
Brad Bloodworth
DLA PIPER LLP (US)
500 8th Street, NW
Washington, DC 20004
Telephone: (202) 799-4537
Facsimile: (202) 799-5537
brad.bloodworth@dlapiper.com

Attorneys for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of November 2012 I caused the foregoing
DEFENDANT THE ESTATE OF WILLIAM D. PHILLIPS' REPLY IN SUPPORT OF ITS
MOTION TO STAY THE PROCEEDING PENDING APPEAL to be filed electronically with
the court, which caused it to be served electronically on counsel for all parties in the case.

/s/ Brad Bloodworth

Brad Bloodworth

EXHIBIT F

Hinrichs, Diane

From: Bloodworth, Brad
Sent: Tuesday, December 11, 2012 11:19 AM
To: Sean J. Bellew (bellews@ballardspahr.com)
Cc: McCormack, Timothy F. (Balt); Gryce, Julie
Subject: FW: Columbia Asset Recovery Group, LLC v. Joseph R. Kelly, as the Successor PR of the Estate of William D. Phillips; Appeal No. 69365-4-I
Attachments: WKG-#3558279-v1-CARG_v__Est_of_Phillips___Brief_of_Appellant.PDF

Sean,

Columbia Asset's stay opposition in Maryland contends that its Washington appeal only relates to the narrow issue of attorneys' fees, and not the merits. Columbia Asset's appeal brief filed yesterday demonstrates otherwise. It seems appropriate that Columbia Asset timely (since stay motion is pending) update the record in Maryland.

Regards,
Brad

From: Philomeno, Mary [<mailto:MPhilomeno@williamskastner.com>]
Sent: Monday, December 10, 2012 6:44 PM
To: Escobar, Andrew; Bloodworth, Brad; Hansen, Karen
Cc: Abell, Hunter; Henrie, Scott; Levitin, Dena
Subject: Columbia Asset Recovery Group, LLC v. Joseph R. Kelly, as the Successor PR of the Estate of William D. Phillips; Appeal No. 69365-4-I

Counsel:

Attached please find the Brief of Appellant filed today with the Court of Appeals, Division I. A copy is being provided via regular U.S. Mail.

Mary Philomeno
Legal Assistant to Scott B. Henrie, Manish Borde and Daniel J. Velloth
Williams Kastner
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Main: 206.628.6600
Direct: 206.233.2992
Fax: 206.628.6611
mphilomeno@williamskastner.com
www.williamskastner.com

WILLIAMS KASTNER™
WIK

EXHIBIT G

From: MDD_CM-ECF_Filing@mdd.uscourts.gov [mailto:MDD_CM-ECF_Filing@mdd.uscourts.gov]
Sent: Thursday, December 20, 2012 03:34 PM Eastern Standard Time
To: MDDdb_ECF@mdd.uscourts.gov <MDDdb_ECF@mdd.uscourts.gov>
Subject: Activity in Case 8:12-cv-03191-PJM Columbia Asset Recovery Group, LLC v. Kelly Order on Motion to Stay

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of Maryland

Notice of Electronic Filing

The following transaction was entered on 12/20/2012 at 3:34 PM EST and filed on 12/20/2012

Case Name: Columbia Asset Recovery Group, LLC v. Kelly

Case Number: [8:12-cv-03191-PJM](#)

Filer:

Document Number: 22(No document attached)

Docket Text:

PAPERLESS ORDER DENYING [17] Motion to Stay. Signed by Judge Peter J. Messitte on 12/20/12. (rass, Chambers)

8:12-cv-03191-PJM Notice has been electronically mailed to:

Timothy Francis McCormack mccormackt@ballardspahr.com, buhrmank@ballardspahr.com,
cromartie@ballardspahr.com, mcgeoghm@ballardspahr.com, praterp@ballardspahr.com

Bradley W Bloodworth brad.bloodworth@dlapiper.com

Sean J Bellew bellews@ballardspahr.com

8:12-cv-03191-PJM Notice will not be electronically delivered to:

EXHIBIT H

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**COLUMBIA ASSET RECOVERY
GROUP, LLC, a Washington Limited
Liability Corporation,**

Plaintiff,

v.

**JOSEPH R. KELLY, as the Successor,
Personal Representative of
THE ESTATE
OF WILLIAM D. PHILLIPS,**

Defendant.

Civil No.PJM 12-cv-3191

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Columbia Asset Recovery Group, LLC (“CARG”), by its attorneys, hereby moves for summary judgment as there are no material facts in dispute. As set forth in the accompanying Memorandum of Law, which is incorporated herein by reference, Defendant Joseph R. Kelly, as the Successor, Personal Representative of the Estate of William D. Phillips (“Estate”), as primary obligor on the Promissory Note (“Note”) subject to this action, defaulted on the Note and failed to allow the claim timely filed by CARG against the Estate.

WHEREFORE, Plaintiff Columbia Asset Recovery Group, LLC respectfully requests that this Court enter Summary Judgment in favor of Plaintiff, and that Plaintiff be granted such other and appropriate relief as is just and equitable.

Dated: January 7, 2013

Respectfully submitted,

/s/
Timothy F. McCormack #03565
Ballard Spahr LLP
300 East Lombard Street, 18th Floor
Baltimore, Maryland 21202
Telephone: 410.528.5600
Facsimile: 410.528.5650

*Attorney for Columbia Asset Recovery
Group, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 2013, a true and correct copy of the foregoing was served via ECF notification and/or mailed first-class, postage prepaid, to:

Brad Bloodworth, Esquire
DLA Piper
500 Eight Street, NW
Washington, DC 20004

/s/ _____
Timothy F. McCormack

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**COLUMBIA ASSET RECOVERY
GROUP, LLC, a Washington Limited
Liability Corporation,**

Plaintiff,

v.

**JOSEPH R. KELLY, as the Successor,
Personal Representative of
THE ESTATE
OF WILLIAM D. PHILLIPS,**

Defendant.

Civil No. PJM 12-cv-3191

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

Plaintiff Columbia Asset Recovery Group (“CARG”) respectfully moves for summary judgment on the \$1,000,000.00 Columbia State Bank’s Promissory Note that is the subject of this action (“Note”). CARG, the holder of the Note, is the assignee of Columbia State Bank. The Estate of William D. Phillips, Sr., deceased (“Estate”), is a primary obligor on the Note. Despite extensions of time granted by the Bank, the Estate defaulted on the Note and failed to allow the claim timely filed by Columbia State Bank against the Estate. Plaintiff CARG acquired the Note from Columbia State Bank. CARG now seeks the entry of judgment against the Estate based on the Note. As the Estate lacks any cognizable or proper defenses, CARG is entitled to summary judgment. Additionally, CARG is entitled to recover its reasonable attorneys' fees and costs.

FACTS

The facts in this case are brief and uncontroverted. On June 1, 2009, Columbia State Bank loaned \$1,000,000.00 to Atlantic Frost Holdings, LLC (“AFH”) and William D. Phillips (“Phillips”) as co-borrowers. (A true and correct copy of the Declaration of Scott Henrie attached hereto as Exhibit 1). The \$1,000,000.00 loan (“Loan”) was evidenced by a Business Loan Agreement, and a Commercial Line of Credit Agreement and Note dated June 1, 2009. Exhibit A to Exhibit 1. There were also a variety of security agreements and a personal guaranty. Id. Columbia State Bank filed a UCC Financing Statement on March 26, 2010 under Initial Filing No. 5292470, which was subsequently amended by Amendment Filing Nos. 2009 2080080 and 2010 1053556. Id.

The original maturity date for the Loan was June 1, 2010. Id. On that date, the first of a series of extensions on the Loan repayment were made by and between Columbia State Bank and William D. Phillips and, later, by the Phillips Estate. Id. The first extension was memorialized in a Change in Terms Agreement which extended the maturity date to September 1, 2010. Id. On October 22, 2010, the second extension on the loan was granted and memorialized in the form of an Extension Agreement. Id. The Extension Agreement extended the maturity date to January 1, 2011. Id. On January 21, 2011, a third extension was granted and memorialized in the form of an Additional Extension Agreement. Id. The Additional Extension Agreement extended the maturity date until April 1, 2011. Id.

Despite the extensions, the Phillips Estate and AFH defaulted on the Loan. Exhibit B to Exhibit 1. As of August 1, 2011, the total amount due on the Loan, including interest, legal fees, and expenses incurred by the Bank was \$1,026,071.94. Id.

On August 4, 2011, CARG acquired the Loan from Columbia State Bank. This transaction was memorialized in a Loan Purchase and Assignment Agreement. Id. The Loan was purchased for \$1,026,071.94. Id.

ARGUMENT

Summary judgment is appropriate where "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(b). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Once the moving party has demonstrated the absence of any genuine issue of material fact, the burden of production shifts to the non-movant who must "go beyond the pleadings and by its own affidavits, or by the depositions, answers to interrogatories, the admissions on file, establish that there is a specific and genuine issue of material fact warranting a trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 342 (1986).

The non-movant cannot cast some metaphysical doubt on the moving party's assertions, but must present specific, significant probative evidence supporting its case. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Thomas Everett, Inc. v. Nat'l Cable Advertising*, 57 F.3d 1317, 1323 (4th Cir. 1995). "A mere scintilla of evidence is not enough to create a fact issue." *Barwick v. Celotex Corp.* 736 F.2d 946, 958-59 (4th Cir. 1984). There must be "sufficient evidence favoring the non-moving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted. *Liberty Lobby, Inc.* 477 U.S. at 249-50.

This is a simple case: a loan was made that was documented by a Promissory Note. Both of the obligors on the Note defaulted. The Note, a negotiable instrument, was assigned to CARG, and CARG now seeks to enforce the Note. Plaintiff is the assignee of a negotiable instrument, the Columbia State Bank Promissory Note. The material facts in this case are clear. Exhibit B to the Declaration of Scott Henrie is the Loan Purchase and Assignment Agreement. The Declaration of Barbara Hegstrom, Vice President of Columbia State Bank, Exhibit C, verifies the amount due on the Loan and documents the default by the Phillips Estate.

Subject to certain exceptions in cases of contracts involving relations of personal confidence or trust or being for personal services, a contract, and a right or duty arising out of it,

may be assigned. *Macke Co. v. Pizza of Gaithersburg, Inc.*, 270 A.2d 645 (1970); *DuPont de-Bie v. Vredenburg*, 490 F.2d 1057 (4th Cir. 1974) (applying Maryland law). Contractual rights can be assigned as long as a party's obligations are not materially changed or increased. *Fry v. Coyote Portfolio, LLC*, 739 A.2d 914 (1999). Even where a contract itself may not be assignable, the right to receive money due or to become due under an existing contract may be assignable. *Motor Vehicle Sec. Fund v. All Coverage Underwriters, Inc.*, 325 A.2d 115 (1974).

It is undisputed that AFH and Phillips executed the Business Loan Agreement and did, in fact, borrow \$1,000,000.00. It is similarly undisputed that the Estate and AFH subsequently defaulted on the loan. Finally, it is undisputed that CARG purchased the Loan for \$1,026,071.94. There is no public policy or statutory contravention of such an assignment. There are no genuine issues of material fact in dispute, the Court should grant summary judgment in favor of CARG against the Estate.

CONCLUSION

This is a simple case on a negotiable instrument. The Loan was made to Phillips and AFH. Despite extension agreements between the Phillips Estate and Columbia State Bank, the Loan is in default. CARG acquired the Loan and has a breach of contract claim against the Estate. There is no genuine issue of material fact that contests these facts.

CARG respectfully moves for the entry of judgment in the amount of the balance owing, \$1,168,281.91, reserving for later the assessment of attorney fees and additional costs incurred in enforcing the Note and efforts to preserve collateral. A proposed form of Order has been filed contemporaneously herewith.

Dated: January 7, 2013

Respectfully submitted,

/s/
Timothy F. McCormack #03565
Ballard Spahr LLP
300 East Lombard Street, 18th Floor
Baltimore, Maryland 21202
Telephone: 410.528.5600
Facsimile: 410.528.5650

*Attorney for Columbia Asset Recovery
Group, LLC*

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**COLUMBIA ASSET RECOVERY
GROUP, LLC, a Washington Limited
Liability Corporation,**

Plaintiff,

v.

**JOSEPH R. KELLY, as the Successor,
Personal Representative of
THE ESTATE
OF WILLIAM D. PHILLIPS,**

Defendant.

Civil No. PJM 12-cv-3191

I, Scott Henrie, state:

1. I am an attorney at WILLIAMS, KASTNER & GIBBS, PLLC, the law firm of record for Plaintiff Columbia Asset Recovery Group LLC in the above-captioned matter and have personal knowledge of the matters related herein.

2. I have attached to this Declaration true and accurate copies of the following four Exhibits:

3. Exhibit A to Exhibit 1 is the Loan Agreement, the Promissory Note and related security and extension agreements, including specifically the following:

- a) The June 1, 2009 Business Loan Agreement signed by William D. Phillips on behalf of himself and on behalf of Atlantic Frost Holdings, LLC;
- b) The June 1, 2009 Commercial Line of Credit Agreement and Note signed by William D. Phillips on behalf of himself and on behalf of Atlantic Frost Holdings, LLC;
- c) The June 1, 2009 Commercial Security Agreement signed by William D. Phillips on behalf of Atlantic Frost Holdings, LLC;
- d) The June 1, 2009 Commercial Loan Guaranty signed by Timothy Kennedy on behalf of himself;

e) The March 26, 2010 UCC Filing Statement No. 5292470 and the subsequently amended Filing Nos. 2009 2080080 and 2010 1053556;

f) The June 1, 2010 Change in Terms Agreement signed by William D. Phillips on behalf of himself and Atlantic Frost Holdings, LLC, and a representative of Columbia State Bank;

g) The October 22, 2010 Extension Agreement;

h) The January 21, 2011 Additional Extension Agreement signed by Janet Phillips on behalf of the Estate of William D. Phillips and on behalf of Atlantic Frost Holdings, LLC, Timothy Kennedy, and William Barclay on behalf of Columbia State Bank; and

4. Exhibit B to Exhibit 1 is the August 4, 2011 Loan Purchase and Assignment Agreement between Columbia Asset Recovery Group, LLC, Timothy Kennedy, and Barbara Hegstrom on behalf of Columbia State Bank.

5. Exhibit C to Exhibit 1 is the Affidavit of Barbara Hegstrom as Vice President of Columbia State Bank verifying the balances owed on the note; and

6. Exhibit D to Exhibit 1 is a spreadsheet updating the interest calculations based on the Barbara Hegstrom Affidavit to the date of filing.

I declare under penalty of perjury under the laws of the State of Maryland that the foregoing is true and correct.

DATED this 3rd day of January, 2013.

A handwritten signature in black ink, appearing to read "Scott B. Henrie", written over a horizontal line.

Scott B. Henrie, WSBA #12673
Hunter Abell, WSBA #37223
Attorneys for Plaintiff Columbia Asset
Recovery Group, LLC
WILLIAMS, KASTNER & GIBBS PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone: (206) 628-6600
Fax: (206) 628-6611
Email: shenrie@williamskastner.com
habell@williamskastner.com

EXHIBIT A

RECEIVED OCT 18 2009

**COMMERCIAL LINE OF CREDIT
AGREEMENT AND NOTE**

Columbia State Bank - Seattle CBC #1 Office
719 2nd Ave., Ste 500
Seattle, Washington 98104

906002177	June 1, 2009	12 months	\$1,000,000.00	June 1, 2010
LOAN PURPOSE: Term Out Line of Credit				

BORROWER INFORMATION

Astoria Frost Holdings LLC
PO Box 2640
Fall River, MA 02722-2640

William D Phillips
13301 Maser Stone Dr
Germantown, MD 20874

LINE OF CREDIT AGREEMENT AND NOTE. This Commercial Line of Credit Agreement and Note will be referred to in this document as the "Agreement".

LENDER. "Lender" means Columbia State Bank - Seattle CBC #1 Office whose address is 719 2nd Ave., Ste 500, Seattle, Washington 98104, its successors and assigns.

BORROWER. "Borrower" means each person or legal entity who signs this Agreement.

PROMISE TO PAY. For value received, receipt of which is hereby acknowledged, on or before the Maturity Date, the Borrower promises to pay the principal amount of One Million and 00/100 Dollars (\$1,000,000.00) or such lesser amount as shall have been advanced by Lender, from time to time, to or on behalf of Borrower under this Agreement, and all interest and any other charges, including service charges, to the order of Lender at its office at the address noted above or at such other place as Lender may designate in writing. The Borrower will make all payments in lawful money of the United States of America.

PAYMENT SCHEDULE. This Agreement will be paid according to the following required payment schedule: Beginning on July 1, 2009, monthly payments of accrued and unpaid interest. All payments received by the Lender from the Borrower for application to the Line of Credit may be applied to the Borrower's obligations under the Line of Credit in such order as determined by the Lender.

ADVANCES BY LENDER. Advances of principal, repayment, and readvances may be made under this Agreement from time to time, but Lender, in its sole discretion and subject to provisions related to obligatory and discretionary advances, may refuse to make advances or readvances hereunder during any period(s) this Agreement is in default. All advances made will be charged to a loan account in Borrower's name on Lender's books, and the Lender shall debit such account for the amount of each advance made to, and credit to such account the amount of each repayment made by Borrower. If the Lender furnishes the Borrower with a statement of Borrower's loan account, such statement shall be deemed to be correct, accepted by, and binding upon Borrower, unless Lender receives a written statement exception from Borrower within 10 days after such statement has been furnished.

INTEREST RATE AND SCHEDULED PAYMENT CHANGES. The initial variable interest rate on this Agreement will be 4.750% per annum. This interest rate may change on June 2, 2009, and every day thereafter. Each date on which the interest rate may change is called the "Change Date." Beginning with the first Change Date, Lender will calculate the new interest rate based on Columbia Bank Base Rate, as published on Columbia Bank's website www.columbiabank.com in effect on the Change Date (the "Index") plus 1.500 percentage points (the "Margin"). If the Index is not available at that time, Lender will choose a new Index which is based on comparable information. The Index is used solely to establish a base from which the actual rate of interest payable under this Agreement will be calculated, and is not a reference to any actual rate of interest charged by any lender to any particular borrower. The interest rate will never be less than 5.500%.

Nothing contained herein shall be construed as to require the Borrower to pay interest at a greater rate than the maximum allowed by law. If, however, from any circumstances, Borrower pays interest at a greater rate than the maximum allowed by law, the obligation to be fulfilled will be reduced to an amount computed at the highest rate of interest permissible under applicable law and if, for any reason whatsoever, Lender ever receives interest in an amount which would be deemed unlawful under applicable law, such interest shall be automatically applied to amounts owed, in Lender's sole discretion, or as otherwise allowed by applicable law. An increase in the interest rates will result in a higher payment amount. Interest on this Agreement is calculated on a 365/360 day basis. The unpaid balance of this loan shall, while any Event of Default exists under this Agreement or any other agreement related to the loan, be subject to a Default Rate of interest equal to 5.000 percentage points over the applicable interest rate in effect at time of Default, and after Maturity, whether by acceleration or otherwise, shall be subject to a Post-Maturity Rate of interest equal to the same fixed or variable rate basis in effect before maturity.

LATE PAYMENT CHARGE. If any required payment is more than 10 days late, then at Lender's option, Lender will assess a late payment charge of \$5.00 or 5% of the amount past due, whichever is greater.

LINE OF CREDIT TERMS. This Agreement is discretionary. The Borrower acknowledges and agrees that although the Borrower may from time to time request an advance under this Agreement up to a maximum amount equal to the Line of Credit Limit, the Lender in no way is obligated to make such advance and all advances will be made by Lender in its sole and absolute discretion, and subject to the terms and conditions of this Agreement.

Initials *ABD*

Advances.

- Advances under this Agreement may be requested orally or in writing by the Borrower or by an authorized person.
- The total of any advance requested and unpaid principal cannot exceed One Million and 00/100 Dollars (\$1,000,000.00).
- All advances made will be charged to a loan account in Borrower's name on Lender's books, and the Lender shall debit such account the amount of each advance made to, and credit to such account the amount of each repayment made by Borrower. Lender shall provide to Borrower periodic statements of Borrower's loan account, which shall be deemed to be correct, accepted by, and binding upon Borrower unless Lender receives a written statement of exception from Borrower within 10 days after such statement is furnished.

Suspension and Termination. Advances under this Agreement will be available until the earlier to occur of (a) June 1, 2010; (b) the date the Line of Credit is cancelled by Borrower; or (c) the date the Line of Credit is cancelled by Lender due to an occurrence of an Event of Default (the "Maturity Date"). From and after the Maturity Date, no further advances will be made available to Borrower.

Loan Type Conversion. Provided no default or event of default shall have occurred, the Borrower may, at its option, apply for conversion of this Agreement into a Term loan 30 days prior to the Maturity Date. However, the Lender shall have no obligation to approve the Borrower's application.

SECURITY TO NOTE. Security (the "Collateral") for this Agreement is granted pursuant to the following security document(s):

- Security Agreement dated June 1, 2009 evidencing security interest in ATLANTIC FROST (Official Number 282733), together with all the engines, boilers, machinery, bowsprits, sails, riggings, boats, anchors, chairs, tackle, apparel, furniture, fittings, tools, pumps, pipe, equipment including but not limited to electronic communication and navigational equipment, and all other appurtenances thereto appertaining and belonging, and all additions and improvements; whether any of the foregoing is owned now or acquired later; all accessories, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance; general intangibles and accounts proceeds).
- Preferred Ship Mortgage - F/V Atlantic Frost, Reg# 282733, ID# 282733 at Bath, ME in the amount of \$1,000,000.00, dated June 29, 2005.

GUARANTY. In support of this transaction, a Guaranty dated June 1, 2009 has been executed by Timothy J Kennedy.

RIGHT OF SET OFF. To the extent permitted by law, Borrower agrees that Lender has the right to set off any amount due and payable under this Agreement, whether matured or unmatured, against any amount owing by Lender to Borrower including any or all of Borrower's accounts with Lender. This shall include all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. Such right of set off may be exercised by Lender against Borrower or against any assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor of Borrower, or against anyone else claiming through or against Borrower of such assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor, notwithstanding the fact that such right of setoff has not been exercised by Lender prior to the making, filing or issuance or service upon Lender of, or of notice of, assignment for the benefit of creditors, appointment or application for the appointment of a receiver, or issuance of execution, subpoena or order or warrant.

DISHONORED ITEM FEE. If Borrower makes a payment on the loan with a check or preauthorized charge which is later dishonored, a fee in the amount of \$29.50 will be charged.

DEFAULT. Upon the occurrence of any one of the following events (each, an "Event of Default" or "default" or "event of default"), Lender's obligations, if any, to make any advances will, at Lender's option, immediately terminate and Lender, at its option, may declare all indebtedness of Borrower to Lender under this Agreement to be immediately due and payable without further notice of any kind notwithstanding anything to the contrary in this Agreement or any other agreement: (a) Borrower's failure to make any payment on time or in the amount due; (b) any default by Borrower under the terms of this Agreement or any other agreement, security agreement executed in connection with this Agreement (individually, a "Loan Document" and collectively, the "Loan Documents"); (c) any default by Borrower under the terms of any other loan agreement, security agreement, mortgage or other document in favor of Lender; (d) the death, dissolution, or termination of existence of Borrower or any guarantor; (e) Borrower is generally not paying Borrower's debts as such debts become due; (f) the commencement of any proceeding under bankruptcy or insolvency laws by or against Borrower or any guarantor or the appointment of a receiver; (g) any default under the terms of any other indebtedness of Borrower to any other creditor; (h) any writ of attachment, garnishment, execution, tax lien or similar instrument is issued against any collateral securing the loan, if any; or any of Borrower's property or any judgment is entered against Borrower or any guarantor; (i) any part of Borrower's business is sold to or merged with any other business, individual, or entity; (j) any representation or warranty made by Borrower to Lender in any of the Loan Documents or any financial statement delivered to Lender proves to have been false in any material respect as of the time when made or given; (k) if any guarantor, or any other party to any agreement or instrument with or in favor of Lender entered into or delivered in connection with the Loan terminates, attempts to terminate or defaults under any such agreement, or instrument; (l) Lender has deemed itself insecure or there has been a material adverse change of condition of the financial prospects of Borrower or any collateral securing the obligations owing to Lender by Borrower.

OTHER APPLICABLE AGREEMENTS. If this Agreement is secured by a security agreement, mortgage, deed of trust, trust deed, security deed or loan agreement of even or previous date, it is subject to all the terms thereof.

GENERAL WAIVERS. To the extent permitted by law, the Borrower severally waives any required notice of presentment, demand, acceleration, intent to accelerate, protest and any other notice and defense due to extensions of time or other indulgence by Lender or to any substitution or release of collateral. No failure or delay on the part of Lender, and no course of dealing between Borrower and Lender, shall

operate as a waiver of such power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right.

JOINT AND SEVERAL LIABILITY. If permitted by law, each Borrower executing this Agreement is jointly and severally bound.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Agreement is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Agreement without invalidating the remainder of either the affected provision or this Agreement. **SURVIVAL.** The rights and privileges of the Lender hereunder shall inure to the benefits of its successors and assigns, and this Agreement shall be binding on all heirs, executors, administrators, assigns and successors of Borrower.

ASSIGNABILITY. Lender may assign, pledge or otherwise transfer this Agreement or any of its rights and powers under this Agreement without notice, with all or any of the obligations owing to Lender by Borrower, and in such event the assignee shall have the same rights as if originally named herein in place of Lender. Borrower may not assign this Agreement or any benefit accruing to it hereunder without the express written consent of the Lender.

ORAL AGREEMENTS DISCLAIMER. Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

GOVERNING LAW. This Agreement is governed by the laws of the state of Washington except to the extent that federal law controls.

HEADING AND GENDER. The headings preceding text in this Agreement are for general convenience in identifying subject matter, but have no limiting impact on the text which follows any particular heading. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require.

ATTORNEYS' FEES AND OTHER COSTS. If legal proceedings are instituted to enforce the terms of this Agreement, Borrower agrees to pay all costs of the Lender in connection therewith, including reasonable attorney's fees, to the extent permitted by law.

ADDITIONAL PROVISIONS, REDUCING CREDIT LIMIT. The initial credit limit shall be \$1,000,000.00 which amount shall reduce by \$36,000.00 on February 1, 2010, and on the same day of each quarter thereafter. If at any time the outstanding principal balance of the Reducing Revolving Line of Credit shall be greater than the Reducing Credit Limit, Borrower shall repay principal of the Note in an amount sufficient to reduce the outstanding principal balance thereof to no more than the Reducing Credit Limit.

Other Note. This is a recited rewrite of the Commercial Note of Credit Agreement and Note from Atlantic Frost Holdings LLC and William D Phillips to Lender dated March 1, 2009 in the original amount of \$1,000,000.00, subsequently modified by a Change in Terms Agreement dated March 1, 2009.

WAIVER OF JURY TRIAL. All parties to this Agreement knowingly and voluntarily waive, to the fullest extent permitted by law, any right to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, between them arising out of, in connection with, related to, or incidental to the relationship established in connection with this Agreement or any other instrument, document, or agreement executed or delivered in connection with this Agreement or the related transactions.

By signing this Agreement, Borrower acknowledges reading, understanding, and agreeing to all its provisions and receipt thereof.


Date 6/24/10

William D Phillips
Individually

Atlantic Frost Holdings, LLC

Date 6/24/10

By: William D Phillips
As: Member

BUSINESS LOAN AGREEMENT

Columbia State Bank - Seattle CBC #1 Office
 719 2nd Ave., Ste 500
 Seattle, Washington 98104

906082177	June 1, 2009	906082177

BORROWER INFORMATION

Atlantic Frost Holdings LLC
 PO Box 2640
 Fall River, MA 02722-2640

Type of Business Entity: Limited Liability Company
State of Organization/Formation: Delaware

William D Phillips
 13301 Manor Stone Dr
 Germantown, MD 20874

Type of Entity: Individual
State of Residence: Maryland

RECEIVED OCT 1⁶ 2009

GUARANTOR INFORMATION

Timothy J Kennedy
 7643 NE Champagne Point Place
 Kirkland, WA 98034

Type of Entity: Individual
State of Residence: Washington

AGREEMENT. This Business Loan Agreement will be referred to in this document as the "Agreement." This Agreement is made by Columbia State Bank - Seattle CBC #1 Office (Lender), Borrower and Guarantor. The consideration is the promises, representations, and warranties made in this Agreement and the Related Documents.

DEFINITIONS. These definitions are used in this Agreement.

"Collateral" means the Property that all Obligors pledge, mortgage, or give Lender a security interest in, regardless of where the Property is located and regardless of when it was or will be acquired, together with all replacements, substitutions, proceeds, and products of the Property.

"Events of Default" means any of the events described in the "Events of Default" section of this Agreement.

"Financial Statements" means the balance sheets, earnings statements, and other financial information that Obligors have, are, or will be giving to Lender.

"Indebtedness" means the Loan and all other loans and indebtedness of Borrower to Lender, including but not limited to Lender's payments of insurance or taxes, all amounts Lender pays to protect its interest in the Collateral, overdrafts in deposit accounts with Lender, and all other indebtedness, obligations, and liabilities of Borrower to Lender, whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, joint or several, due or to become due, now existing or hereafter arising.

"Loan" means the loan or loans Lender makes to Borrower under the note or notes dated the same date as this Agreement that Borrower gives to Lender and all amendments, extensions, renewals, and refinancing.

"Obligor" means any person having any obligation to Lender, whether for the payment of money or otherwise, under this Agreement or under the Related Documents, including but not limited to Guarantor and any other guarantors of the Indebtedness.

"Parties" means all Borrowers, Guarantors, and Non-Borrower Debtors signing this Agreement.

"Party" means any Borrower, Guarantor, and Non-Borrower Debtor signing this Agreement.

"Property" means the Parties' assets, regardless of what kind of assets they are.

"Related Documents" means all documents, promissory notes, security agreements, leases, mortgages, construction loan agreements, assignments of leases and rents, guaranties, pledges, and all other documents or agreements executed in connection with this Agreement. The term includes both documents existing at the time of execution of this Agreement and documents executed after the date of this Agreement.

"Definition of Obligor is amended and" means any person or legal entity having any obligation to Lender, whether for the payment of money or otherwise, under this agreement or under the Related Documents, including but not limited to Guarantor and any other guarantors of the Indebtedness. Further Non Borrower Debtors are parties that provide security to the Bank but are not obligated to the Bank as a Borrower or Guarantor.

"Definition of Indebtedness is amended and" means all borrower debts to the Bank are covered by this Business Loan Agreement as defined in the "Definition" section under "Indebtedness" in this document. The current loan transaction outlined in the "Identification of Indebtedness" section is there solely to identify the current loan transaction and does not limit the definition of "Indebtedness" located in the "Definition" clause.

Initials *WDB*

IDENTIFICATION OF INDEBTEDNESS. The following loan and any amendments, extensions, renewals or refinancing (the "Loans") thereof is subject to this Agreement:

- Loan number 966002177 with a principal amount of \$1,000,000.00

BORROWER'S REPRESENTATIONS AND WARRANTIES. Obligors represent and warrant to Lender the accuracy of the description of Borrower and Guarantor, the nature of Borrower's business shown above, and the statements made in this section. The representations and warranties will continue and remain in effect until all of the indebtedness is fully paid to Lender and Obligors' obligations are fully performed.

Borrower's Existence and Authority. Borrower is duly formed and in good standing under all laws governing Borrower and Borrower's business, and the person or persons executing this Agreement have the power and authority to execute this Agreement and the Related Documents and to bind Borrower to the obligation created in this Agreement and the Related Documents.

Financial Information and Filing. All Financial Statements provided to Lender have been prepared and will continue to be prepared in accordance with generally accepted accounting principles, consistently applied, and fully and fairly present the financial condition of Obligors, and there has been no material adverse change in Obligors' business, Property, or condition, either financial or otherwise, since the date of Obligors' latest Financial Statements. Obligors have filed all federal, state, and local tax returns and other reports and filings required by law to be filed before the date of this Agreement and have paid all taxes, assessments, and other charges that are due and payable prior to the date of this Agreement. Obligors have made reasonable provision for these types of payments that are accrued but not yet payable. Borrower does not know of any deficiency or additional assessment not disclosed in Borrower's books and records.

Title and Encumbrances. Obligors have good title to all of Obligors' assets. All encumbrances on any part of the Property were disclosed to Lender in writing.

Compliance with General Law. Borrower is in compliance with and will conduct its business and use its assets in compliance with all laws, regulations, ordinances, directives, and orders of any level of governmental authority that has jurisdiction over Borrower, Borrower's business, or Borrower's assets.

Environmental Compliance. Obligors are in compliance with all applicable laws and rules of federal, state, and local authorities affecting the environment, as all have been or are amended.

No Litigation/No Misrepresentations. There are no existing or pending suits or proceedings before any court, government agency, arbitration panel, administrative tribunal, or other body, or threatened against Borrower that may result in any material adverse change in Borrower's business, property, or financial condition, and all representations and warranties in this Agreement and the Loan Documents are true and correct and no material fact has been omitted.

COVENANTS: On the date of this Agreement and continuing until the indebtedness is repaid and Borrower's obligations are fully performed, Borrower covenants as follows.

Notices of Claims and Litigation/Notice of Adverse Events. Borrower will promptly notify Lender in writing of all threatened and actual litigation, governmental proceeding, default, and every other occurrence that may have a material adverse effect on Borrower's business, financial condition, or the Property.

Insurance. Borrower will maintain adequate fire and extended risk insurance coverage, business interruption, workers' compensation, commercial general liability, and other insurance required by law or as may be required by Lender. All insurance policies will be in amounts, upon terms, and in a form acceptable to Lender. All policies must be carried with insurers acceptable to Lender. Borrower will provide evidence satisfactory to Lender of all insurance and that the policies are in full force and effect and all insurance on the Collateral will name Lender as a mortgagee and loss payee, will include a lender's loss payable endorsement, and will require thirty days advance written notice to Lender of any cancellation of coverage. If the Borrower fails to maintain required insurance, the absence of the required insurance will be an Event of Default. If this happens, Lender may buy the insurance, but will have no obligation to buy it. These amounts paid by Lender will be added to the indebtedness or will be payable on demand, at Lender's option.

Confirmatory Documents and Actions. Borrower agrees that on Lender's request, Borrower will do any act or execute any additional documents that are or may be required to make the terms of the Loan conform to the conditions contained in Lender's commitment to Borrower. Within five days of Lender's request, Borrower will furnish an estoppel certificate in a form Lender approves.

Payment of Taxes. Borrower will pay all taxes, levies, and assessments required by all local, state, and federal agencies. Borrower will make these payments when the amounts are due but before any penalty for late payment is imposed. Borrower's failure to promptly pay any tax, levy, or assessment due will be an Event of Default unless Borrower is diligently disputing the amount and Borrower has established a reserve account for the payment of the taxes if Borrower does not prevail in the dispute.

Business Existence and Operations. Borrower will keep Borrower's existence in its current organizational form in full force and effect unless Lender gives prior written consent to Borrower's proposed change. Borrower will not sell or merge Borrower's business or any part of Borrower's business without the Lender's prior written consent. Borrower will continue its business as currently conducted. Borrower will not change its name, its identification number, or its place of organization without Lender's prior written consent. Borrower will keep its books and records at the address in this Agreement. Borrower will promptly notify Lender in writing of any planned change in Borrower's principal place of business. The Borrower is to maintain executive and

management personnel with substantially the same qualifications and experience as its present executive and management personnel, and the Borrower will inform the bank of any change in such executive management and personnel.

Environmental Compliance. Borrower will comply with all laws affecting the environment. Borrower will notify Lender within ten days after Borrower receives a summons, notice, citation, letter, or any other type of notice from any federal, state, or local authority, or any other person that claims Borrower is in violation of any law affecting the environment. Obligors indemnify and hold Lender harmless from all violations of any environmental laws. This indemnity includes all costs and expenses incurred by Lender, including reasonable attorneys' fees, that are related to a violation of any environmental laws, even if the indebtedness has been paid at the time any proceeding, claim, or action is started against Lender. Lender may itself or through Borrower arrange for an environmental audit prepared by a qualified environmental engineering firm acceptable to Lender to confirm the continued accuracy of Borrower's environmental representations and warranties. Borrower will pay for the environmental audit.

Use of Proceeds. Borrower will use the loan proceeds in its business.

Pay Limitations. Borrower will not draw, permit, or pay anyone more than is reasonable for services provided to Borrower.

No Borrowings, Guarantees, or Loans. Borrower will not incur debt, borrow money, or guaranty any loan or other obligation. Borrower will not lend any money or sell any of Borrower's accounts receivable without Lender's prior written permission.

No Encumbrances or Transfer of Assets. Borrower will not mortgage, assign, hypothecate, or encumber any of the Property except to Lender without Lender's prior written permission. Borrower will not sell, transfer, or assign any of the Property without Lender's prior written permission. Borrower will not merge, consolidate, sell, transfer, license, lease, encumber or otherwise dispose of Borrower's Property or Borrower's business.

No Dividends, Distributions and Redemptions. Borrower will not pay or declare any dividend, or make any other distribution on account of any share of any class of its stock or other ownership interest, or redeem, purchase, or otherwise acquire directly or indirectly, any shares of any class of its capital stock or other ownership interest.

No Loans or Investments. Borrower will not make any loans or advances to, or investments in, other persons, corporations or entities.

Conditions Precedent to Each Advance. Lender's obligation to make any Advance to or for the account of Borrower under this Agreement is subject to the following conditions precedent, with all documents, instruments, opinions, reports and other items required under this Agreement to be in form and substance satisfactory to Lender:

1) Lender shall have received evidence that this Agreement and all Related Documents have been duly authorized, executed, and delivered by Borrower to Lender. 2) Lender shall have received such opinions of counsel, supplemental opinions, and documents as Lender may request. 3) The security interests in the Collateral shall have been duly authorized, created, and perfected with first lien priority and shall be in full force and effect. 4) All guarantees required by Lender for the credit facility(ies) shall have been executed by each Guarantor, delivered to Lender, and be in full force and effect. 5) Borrower shall have paid to Lender all fees, costs, and expenses specified in this Agreement and the Related Documents as are then due and payable. 6) There shall not exist at this time of any Advance a condition which would constitute an Event of Default under this Agreement.

EVENTS OF DEFAULT. The occurrence of any of the following events will be an Event of Default.

Noncompliance with Lender Agreements. Default by Borrower or Guarantor under any provision of this Agreement, the Related Documents, or any other agreement with Lender.

False Statements. If an Obligor made or makes a false or misleading misrepresentation in the Related Documents, in any supporting material submitted to Lender or to third parties providing reports to Lender, or in Financial Statements given or to be given to Lender.

Material Adverse Change. Any material adverse change in the Borrower's business, financial condition, or the Property has occurred or is imminent; if the full performance of the obligations of any Obligor is materially impaired; or if the Collateral and its value or Lender's rights with respect thereto are materially impaired in any way. The existence or reasonable likelihood of litigation, governmental proceeding, default, or other event that may materially and adversely affect an Obligor's business, financial condition, or the Property.

Insolvency or Liquidation. An Obligor voluntarily suspends transaction of its business or does not generally pay debts as they mature. If an Obligor has or will make a general assignment for the benefit of creditors or will file, or have filed against it, any petition under federal bankruptcy law or under any other state or federal law providing for the relief of debtors if the resulting proceeding is not discharged within thirty days after filing. If a receiver, trustee, or custodian is or will be appointed for an Obligor.

Default on Unrelated Debt. If Borrower or Guarantor materially defaults under a provision of an agreement with a third party or if the indebtedness under such an agreement is accelerated.

Judgments or Attachments. If there is entered against an Obligor a judgment that materially affects the Borrower's business, financial condition, or the Property, or if a tax lien, levy, writ of attachment, garnishment, execution, or similar item is or will be issued against the Collateral or which materially affects Borrower's business, financial condition, or the Property, and which remains unpaid, unstayed on appeal, undischarged, unbonded, or undismissed for thirty days after it was issued.

Collateral Impairment. Lender has a good-faith belief that Lender's rights in the Collateral are or will soon be impaired or that the Collateral itself is or soon will be impaired.

Termination of Existence or Change in Control. If Borrower or Borrower's business is sold or merged or if Borrower or Borrower's business suspends business or ceases to exist.

Insecurity. If Lender has a good-faith belief that any Party is unable or will soon be unable to perform that Party's duties under this Agreement or under the Related Documents.

Death. The death of an individual who is an Obligor, a partner in a partnership that is an Obligor, a member in a limited liability company that is an Obligor, an officer of a corporation that is an Obligor, or an individual of similar position in any other type of business organization that is an Obligor.

REMEDIES ON DEFAULT.

Remedies, No Waiver. The remedies provided for in this Agreement, the Related Documents, and by law are cumulative and not exclusive. Lender reserves the right to exercise some, all, or none of its rights and reserves the right to exercise any right at any time that Lender has the right, without regard to how much time has passed since the right arose. Lender may exercise its rights in its sole, absolute discretion.

Acceleration, Setoff. Upon an Event of Default, the Loan and the Indebtedness may, at Lender's sole option, be declared immediately due and payable. Lender may apply Obligor's bank accounts and any other property held by Lender against the Indebtedness.

CROSS-DEFAULT AND CROSS COLLATERALIZATION. The default of any Party under this Agreement, the Related Documents, or under any other obligation to Lender is a default under this Agreement. The Collateral secures all obligations of the Parties to Lender.

ATTORNEYS' FEES AND OTHER COSTS. If legal proceedings are instituted to enforce the terms of this Agreement, Borrower agrees to pay all costs of the Lender in connection therewith, including reasonable attorneys' fees, to the extent permitted by law.

EXPENSES. Obligors agree to pay all of Lender's reasonable expenses incidental to perfecting Lender's security interests and liens, all insurance premiums, Uniform Commercial Code search fees, and all reasonable fees incurred by Lender for audits, inspection, and copying of the Obligor's books and records. Obligors also agree to pay all reasonable costs and expenses of Lender in connection with the enforcement of Lender's rights and remedies under this Agreement, the Related Documents, and any other agreement between one or more Obligors and Lender, and in connection with the preparation of all amendments, modifications, and waivers of consent with respect to this Agreement, including reasonable attorneys' fees.

GOVERNING LAW/PARTIAL ILLEGALITY. This Agreement and the Related Documents are and will be governed by, and the rights of the Parties will be determined by the laws of the state of Washington except to the extent that federal law controls. If any part, term, or provision of this Agreement is determined to be illegal or in conflict with state or federal law, the validity of the remaining portion or provisions of this Agreement will not be affected, unless the stricken portion or provision adversely affects Lender's risk of realizing Lender's anticipated return, in which case Lender may, in its sole discretion, deem the Loan matured.

NOTICES. All notices required under this Agreement must be in writing and will be considered given: (i) on the day of personal delivery, or (ii) one business day after deposit with a nationally recognized overnight courier service, or (iii) three business days after deposit with the United States Postal Service sent certified mail, return receipt requested. Any of these methods may be used to give notice. All notices must be sent to the party or parties entitled to notice at the addresses first set forth in this Agreement. Any Party may change its address for notice purposes on five days prior written notice to the other Parties.

INTEGRATION AND AMENDMENT. This Agreement and other written agreements among the Parties, including but not limited to the Related Documents, are the entire agreement of the Parties and will be interpreted as a group, one with the others. None of the Parties will be bound by anything not expressed in writing, and this Agreement cannot be modified except by a writing executed by those Parties burdened by the modification.

FURTHER ACTION. Obligors will, upon request of Lender, make, execute, acknowledge, and deliver to Lender the modified and additional instruments, documents, and agreements, and will take the further action that is reasonably required, to carry out the intent and purpose of this transaction.

CONTINUING EFFECT. Unless superseded by a later Business Loan Agreement, this Agreement will continue in full force and effect until all of the Obligors' obligations to Lender are fully satisfied and the Loan and Indebtedness are fully repaid.

HEADINGS. All headings in this Agreement are included for reference only and do not have any effect on the interpretation of this Agreement.

COUNTERPARTS. This Agreement may be executed by the Parties using any number of copies of the Agreement. All executed copies taken together will be treated as a single Agreement.

TIME IS OF THE ESSENCE. Time is of the essence in the performance of this Agreement.

TRANSFERS. Borrower may not assign or transfer its rights or obligations under this Agreement without Lender's prior written consent. Lender may transfer its interest in Lender's sole discretion. Borrower waives all rights of offset and counterclaim Borrower has against Lender. The purchaser of a participation in the loan may enforce its interest regardless of any claims or defenses Borrower has against Lender.

COMMERCIAL LOAN GUARANTY

Columbia State Bank - Seattle CBC #1 Office
 719 2nd Ave., Ste 500
 Seattle, Washington 98104

LOAN NUMBER	GUARANTY DATE
906002177	June 1, 2009

GUARANTOR INFORMATION

Timothy J Kennedy
 7643 NE Champagne Point Place
 Kirkland, WA 98034

Type of Entity: Individual
 State of Residence: Washington

BORROWER INFORMATION

Atlantic Frost Holdings LLC
 PO Box 2640
 Fall River, MA 02722-2640

Type of Business Entity: Limited Liability Company
 State of Organization/Formation: Delaware

William D Phillips
 13301 Manor Stone Dr
 Germantown, MD 20874

Type of Entity: Individual
 State of Residence: Maryland

NOTICE TO GUARANTOR. Each undersigned Guarantor is being asked to guarantee all of Borrower's past, present and future obligations. If Borrower does not pay, any Guarantor may be required to do so. In addition, any Guarantor may be required to pay collection expenses and costs. Lender can require any Guarantor to pay without first attempting to collect from the Borrower or any other Guarantor.

UNLIMITED CONTINUING GUARANTY. The undersigned, jointly and severally hereafter called the "Guarantor" in order to induce Lender to extend or continue to extend financial accommodations to Borrower, hereby guarantees to Lender the full and prompt payment of all loans, drafts, overdrafts, notes, bills, and all other debts, obligations, and liabilities of every kind and description, whether now owing or hereafter arising out of credit previously, contemporaneously, or hereafter granted by Lender to Borrower, whether arising from dealings between Lender and Borrower, or from dealings by which Lender may become, in any manner whatever, a creditor of Borrower. The Guarantor also agrees to pay all interest, fees, charges, attorney fees, and collection costs.

This Guaranty is unconditional and absolute. It is understood that this Guaranty shall cover all obligations of Borrower to Lender. This shall be a continuing guaranty and shall not be affected by any payment made by Borrower to Lender, whether in the form of cash, property, renewal, or other consideration.

This is a guaranty of payment and not of collection.

JOINT AND SEVERAL LIABILITY. If this Guaranty is signed by more than one person, each person having executed the Guaranty acknowledges that his or her obligation hereunder shall be joint and several. Each Guarantor expressly authorizes the Lender to proceed, in its sole and absolute discretion, against each or any Guarantor, and further agrees that if the Lender proceeds against any one of them, the others waive any defense of election of remedies and agree to continue to be liable under the terms of this Guaranty for any amount remaining owing to Lender from Borrower.

CONSENT. The Guarantor consents to all extensions, renewals, and modifications made by the Lender for, or on account of, any indebtedness of Borrower to Lender. Lender may proceed directly against Guarantor in the event of any default by Borrower without resorting to any other persons, to the assets of Borrower, to any collateral security granted by Borrower to Lender, or the liquidation of any collateral security given hereunder to secure this Guaranty. Furthermore, to the extent permitted by law, Guarantor hereby agrees and consents that the Lender may from time to time without notice to Guarantor and without affecting the liability of Guarantor (a) release, impair, sell or otherwise dispose of any security or collateral, (b) release or agree not to sue any guarantor or surety, (c) fail to perfect its security interest in or realize upon any security or collateral, (d) fail to realize upon any of the obligations of Borrower or to proceed against Borrower or any guarantor or surety, (e) renew or extend the time of payment, (f) increase or decrease the rate of interest, (g) accept additional security or collateral, (h) determine the allocation and application of payments and credits and accept partial payments, (i) determine what, if anything, may at any time be done with reference to any security or collateral, and (j) settle or compromise the amount due or owing or claimed to be due or owing from any Borrower, guarantor or surety, which settlement or compromise shall not affect the undersigned's liability for the full amount of the guaranteed obligations. To the extent permitted by law, Guarantor expressly consents to and waives notice of all of the above.

REPRESENTATIONS. Guarantor acknowledges and agrees that Lender (a) has not made any representations or warranties with respect to, (b) does not assume any responsibility to Guarantor for, and (c) has no duty to provide information to the undersigned regarding, the enforceability of any of the indebtedness or the financial condition of any Borrower or any other guarantor. Guarantor has independently determined the

Initials *BJB*

creditworthiness of Borrower and the enforceability of the obligations of Borrower to Lender and until such obligations are paid in full in accordance with this Guaranty, Guarantor will independently and without reliance on Lender continue to make such determinations.

GENERAL WAIVERS. Guarantor hereby waives notice of acceptance of this Guaranty, all notices hereunder, and all notices of demand, presentment, notice of dishonor, intention to accelerate, acceleration, notice of any adverse information which Lender may have, and all notices of protest, default, and nonpayment. Guarantor waives all defenses of suretyship. Guarantor waives any defense that could be asserted by Borrower, including defenses arising out of failure of consideration, breach of warranty, fraud, payment, statute of frauds, bankruptcy, lack of capacity, statute of limitations, lender liability, unenforceability of any loan document, accord and satisfaction, or usury.

SURVIVAL. This Guaranty shall be binding upon Guarantor, Guarantor's heirs, successors, and estate representatives, until all such indebtedness shall be fully paid to Lender.

EXERCISE OF LENDER'S RIGHTS. Any delay or failure of the Lender in exercising any of its rights under this Guaranty does not operate as a waiver of the Lender's ability to exercise all of its rights. The Lender may choose to partially exercise rights under this Guaranty, but that does not prevent the Lender from fully exercising these rights.

ASSIGNABILITY. This Guaranty shall inure to the benefit of the Lender and its successors and assigns, including every holder of any of the indebtedness here guaranteed. In the event that any person other than the Lender shall become a holder of any of the indebtedness, the reference to the Lender shall be construed to refer to each such holder.

RIGHT OF SETOFF. To the extent permitted by law, Guarantor gives Lender the right to setoff any of Guarantor's money or property which may be in Lender's possession against any amount owed under this Guaranty. This right of setoff does not extend to any Keogh account, IRA, or similar tax deferred deposit. Further, the Lender shall have available all remedies under applicable state and federal laws, including the garnishment of wages, to the extent permitted by law.

WAIVER OF JURY TRIAL. All parties to this Guaranty knowingly and voluntarily waive, to the fullest extent permitted by law, all rights to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, between Guarantor and Lender arising out of, in connection with, related to, or incidental to the relationship established in connection with this Guaranty or made pursuant to any other note or other instrument, document, or agreement executed or delivered by Borrower or Guarantor in connection with this Guaranty or the related transactions.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Guaranty is invalid or prohibited by applicable law, that term or provision will be ineffective, but only to the extent required to make it lawful. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Guaranty without invalidating the remainder of the provisions of this Guaranty.

GOVERNING LAW. This Guaranty will be governed by and construed in accordance with the laws of the state of Washington except to the extent that federal law controls.

HEADINGS AND GENDER. The headings in this Guaranty are for convenience in identifying subject matter. The headings have no limiting effect on the text that follows any particular heading. All words used in this Guaranty are read to be of whatever gender or number is appropriate under the circumstances.

ORAL AGREEMENTS DISCLAIMER. Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

ADDITIONAL PROVISIONS. Guarantor agrees to furnish Lender with the following:

Annual Personal Financial Statements. As soon as available, within ninety (90) days of the one year anniversary of the previous personal financial statements in file, Guarantor's personal financial statement, prepared by Guarantor in form satisfactory to Lender.

Tax Returns. Annually, due upon completion but not later than November 1st of each year, Federal and other governmental tax returns, prepared by a Certified Public accountant in a form satisfactory to Lender.

Marital Community Bound by Agreement. By executing this Guaranty, Guarantor acknowledges and agrees that the extension of credit by Lender to Borrower constitutes a benefit to the marital community, and that Guarantor's liability to Lender under the terms of this Guaranty extends to and includes Guarantor's marital community.

ACKNOWLEDGMENT. This Guaranty is freely and voluntarily given to the Lender by Guarantor, without duress or coercion, and after Guarantor has either consulted with legal counsel or has been given an opportunity to do so, and Guarantor has fully and carefully read and understands all of the terms and provisions of the Guaranty.

By signing this Guaranty, Guarantor acknowledges reading, understanding, and agreeing to all its provisions.

 6/28/09
Timothy J Kennedy Date

Individually

COMMERCIAL SECURITY AGREEMENT

Columbia State Bank - Seattle CBC #1 Office
719 2nd Ave., Ste 500
Seattle, Washington 98104

906002177	June 1, 2009	
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BORROWER INFORMATION

Atlantic Frost Holdings LLC
PO Box 2640
Fall River, MA 02722-2640

William D Phillips
13301 Manor Stone Dr
Germantown, MD 20874

COLLATERAL OWNER INFORMATION

Atlantic Frost Holdings LLC
PO Box 2640
Fall River, MA 02722-2640

RECEIVED OCT 16 2009

AGREEMENT. For purposes of this document, the term "Agreement" is used when reference is made to this Commercial Security Agreement.

LENDER. "Lender" means Columbia State Bank - Seattle CBC #1 Office whose address is 719 2nd Ave., Ste 500, Seattle, Washington 98104, its successors and assigns.

DEBTOR. For purposes of this Agreement, the term "Debtor" refers to any party who has an interest in the Collateral defined in the "DESCRIPTION OF COLLATERAL" provision below. The Debtor includes each party (Borrower) identified above as a Collateral Owner. Throughout this Agreement, references to Debtor are to be construed as specifically defined by Article 9 (or equivalent) of the Uniform Commercial Code.

OBLIGOR. For purposes of this Agreement, the term "Obligor" refers to any party, with respect to an obligation secured by a security interest in the collateral, that: (i) owes payment or other performance of the obligation, or (ii) is otherwise accountable in whole or in part for payment or other performance of the obligation. Throughout this Agreement, references to Obligor are to be construed as specifically defined by Article 9 (or equivalent) of the Uniform Commercial Code.

SECURITY INTEREST GRANT. Debtor, in consideration of the Obligations to Lender, as defined in the "OBLIGATIONS" provision below, hereby agrees to all of the terms of this Agreement and further hereby specifically grants Lender a continuing security interest in the collateral described in the "DESCRIPTION OF COLLATERAL" provision below. Debtor further grants Lender a security interest in the proceeds of said collateral; the proceeds of hazard insurance and eminent domain or condemnation awards involving the collateral; all products of, and accessions to, such collateral or interests therein; any and all deposits or other sums at any time credited by or due from Lender to Debtor; and any and all instruments, documents, policies, and certificates of insurance, securities, goods, accounts receivable, choses in action, chattel paper, cash, property, and the proceeds thereof (whether or not the same are Collateral or proceeds thereof hereunder), owned by Debtor or in which Debtor has an interest which are now or at any time hereafter in possession or control of Lender, or in transit by mail or carrier to or from Lender, or in possession of any third party acting on Lender's behalf, without regard to whether Lender received the same in pledge, for safekeeping, as agent or otherwise, or whether Lender has conditionally released the same. Debtor's grant of a continuing security interest in the foregoing described collateral secures to Lender the payment of all loans, advances, and extensions of credit from Lender to Borrower, including all renewals and extensions thereof, and any and all obligations of every kind whatsoever, whether heretofore, now, or hereafter existing or arising between Lender and Borrower and howsoever incurred or evidenced, whether primary, secondary, contingent, or otherwise.

OBLIGATIONS. As used in this Agreement, the term "Obligations" shall mean any and all of Obligor's or Debtor's obligations to Lender, whether they arise under this Agreement or the Note, Loan Agreement, Guaranty, or other evidence of debt executed in connection with this Agreement, or under any other mortgage, trust deed, deed of trust, security deed, security agreement, note, lease, instrument, contract, document, or other similar writing heretofore, now, or hereafter executed by the Obligor or Debtor to Lender, including any renewals, extensions and modifications thereof, and including oral agreements and obligations arising by operation of law. The Obligations shall also include all expenditures that Lender may make under the terms of this Agreement or for the benefit of Obligor or Debtor, all interest, costs, expenses, and attorneys' fees accruing to or incurred by Lender in enforcing the Obligations or in the protection, maintenance, preservation, or liquidation of the Collateral, and any of the foregoing that may arise after the filing of any petition by or against Obligor or Debtor under the Bankruptcy Code, irrespective of whether the obligations do not accrue because of the automatic stay under Bankruptcy Code Section 362 or otherwise.

DESCRIPTION OF COLLATERAL. The collateral covered by this Agreement (the "Collateral") is all of the Debtor's property described below which the Debtor now owns or may hereafter acquire or create and all proceeds and products thereof, whether tangible or intangible,

Initials *WDP*

including proceeds of insurance and which may include, but shall not be limited to, any items listed on any schedule or list attached hereto. The Collateral described has the meanings contained in the Uniform Commercial Code as adopted in the state where the Lender is located.

Specific Collateral. "Specific" refers to the specific property, together with all related rights, described below.

SPECIFIC COLLATERAL DESCRIPTION: ATLANTIC FROST (Official Number 262733), together with all the engines, boilers, machinery, hoists, lifts, rigging, boats, anchors, chairs, tackle, apparel, furniture, fittings, tools, pumps, pipe, equipment including but not limited to electric communication and navigational equipment, and all other appurtenances thereto appertaining and belonging, and all additions and improvements; whether any of the foregoing is owned now or acquired later; all accessories, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and accounts proceeds).

WARRANTIES. The Debtor warrants the following: Debtor has or will acquire free and clear title to all of the Collateral, unless otherwise provided herein; the security interest granted to the Lender shall be a first security interest, and the Debtor will defend same to the Lender against the claims and demands of all persons; the Debtor will fully cooperate in placing or maintaining Lender's lien or security interest; the Debtor agrees not to allow or permit any lien, security interest, adverse claim, charge, or encumbrance of any kind against the collateral or any part thereof, without the Lender's prior written consent; all of the Collateral is located in the state of the Debtor's address specified at the beginning of this Agreement, unless otherwise certified to and agreed to by the Lender, or, alternatively, is in possession of the Lender; the Debtor will not remove or change the location of any Collateral without the Lender's prior written consent; the Debtor will use the Collateral only in the conduct of its own business, in a careful and proper manner; the Debtor will not use the Collateral or permit it to be used for any unlawful purpose; except as otherwise provided in this Agreement with respect to inventory; Debtor will not, without the Lender's prior written consent, sell, assign, transfer, lease, charter, encumber, hypothecate, or dispose of the Collateral, or any part thereof, or any interest therein, nor will Debtor offer to sell, assign, transfer, lease, charter, encumber, hypothecate, or dispose of the Collateral, or any interest therein; the Debtor will not conduct business under any name other than that given at the beginning of this Agreement, nor change, nor reorganize the type of business entity; as described, except upon the prior written approval of the Lender, in which event the Debtor agrees to execute any documentation of whatsoever character or nature demanded by the Lender for filing or recording, at the Debtor's expense, before such change occurs; the information regarding Debtor's state of organization or formation as set forth at the beginning of this Agreement is correct, and Debtor further warrants that Debtor will not change Debtor's state of organization or formation without Lender's prior written consent and will assist Lender with any changes to any documents, filings, or other records resulting or required therefrom; the Debtor will keep all records of account, documents, evidence of title, and all other documentation regarding its business and the Collateral at the address specified at the beginning of this Agreement, unless notice thereof is given to the Lender at least ten (10) days prior to the change of any address for the keeping of such records; the Debtor will, at all times, maintain the Collateral in good condition and repair and will not sell or remove same except as to inventory in the ordinary course of business; the Debtor is a legally created business entity, as described before, and it has the power, and the person signing is duly authorized, to enter into this Agreement; the execution of this Agreement will not create any breach of any provision of the Debtor's organizational documents (Articles of Incorporation and By-Laws if the Debtor is a corporation, Articles of Organization and Operating Agreement if the Debtor is a limited liability company, or Certificate of Limited Partnership (if applicable)) or Partnership Agreement if the Debtor is a partnership), or any other agreement to which the Debtor is or may become a party; all financial information and statements delivered by the Debtor to the Lender to obtain loans and extensions of credit are true and correct and are prepared in accordance with generally accepted accounting principles; there has been no material adverse change in the financial condition of the Debtor since it last submitted any financial information to the Lender; there are no actions or proceedings, including set-off or counterclaim, which are threatened or pending against the Debtor which may result in any material adverse change in the Debtor's financial condition or which might materially affect any of the Debtor's assets; and the Debtor has duly filed all federal, state, municipal, and other governmental tax returns, and has obtained all licenses, permits, and the like which the Debtor is required by law to file or obtain, and all such taxes and fees for such licenses and permits required to be paid, have been paid in full.

INSURANCE. The Debtor agrees that it will, at its own expense, fully insure the Collateral against all loss or damage for any risk of whatsoever nature in such amounts, with such companies, and under such policies as shall be satisfactory to the Lender. All policies shall expressly provide that the Lender shall be the loss payee or, alternatively, if requested by Lender, mortgagee. The Lender is granted a security interest in the proceeds of such insurance and may apply such proceeds as it may receive toward the payment of the Obligations, whether or not due, in such order as the Lender may in its sole discretion determine. The Debtor agrees to maintain, at its own expense, public liability and property damage insurance upon all its other property, to provide such policies in such form as the Lender may approve, and to furnish the Lender with copies of other evidence of such policies and evidence of the payments of the premiums thereon. All policies of insurance shall provide for a minimum 10 days' written notice of cancellation to Lender. At the request of Lender, such policies of insurance shall be delivered to and held by Lender. Debtor agrees that Lender is authorized to act as attorney for Debtor in obtaining, adjusting, settling, and canceling such insurance and endorsing any drafts or instruments issued or connected with such insurance. Debtor specifically authorizes Lender to disclose information obtained in conjunction with this Agreement and from policies of insurance to prospective insurers of the Collateral. If the Debtor at any time fails to obtain or to maintain any of the insurance required above, other than insurance for loss or damage to Collateral which is a motor vehicle or vessel purchased with the proceeds of a loan secured by this Agreement, or pay any premium in whole or in part relating thereto, the Lender, without waiving any default hereunder, may make such payment or obtain such policies as the Lender, in its sole discretion, deems advisable to protect the Debtor's property. All costs incurred by the Lender, including reasonable attorney's fees, court costs, expenses, and other charges thereby incurred, shall become a part of the Obligations and shall be payable on demand.

ADDITIONAL COLLATERAL. In the event that Lender should, at any time, determine that the Collateral or Lender's security interest in the Collateral is impaired, insufficient, or has declined or may decline in value, or if Lender should deem that payment of the Obligations is insecure, time being of the very essence, then Lender may require, and Debtor agrees to furnish, additional Collateral that is satisfactory to Lender. Lender's request for additional collateral may be oral or in writing delivered by United States mail addressed to Debtor and shall not affect any other subsequent right of the Lender to request additional Collateral.

FINANCING STATEMENT(S) AND LIEN PERFECTION. Lender is authorized to file a conforming financing statement or statements to perfect its security interest in the Collateral, as provided in Revised Article 9, Uniform Commercial Code - Secured Transactions. Debtor agrees to provide such information, supplements, and other documents as Lender may from time to time require to supplement or amend such financing statement filings, in order to comply with applicable state or federal law and to preserve and protect the Lender's rights in the Collateral. The Debtor further grants the Lender a power of attorney to execute any and all documents necessary for the Lender to perfect or maintain perfection of its security interest in the Collateral, and to change or correct any error on any financing statement or any other document necessary for proper placement of a lien on any Collateral which is subject to this Agreement.

LANDLORD'S WAIVER. Upon request, Debtor shall furnish to Lender, in a form and upon such terms as are acceptable to Lender, a landlord's waiver of all liens with respect to any Collateral covered by this Agreement that is or may be located upon leased premises.

RELATIONSHIP TO OTHER AGREEMENTS. This Agreement and the security interests (and pledges and assignments, as applicable) herein granted are in addition to (and not in substitution, novation or discharge of) any and all prior or contemporaneous security agreements, security interest, pledges, assignments, mortgages, liens, rights, titles, or other interests in favor of Lender or assigned to Lender by others in connection with the Obligations. All rights and remedies of Lender in all such agreements are cumulative.

TAXES, LIENS, ETC. The Debtor agrees to pay all taxes, levies, judgments, assessments, and charges of any nature whatsoever relating to the Collateral or to the Debtor's business. If the Debtor fails to pay such taxes or other charges, the Lender, at its sole discretion, may pay such charges on behalf of the Debtor; and all sums so dispensed by the Lender, including reasonable attorneys' fees, court costs, expenses, and other charges relating thereto, shall become a part of the Obligations and shall be payable on demand.

ENVIRONMENTAL HAZARDS. Debtor certifies that as to any real estate which has been, is now, or will be in the future owned or occupied by Debtor, that such real estate has not in the past, nor will now or in the future be allowed in any manner to be exposed to or contain hazardous or environmentally harmful substances as may be defined or regulated by any state or federal law or regulation which impacts, in any way, such substances, except to the extent the existence of such substances has been presently disclosed in writing to Lender, and Debtor will immediately notify Lender in writing of any assertion made by any party to the contrary. Debtor indemnifies and holds Lender and Lender's directors, officers, employees, and agents harmless from any liability or expense of whatsoever nature, including reasonable attorneys' fees, incurred directly or indirectly as a result of Debtor's involvement with hazardous or environmentally harmful substances as may be defined or regulated as such under any state or federal law or regulation.

PROTECTION OF COLLATERAL. Debtor agrees that Lender may, at Lender's sole option, whether before or after any event of default, and without prior notice to Debtor, take the following actions to protect Lender's interest in the Collateral: (a) pay for the maintenance, preservation, repair, improvement, or testing of the Collateral; (b) pay any filing, recording, registration, licensing, certification, or other fees and charges related to the Collateral; or (c) take any other action to preserve and protect the Collateral or Lender's rights and remedies under this Agreement, as Lender may deem necessary or appropriate from time to time. Debtor agrees that Lender is not obligated and has no duty whatsoever to take the foregoing actions. Debtor further agrees to reimburse Lender promptly upon demand for any payment made or any expenses incurred by Lender pursuant to this authorization. Payments and expenditures made by Lender under this authorization shall constitute additional Obligations, shall be secured by this Agreement, and shall bear interest thereon from the date incurred at the maximum rate of interest, including any default rate, if one is provided, as set forth in the notes secured by this obligation.

INFORMATION AND REPORTING. The Debtor agrees to supply to the Lender such financial and other information concerning its affairs and the status of any of its assets as the Lender, from time to time, may reasonably request. The Debtor further agrees to permit the Lender, its employees, and agents, to have access to the Collateral for the purpose of inspecting it, together with all of the Debtor's other physical assets, if any, and to permit the Lender, from time to time, to verify Accounts as well as to inspect, copy, and to examine the books, records, and files of the Debtor.

CROSS-COLLATERALIZATION. Obligor and Debtor agree that any security interest provided in Collateral under this Agreement or any collateral provided in connection with any and all other indebtedness of Obligor or Debtor to Lender, whether or not such indebtedness is related by class or claim and whether or not contemplated by the parties at the time of executing each evidence of indebtedness, shall act as collateral for all said indebtedness. This cross-collateralization provision shall not apply to any Collateral that is/are household goods or a principal dwelling.

CROSS-DEFAULT. Any default of the Obligor or Debtor in the terms of any indebtedness to Lender shall constitute a default under this Agreement.

DEFAULT. The occurrence of any of the following events shall constitute a default of this Agreement: (a) the non-payment, when due (whether by acceleration of maturity or otherwise), of any amount payable on any of the Obligations or any extension or renewal thereof; (b) the failure to perform any agreement of the Obligor or Debtor contained herein or in any other agreement Obligor or Debtor has or may have with Lender; (c) the publication of any statement, representation, or warranty, whether written or oral, by the Obligor or Debtor to the Lender, which at any time

is untrue in any respect as of the date made; (d) the condition that any Obligor or Debtor becomes insolvent or unable to pay debts as they mature, or makes an assignment for the benefit of the Obligor's or Debtor's creditors, or conveys substantially all of its assets, or in the event of any proceedings instituted by or against any Obligor or Debtor alleging that such Obligor or Debtor is insolvent or unable to pay debts as they mature (failure to pay being conclusive evidence of inability to pay), or makes application for appointment of a receiver or any other legal custodian, or in the event that a petition of any kind is filed under the Federal Bankruptcy Act by or against such Obligor or Debtor; (e) the entry of any judgment against any Obligor or Debtor, or the issue of any order of attachment, execution, sequestration, claim and delivery, or other order in the nature of a writ levied against the Collateral; (f) the death of any Obligor or Debtor who is a natural person, or of any partner of the Obligor or Debtor which is a partnership; (g) the dissolution, liquidation, termination of existence, business failure, merger, and consolidation or transfer of a substantial part of the property of any Obligor or Debtor which is a corporation or partnership; (h) the Collateral or any part of the Collateral declines in value in excess of normal wear, tear, and depreciation or becomes, in the judgment of Lender, impaired, unsatisfactory, or insufficient in character or value, including but not limited to the filing of a competing financing statement; breach of warranty that the Debtor is the owner of the Collateral free and clear of any encumbrances (other than those encumbrances disclosed by Debtor or otherwise made known to Lender, and which were acceptable to Lender at the time); sale of the Collateral (except in the ordinary course of business) without Lender's express written consent; failure to keep the Collateral insured as provided herein; failure to allow Lender to inspect the Collateral upon demand or at reasonable time; failure to make prompt payment of taxes on the Collateral; loss, theft, substantial damage, or destruction of the Collateral; and, when Collateral includes inventory, accounts, chattel paper, or instruments, failure of account debtors to pay their obligations in due course; or (i) the Lender in good faith, believes the Obligor's ability to repay the Obligor's indebtedness secured by this Agreement, any Collateral, or the Lender's ability to resort to any Collateral, is or soon will be impaired, time being of the very essence.

REMEDY. Upon the occurrence of an event of default, Lender, at its option, shall be entitled to exercise any one or more of the remedies described in this Agreement, in all documents evidencing the Obligations, in any other agreements executed by or delivered by Obligor or Debtor for benefit of Lender, in any third-party security agreement, mortgage, pledge, or guaranty relating to the Obligations, in the Uniform Commercial Code of the state in which Lender is located, and all remedies at law and equity, all of which shall be deemed cumulative. The Obligor agrees that, whenever a default exists, all Obligations may (notwithstanding any provision in any other agreement), at the sole option and discretion of the Lender and without demand or notice of any kind, be declared, and thereupon immediately shall become due and payable; and the Lender may exercise, from time to time, any rights and remedies, including the right to immediate possession of the Collateral, available to it under applicable law. The Debtor agrees, in the case of default, to assemble, at its own expense, all Collateral at a convenient place acceptable to the Lender. The Lender shall, in the event of any default, have the right to take possession of and remove the Collateral, with or without process of law, and in doing so, may peacefully enter any premises where the Collateral may be located for such purpose. Debtor waives any right that Debtor may have, in such instance, to a judicial hearing prior to such retaking. The Lender shall have the right to hold any property then in or upon said Collateral at the time of repossession not covered by the security agreement until return is demanded in writing by Debtor. Obligor and Debtor agree to pay all reasonable costs of the Lender in connection with the collecting of the Obligations and enforcement of any rights connected with retaking, holding, testing, repairing, improving, selling, leasing, or disposing of the Collateral, or like expenses. These expenses, together with interest thereon from the date incurred until paid by Obligor or Debtor at the maximum post-default rate stated in the notes secured hereby, which Obligor and Debtor agree to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement. The Lender may sell, lease, or otherwise dispose of the Collateral, by public or private proceedings, for cash or credit, without assumption of credit risk. Unless the Collateral is perishable or threatens to decline speedily in value or of a type customarily sold on a recognized market, Lender will send Debtor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition will be made. Any notification of intended disposition of the Collateral by the Lender shall be deemed to be reasonable and proper if sent United States mail, postage prepaid, to the Debtor at least ten (10) days before such disposition, and addressed to the Debtor either at the address shown herein or at any other address provided to Lender in writing for the purpose of providing notice. Proceeds received by Lender from disposition of the Collateral may be applied toward Lender's expenses and other obligations in such order or manner as Lender may elect. Debtor shall be entitled to any surplus if one results after lawful application of the proceeds. If the proceeds from a sale of the Collateral are insufficient to extinguish the Obligations of the Obligor hereunder, Obligor shall be liable for a deficiency. Lender shall have the right, whether before or after default, to collect and receipt for, compound, compromise, and settle, and give releases, discharges, and acquittances with respect to, any and all amounts owed by any person or entity with respect to the Collateral. Lender may remedy any default and may waive any default without waiving the default remedied and without waiving any other prior or subsequent default. The rights and remedies of the Lender are cumulative, and the exercise of any one or more of the rights or remedies shall not be deemed an election of rights or remedies or a waiver of any other right or remedy.

FUTURE ADVANCES AND AFTER-ACQUIRED PROPERTY. Future advances may be made by the Lender under this Agreement to the extent allowed by law. The security interest grant contained in this Agreement also applies to any Collateral of the type(s) identified in this Agreement that the Debtor acquires after this Agreement is executed, except that no security interest attaches to after-acquired consumer goods unless the Debtor acquires rights in such goods within 10 days of Lender giving value. In anticipation of future advances by Lender, the Obligor or Debtor authorize Lender to file any necessary financing statements to protect Lender's security interest.

EXERCISE OF LENDER'S RIGHTS. Any delay on the part of the Lender in exercising any power, privilege, or right hereunder, or under any other document executed by Obligor or Debtor to the Lender in connection herewith, shall not operate as a waiver thereof, and no single or partial exercise thereof or any other power, privilege, or right shall preclude other or further exercise thereof. The waiver by the Lender of any default of the Obligor or Debtor shall not constitute a waiver of subsequent default.

CONTINUING AGREEMENT. This is a continuing agreement, and shall remain in full force and effect until the Obligations are paid in full. In the event that Lender should take additional Collateral, or enter into other security agreements, mortgages, guarantees, assignments, or similar

documents with respect to the Obligations, or should Lender enter into other such agreements with respect to other obligations of Obligor or Debtor, such agreements shall not discharge this Agreement, which shall be construed as cumulative and continuing and not alternative and exclusive.

The security interest (and pledge and assignment as applicable), hereby granted and all of the terms and provisions of this Agreement shall be deemed a continuing agreement and shall continue in full force and effect until the Obligations are paid in full. Any such revocation or termination shall only be effective if explicitly confirmed in a signed writing issued by Lender to such effect and shall in no way impair or affect any transactions entered into or rights created or liabilities incurred or arising prior to such revocation or termination, as to which this Agreement shall be truly operative until same are repaid and discharged in full. Unless otherwise required by applicable law, Lender shall be under no obligation to issue a termination statement or similar document unless Debtor requests same in writing, and providing further, that all Obligations have been repaid and discharged in full and there are no commitments to make advances, incur any obligations, or otherwise give value.

ABSENCE OF CONDITIONS OF LIABILITY. This Agreement is unconditional. Lender shall not be required to exhaust its remedies against Debtor, other collateral, or guarantors, or pursue any other remedies within Lender's power before being entitled to exercise its remedies hereunder. Lender's rights to the Collateral shall not be altered by the lack of validity or enforceability of the Obligations against Obligor, and this Agreement shall be fully enforceable irrespective of any counterclaim which the Obligor may assert on the underlying debt and notwithstanding any stay, modification, discharge, or extension of Obligor's Obligation arising by virtue of Debtor's insolvency, bankruptcy, or reorganization, whether occurring with or without Lender's consent.

NOTICES. Any notice or demand given by Lender to Obligor or Debtor in connection with this Agreement, the Collateral, or the Obligations, shall be deemed given and effective upon deposit in the United States mail, postage prepaid, addressed to Obligor or Debtor at the address designated at the beginning of this Agreement, or such other address as Obligor or Debtor may provide to Lender in writing from time to time for such purposes. Actual notice to Obligor or Debtor shall always be effective no matter how such notice is given or received.

WAIVERS. Debtor waives notice of Lender's acceptance of this Agreement, defenses based on suretyship, and to the fullest extent permitted by law, any defense arising as a result of any election by Lender under the Bankruptcy Code and the Uniform Commercial Code. Debtor and any maker, endorser, guarantor, surety, third-party pledgor, and other party executing this Agreement that is liable in any capacity with respect to the Obligations hereby waive demand, notice of intention to accelerate, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor, and any other similar notice whatsoever.

WAIVER OF JURY TRIAL. All parties to this Agreement hereby waive to the fullest extent permitted by law any right to trial by jury with respect to any disputes, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship established between them in this Agreement or any note or other instrument, document, or agreement executed or delivered in connection herewith or the transactions related hereto.

JOINT AND SEVERAL LIABILITY. If this Agreement is executed by more than one Party, it is understood and agreed that each such Party to this Agreement shall be jointly and severally bound and the word "Obligor" or "Debtor" as used herein shall be construed to be of such number as circumstances required.

SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but, in the event any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity and shall be severed from the rest of this Agreement without invalidating the remainder of such provision or the remaining provisions of this Agreement.

SURVIVAL. The rights and privileges of the Lender hereunder shall inure to the benefits of its successors and assigns, and this Agreement shall be binding on all heirs, executors, administrators, assigns, and successors of Obligor or Debtor.

ASSIGNABILITY. Lender may assign, pledge, or otherwise transfer this Agreement or any of its rights and powers under this Agreement without notice, with all or any of the Obligations, and in such event the assignee shall have the same rights as if originally named herein in place of Lender. Obligor or Debtor may not assign this Agreement or any benefit accruing to it hereunder without the express written consent of the Lender.

AUTHORIZATIONS. Debtor authorizes Lender, without notice or demand and without altering Debtor's liability or Lender's rights hereunder, from time to time to take acts which may alter the obligation of Obligor to Lender or Debtor's right to restitution or subrogation or both, including: (a) to renew, compromise, extend, or otherwise change the time for payment of, or otherwise change the terms of the Obligations or any part thereof, including increasing the rate of interest; (b) to extend additional credit to Obligor in any manner for any purpose; (c) to incur costs, including attorneys' fees, with respect to enforcing its rights with respect to the Obligations, and collateral securing the Obligations; (d) to exchange, enforce, waive, or release (whether intentionally or unintentionally) any security for the Obligations or any part thereof or purchase such security at private or public sale and to file any financing statements necessary for Lender to perfect or protect Lender's security interest; (e) to settle, release, compromise with, or substitute any one or more endorsers, guarantors, or other obligors or the Obligations; (f) to impair the value of Lender's interest in Collateral through failure to obtain or maintain protection, failure to obtain or maintain recordation of an interest, or through failure to perform a duty owed to Debtor to preserve the Collateral; and (g) to apply all monies received from Debtor and others or from Collateral in Lender's discretion without in any way being required to marshal assets.

GOVERNING LAW. This Agreement has been delivered in the state of Washington and shall be construed in accordance with the laws of that state.

HEADINGS AND GENDER. The headings preceding text in this Agreement are for general convenience in identifying subject matter, but have no limiting impact on the text which follows any particular heading. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require.

MISCELLANEOUS. Time is of the essence of this Agreement. Except as otherwise defined in this Agreement, all terms herein shall have the meanings provided by the Uniform Commercial Code as it has been adopted in the state of Washington. All rights, remedies, and powers of the Lender hereunder are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all rights, remedies, and powers given hereunder or in or by any other instruments or by the provision of the Uniform Commercial Code as adopted in the state where the Lender is located, or any other laws, now existing or hereafter enacted. The Obligor specifically agrees that, if it has heretofore or hereafter executed any loan agreement in conjunction with the Agreement, any ambiguities between this Agreement and any such loan agreement shall be construed under the provisions of the loan agreement, to the extent that it may be necessary to eliminate any such ambiguity. Obligor and Debtor release Lender from any liability which might otherwise exist for any act or omission of Lender related to the collection of any debt secured by this Agreement or the disposal of any Collateral, except for the Lender's willful misconduct.

ORAL AGREEMENTS DISCLAIMER. Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

ACKNOWLEDGMENT. Debtor acknowledges agreeing to all of the provisions in this Agreement, and further acknowledges receipt of a true and complete copy of this Agreement.

IN WITNESS WHEREOF, Debtor has executed this Agreement on the date and year shown below.

Atlantic Frost Holdings LLC

By:  Date: 01/24/13
Its: Member

Exhibit

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]	
Corporation Service Company	8008585294
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
CORPORATION SERVICE COMPANY	
2711 CENTERVILLE ROAD	
SUITE 400	
WILMINGTON DE 19808	

DELAWARE DEPARTMENT OF STATE
 U.C.C. FILING SECTION
 FILED 02:53 PM 03/26/2010
 INITIAL FILING # 5292470 3
 AMENDMENT # 2010 1053556
 SRV: 100322906

1a. INITIAL FINANCING STATEMENT FILE # 5292470 3	1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. <input type="checkbox"/>
---	---

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes.
 Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.
 CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME Atlantic Frost Holdings, LLC				
OR	6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME					
OR	7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
7c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

7d. TYPE OF ORGANIZATION	7e. JURISDICTION OF ORGANIZATION
--------------------------	----------------------------------

8. AMENDMENT (COLLATERAL CHANGE): check only one box.
 Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. NAME of SECURED PARTY of RECORD AUTHORIZING THIS AMENDMENT
 Columbia State Bank

10. OPTIONAL FILER REFERENCE DATA
 [49114351] # 90600 2177

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

DELAWARE DEPARTMENT OF STATE
 U.C.C. FILING SECTION
 FILED 04:31 PM 06/29/2009
 INITIAL FILING # 5292470 3
 AMENDMENT # 2009 2080080
 SRV: 090658435

A. NAME & PHONE OF CONTACT AT FILER (optional)
 Diligence 8008585294

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

CORPORATION SERVICE COMPANY
 2711 CENTERVILLE ROAD
 SUITE 400
 WILMINGTON DE 19808

1a. INITIAL FINANCING STATEMENT FILE #
 5292470 3

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME
 Atlantic Frost Holdings Inc.

OR

6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

7e. TYPE OF ORGANIZATION 7f. JURISDICTION OF ORGANIZATION

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral: deleted or added, or give entire restated collateral description, or describe collateral assigned.

ELECTRONIC COMMUNICATION AND NAVIGATIONAL EQUIPMENT

9. NAME of SECURED PARTY of RECORD AUTHORIZING THIS AMENDMENT

Columbia State Bank

10. OPTIONAL FILER REFERENCE DATA

906002177 / 6209 [43446796]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
 David Ashford 8008585294

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

DILIGENCE, INC.
 6500 HARBOR HEIGHTS PARKWAY
 SUITE 400
 MOKILTZO WA 98275

DELAWARE DEPARTMENT OF STATE
 U.C.C. FILING SECTION
 FILED 05:27 PM 09/21/2005
 INITIAL FILING NUM: 5292470 3
 AMENDMENT NUMBER: 0000000
 SRV: 050774498

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
 ATLANTIC FROST HOLDINGS LLC

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
 PO BOX 2640 FALL RIVER MA 02722-264 US

1a. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION
 LTD LIABILITY COMPANY DE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2a. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
 COLUMBIA STATE BANK

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
 1102 BROADWAY PLAZA MS6100 TACOMA WA 98402 US

5. ALTERNATIVE DESIGNATION - 2004

6. This FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (if applicable) [ADDITIONAL FEE] All Debtors Debtor 1 Debtor 2 (optional)

8. OPTIONAL FILER REFERENCE DATA
 201167667-1/MS 6208 [15004823]

UCC FINANCING STATEMENT ADDENDUM - COLLATERAL

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT		
1a. ORGANIZATION'S NAME		
ATLANTIC FROST HOLDINGS LLC		
OR		
1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

This FINANCING STATEMENT covers the following collateral:
ATLANTIC FROST (OFFICIAL NUMBER 282733), TOGETHER WITH ALL THE ENGINES, BOILERS, MACHINERY, BOWSPRITS, SAILS, RIGGINGS, BOATS, ANCHORS, CHAIRS, TACKLE, APPAREL, FURNITURE, FITTINGS, TOOLS, PUMPS, PIPE, EQUIPMENT AND ALL OTHER APPURTENANCES THEREUNTO APPERTAINING AND BELONGING, AND ALL ADDITIONS AND IMPROVEMENTS; WHETHER ANY OF THE FOREGOING IS OWNED NOW OR ACQUIRED LATER; ALL ACCESSIONS, ADDITIONS, REPLACEMENTS, AND SUBSTITUTIONS RELATING TO ANY OF THE FOREGOING; ALL RECORDS OF ANY KIND RELATING TO ANY OF THE FOREGOING; ALL PROCEEDS RELATING TO ANY OF THE FOREGOING (INCLUDING INSURANCE, GENERAL INTANGIBLES AND OTHER ACCOUNTS PROCEEDS)

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**COLUMBIA STATE BANK
LOAN OPERATIONS MS-6120
1102 BROADWAY PLAZA
TACOMA, WA 98402**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME				
ATLANTIC FROST HOLDINGS LLC				
OR	1b. INDIVIDUAL'S LAST NAME			
	FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
PO BOX 2640		FALL RIVER	MA	02722-2640
1d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
		LLC	DE	3766899 <input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S LAST NAME			
	FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
2d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				<input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR B/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME				
COLUMBIA STATE BANK				
OR	3b. INDIVIDUAL'S LAST NAME			
	FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
719 2ND AVENUE, SUITE 500		SEATTLE	WA	98104
				USA

4. This FINANCING STATEMENT covers the following collateral:

ATLANTIC FROST (Official Number 282733), together with all the engines, boilers, machinery, bowsprits, sails, riggings, boats, anchors, chairs, tackle, apparel, furniture, fittings, tools, pumps, pipe, equipment and all other appurtenances thereunto appertaining and belonging, and all additions and improvements; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and accounts proceeds).

5. ALTERNATIVE DESIGNATION [if applicable]:	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOBR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional]	All Debtors	Debtor 1	Debtor 2		
8. OPTIONAL FILER REFERENCE DATA						

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME
ATLANTIC FROST HOLDINGS LLC

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:
201187687-1 / 6208

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

11c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

11d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 11a. TYPE OF ORGANIZATION 11f. JURISDICTION OF ORGANIZATION 11g. ORGANIZATIONAL ID #, if any

NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

12c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or ss-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.
 Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.
 Debtor is a TRANSMITTING UTILITY
 Filed in connection with a Manufactured-Home Transaction - effective 30 years
 Filed in connection with a Public-Finance Transaction - effective for 30 years

Document Type: MORTGAGE
Batch Number: 387509
Document ID: 3955489
User ID: SCANNER6
Filed Date/Time: 05-JUL-2005 10:41 AM

PREFERRED MORTGAGE
Dated: June 29, 2005

made by

ATLANTIC FROST HOLDINGS, LLC
1 Water Street
Fall River, MA 02721

Mortgagor

in favor of

COLUMBIA STATE BANK
719 2nd Avenue
Suite 500
Seattle, Washington 98104

Mortgagee

Mortgagor:

Mortgagor's Interest:

100%

Mortgagee:

COLUMBIA STATE BANK

Vessel:

ATLANTIC FROST, O/N 282733

Mortgagee's Interest:

100%

Amount of Mortgage:

\$1,000,000.00

PREFERRED MORTGAGE

THIS PREFERRED MORTGAGE (the "Mortgage") is dated the 24th day of June, 2005 in the amount of ONE MILLION AND NO/100THS (\$1,000,000.00) US Dollars, made by ATLANTIC FROST HOLDINGS LLC, organized under the laws of the State of Delaware with its offices at 1 Water Street, Fall River, MA 02731 acting herein by and through its duly authorized officer (the "Owner"), to COLUMBIA STATES BANK, with its offices at 719 Second Avenue, Suite 600, Seattle, Washington 98104 (the "Mortgagee").

WITNESSETH

WHEREAS, the Owner is the sole owner of the whole of the vessel, or each individually as the "vessel", which are described as follows:

Name: ATLANTIC FROST, ON 2005735

which vessel is duly documented under and pursuant to the laws of the United States of America at the National Vessel Documentation Center, and referred to as the "Vessel"; and

WHEREAS, ATLANTIC FROST HOLDINGS, LLC, (the Borrower) are indebted by the Mortgagee pursuant to a Credit Agreement, a Promissory Note executed (the Note) Dated as of June 24, 2005 by the Borrower, and pursuant to other loan documents, including but not limited to a Security Agreement (hereinafter collectively referred to as "Loan Documents") among Borrower and Mortgagee; said Note in the principal amount of ONE MILLION AND NO/100THS(\$1,000,000.00) U. S. Dollars executed by the Borrower and payable to the order of the Mortgagee in installments as therein provided;

and the Owner has agreed to give this Mortgage as security therefor and has authorized and directed the execution and delivery thereof;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, and to secure the payment of the Note and indebtedness, interest and other sums that hereafter may become due pursuant hereto (all of which is called the "Indebtedness"), and the performance of all covenants hereof, the Owner has GRANTED, BARGAINED, SOLD, CONVEYED, TRANSFERRED, ASSIGNED, REMISED, RELEASED, MORTGAGED, SET OVER and CONTINUED, and by these presents does GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN, REMISE, RELEASE, RELEAS, MORTGAGE, SET OVER and CONTINUE unto the Mortgagee, its successors and assigns, the whole of the Vessel, together with all of the Vessel's engines, boilers, machinery, hoists, rigging, boats, anchors, chains, tackle, apparel, furniture, fittings, tools, pumps, pipe, equipment and all other appurtenances thereunto appertaining and belonging, and all additions, improvements and "Fishing Rights". The term "Fishing Rights" means licenses, quotas, permits, or privileges of whatever nature in which Grantor has an interest pertaining to the catching or processing of any marine fish or shellfish species, whether presently existing or hereafter created, awarded, leased, received or otherwise acquired, however, the same may be described and whatsoever the source or basis therefor, and all proceeds of the foregoing, including, without limitation: (a) any rights or privileges arising pursuant to any program establishing individual fishing or processing quotas, quota shares, quotas, community development quotas, eligibility certificates, transferable allocations, permits, licenses, or other rights or privileges to harvest or process any marine fish or shellfish species, regardless of the name of such right or privilege and whatsoever the source or basis therefor; (b) any rights or privileges arising pursuant to any limited access or limited entry system, including without limitation, license limitation, individual transferable fishing or processing quotas, quota shares, individual fishing or processing quotas, individual fishing or processing privileges, community development quotas, transferable allocations, permits, quotas, licenses, certificates, cage tags, or any other fisheries access restriction or right, regardless of the name, source or basis of such restriction or right; (c) any rights or privileges arising under any fishery cooperative agreement; and (d) all modifications, extensions, amendments, renewals, additions, substitutions and replacements of any of the foregoing.

Without limitation, "fishing rights" shall include Atlantic coast of the United States or Alaska or Maine, (iii) all fishing or processing rights or privileges heretofore or hereafter arising in connection with or related to the fishing vessel ATLANTIC FROST, O/N 282733 (the "Vessel"), or its capacity, harvesting history, processing history or operations, (iv) all fishing or processing rights or privileges authorizing, or used in connection with, the operations of the Vessel, and (v) all modifications, extensions, amendments, renewals, additions, substitutions and replacements thereof.

TO HAVE AND TO HOLD all and singular the Vessel unto the Mortgagee, its successors and assigns, as set forth in this Mortgage.

Provided, however, that if the Owner/the Borrower, or its successors or assigns shall pay or cause to be paid to the Mortgagee or its successors and assigns the sum of \$1,000,000.00 US Dollars by payment of the Note with interest, and any rearrangements, renewals for any period, increases and/or extensions thereof as provided in the Note, and shall keep, perform and observe all and singular the covenants, conditions, stipulations, provisions and agreements in the Note and in any renewals for any period, increases and/or extensions thereof, and in this Mortgage expressed or implied to be kept, performed and observed by or on the part of the Owner, and shall pay or cause to be paid to the Mortgagee or its successors and assigns all sums that hereafter may become due pursuant to the terms and conditions hereof, then this Mortgage and the estate and rights hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

The Owner agrees to pay the Note and the Indebtedness with interest thereon as herein and in the Note provided, and as provided in any arrangements, renewals for any period, increases and/or extensions thereof, and to perform and observe the further terms, covenants and agreements herein, and to hold the Vessel subject thereto.

The maximum amount of direct or contingent obligations that may become secured by this Mortgage is \$1,000,000.00 U. S. Dollar, excluding interest, expenses and fees. The discharge amount is the same as the total amount. Upon receipt of the total amount, the Mortgagee shall release and discharge the Vessel from the lien of this Mortgage. The Mortgagee expressly does not waive the preferred status of this Mortgage.

ARTICLE I

The Owner hereby covenants and agrees:

Section 1. The Owner is and shall continue to be a citizen of the United States of America within the meaning of 46 USC 13102, and is entitled to own and operate the Vessel under the marine documents, which the Owner shall maintain in full force and effect; and all action necessary for the execution, delivery, performance and validity hereof and of the Note has been taken. The Owner was duly organized and is now existing under the laws of the State of Alaska and is duly authorized to mortgage the property covered hereby, and this Mortgage and the Note are and will be legal, valid and binding obligations of the Owner enforceable in accordance with their terms.

Section 2. The Owner is the sole owner of the whole of the Vessel and is lawfully possessed of the Vessel and will warrant and defend the title and possession thereof and in every part thereof for the benefit of the Mortgagee against the claims and demands of all persons whomsoever, and any claims that the Owner, its successors and/or assigns, now have or hereafter may have arising out of the past or future transactions with the Mortgagee or its successors and assigns shall not affect the rights hereunder of the Mortgagee or its successors and assigns or be used as a bar or defense to, or as a counterclaim or offset against, any action, suit or proceeding by the Mortgagee or its successors and assigns to enforce the covenants, stipulations and conditions of this Mortgage or the Note secured hereby, and the Owner further agrees that it and its successors and assigns are hereby estopped from setting up or asserting any such claims in any action, suit or proceeding; and the Owner warrants that the Vessels are free and clear from any lien, charge or encumbrance whatsoever prior to the lien of this Mortgage or to any other lien held by the Mortgagee, except for permitted liens (as defined in the Credit Agreement), and liens for damages arising out of tort, for wages of a stewardess when employed directly by the Owner, operator, master, ship's husband, or agent of the Vessel, for wages of the crew of the Vessel, for general

average, and for salvage, including contract salvage, which have not been judicially asserted, and mortgages, if any, as set forth herein.

Section 3. The Owner shall, at its own cost and expense, and at all times during the continuance of this Mortgage, keep the Vessel insured against such risks and contingencies and in such amounts as is customary in the industry and business of the Owner with respect to vessels comparable to the Vessel which are engaged in activities similar to those of the Vessel, and without limiting the generality of the foregoing, the Owner will keep the Vessel insured with (i) marine hull and machinery insurance in an amount not less than the greater of the full insurable value or 110% of the outstanding principal indebtedness (ii) marine protection and indemnity insurance in amounts approved by Mortgagee (iii) towage liability insurance whenever the Vessel shall tow another vessel or object in amounts approved by Mortgagee (iv) third party pollution liability insurance and pollution cleanup insurance as required by applicable law (v) mortgagee's interest insurance in the minimum amount of the Vessel's hull and machinery insurance required hereunder. Unless otherwise required or permitted by the Mortgagee, the Owner will, at its own expense, keep the Vessel insured for an amount not less than the greater of the full insurable value of the Vessel or 110% of the total outstanding balance on the Note. The Owner will keep the premiums and other charges thereon fully paid. Such insurance shall be on such forms of policies and include such coverage provisions as the Mortgagee from time to time may require and shall be placed and kept with responsible underwriters in good standing and satisfactory to the Mortgagee. Owner further covenants and agrees that:

(a) All insurance required hereunder shall be taken out in the name of the Owner and such other parties, if any, as the Owner may desire for the account of whom it may concern and cover all operational areas where the Vessel shall operate during the existence of this Mortgage. Such policies shall provide that all losses are payable as set forth in paragraph (d).

(b) Notwithstanding that the Owner is named in the loss payable clause of the policies on the Vessels, all losses under policies of insurance carried on the Vessel shall be payable to the Mortgagee for the account of the Mortgagee and the Owner as their respective interests may appear. At the option of the Mortgagee, all moneys so received shall either be applied on the Indebtedness secured hereby, or to the repair of the damage in respect of which the insurance loss was paid, or in reimbursement of moneys so applied by the Owner. Provided, however, (i) any loss under any insurance on the Vessel with respect to protection and indemnity or similar risks and liabilities may be paid directly to the person to whom any liability covered by such insurance has been incurred, or to the Owner to reimburse it for any loss, damage or expense incurred by it with respect to third party liabilities and covered by such insurance, provided that, in the latter event, the underwriter shall have first received evidence that the liability insured against has been discharged; and (ii) any amounts with respect to a loss of up to \$50,000.00 shall be paid directly for the repair, salvage or other liability or charge involved, or if the Owner shall have first properly repaired such damage and paid the costs thereof or paid and discharged such salvage or other liability or charge, and the insurers shall have first received evidence thereof, such amounts shall be paid directly to the Owner as reimbursement thereof.

(c) In the event of an actual or constructive total loss of the Vessel, the insurance proceeds for such loss shall be applied as follows: (i) to the payment of the costs of collecting such insurance if any; (ii) to the payment of the principal sum of the Note, outstanding and accrued interest and all other sums owed by the Owner to the Mortgagee or its successors and assigns under the terms of this Mortgage and the Note and Loan Documents; and (iii) the balance, if any, to the Owner.

(d) All policies, amendments, endorsements and binders shall name Mortgagee as an assured in addition to Owner and as sole loss payee (except Mortgagee's interest insurance, as to which Owner shall not be an assured or loss payee).

(e) Copies of all policies and/or binders and/or cover notes evidencing insurance as required hereunder shall be delivered to the Mortgagee or its successors and assigns for its approval and custody.

(f) The Owner shall obtain an endorsement to such insurance policies that the underwriters will give thirty (30) days' prior notice to the Mortgagees of any cancellation of or material change in any insurance coverage, and the Owner will furnish evidence satisfactory to the Mortgagees that all premiums and other charges therefor have been fully paid.

(g) Owner shall maintain insurance such that the interests of Mortgagees shall not be impaired or invalidated by any act or neglect of the Owner, master, agent or crew of the Vessel, or by the failure of Owner to comply with any warranty or conditions over which Mortgagee has no control, provided, that the amount of the above-described insurance coverage shall equal one hundred ten percent (110%) of the total amount outstanding under the Note.

Section 4. The Owner will not do any act or voluntarily suffer or permit any act to be done whereby any insurance shall or may be suspended, impaired or defeated; the Owner will not suffer or permit the Vessel to engage in any voyage or to carry any cargo not permitted under the policies of insurance in effect without first covering the Vessel to the amount herein provided for with insurance satisfactory to the Mortgagee and its successors and assigns for such voyage or the carriage of such cargo; and the Owner will not cause or permit the Vessel, while subject to this Mortgage, to be operated in any manner contrary to any laws, treaties, conventions, rules, regulations or orders of the United States of America, and/or any other jurisdiction wherein operated, and/or of any department or agency thereof, or remove the Vessel from the limits of the United States of America, save on voyages with the intent of returning, or abandon the Vessel in any foreign port.

Section 5. Except as provided in Section 2, neither the Owner nor the Masters of the Vessel has or shall have any right, power or authority to create, incur or permit to be placed or imposed upon the Vessel, or any part of any of the Vessel, subject or intended to be subject to this Mortgage, any lien whatsoever. Provided, however, the Owner shall have fifteen (15) days in which to cause the release of liens imposed on the Vessel for crew's wages, salvage and liens for damages arising out of tort.

Section 6. The Owner will pay and discharge, or cause to be paid and discharged, when due and payable, from time to time, all taxes, assessments, government charges, fines and penalties lawfully imposed upon the Vessel. If a libel shall be filed against the Vessel or if the Vessel shall be levied upon or taken into custody, or detained by any proceeding in any court or tribunal, or by any government, or any other authority, the Owner, within fifteen (15) days thereafter, will cause such Vessel to be released and any lien thereon, other than this Mortgage, to be discharged. In the event such Vessel is levied upon, or taken into custody, or detained by any authority whatsoever, the Owner agrees forthwith to notify the Mortgagee by telegram, confirmed by letter, at its offices set forth in the opening paragraph of this Mortgage.

Section 7. The Owner will, at all times, and without cost or expense to the Mortgagee, maintain and preserve the Vessel, so far as practicable, in at least as good condition, working order and repair as such Vessel is at the date of this Mortgage, ordinary wear, tear and depreciation excepted; and the Owner will keep the Vessel in such condition as will enable it to be the highest classification and rating for vessels of the same age and type. If the Vessels are subject to classification by the American Bureau of Shipping, or other similar classification society of like standing, the Owner will annually furnish to the Mortgagee a statement of such Bureau or classification society that such classification is maintained. The Owner will not make or permit to be made any substantial change in the structure, type or speed of the Vessel, or change in any of its rigs, without first receiving written approval from the Mortgagee.

Section 8. At all times the Owner will afford the Mortgagee or its successors and assigns, or its authorized representatives, full and complete access to the Vessel for the purpose of inspecting the same and its cargo and papers.

Section 9. Except as provided in section 2, the Owner will not sell or mortgage the Vessel in any manner, without the written consent of the Mortgagee being first had and obtained, and any such written consent to any such sale or mortgage shall not be construed to be a waiver of this provision in respect to any subsequent proposed sale or mortgage. Any sale or mortgage of the Vessel shall be subject to the provisions of this Mortgage and the lien it creates. The Owner will not merge or consolidate with any other firm or corporation, or dissolve, during the

term of this Mortgage, without the prior written consent of the Mortgagee. So long as this Mortgage shall be outstanding, the Vessel shall remain documented under the laws of the United States of America.

Section 10. In the event this Mortgage, the Note or any other note given herewith or hereafter with reference to the Vessel, or any provisions hereof, shall be deemed invalidated in whole or in part by any present or future law of the United States of America or any decision of any authoritative court, the Owner will execute such further instruments and do such things as in the opinion of counsel for the Mortgagee or its successors and assigns will carry out the true intent and spirit of this Mortgage. From time to time, for the reasons aforesaid or for any other reasons deemed sufficient by the Mortgagee or its successors and assigns, the Owner will execute such assurances as in the opinion of such counsel may be required more effectually to subject the property hereby mortgaged or intended to be mortgaged to the payment of the Note and the Indebtedness.

Section 11. The Owner will maintain its existence, rights and franchises, and will exercise its best efforts to procure the extension or renewal of any right, franchise or privilege expiring as the result of lapse of time.

Section 12. The Owner punctually and faithfully will keep, perform, observe and carry out all and singular the terms, covenants, conditions, stipulations and agreements contained in this Mortgage, expressed or implied, and on its part to be kept, performed, observed and carried out.

ARTICLE II

Section 1. In case any one or more of the following events of default shall happen:

(a) default shall be made in the due and punctual observance and performance of any of the provisions of Article I hereof; or

(b) the Owner shall sell, mortgage or transfer the Vessel or any of the appurtenances or parts thereof, or shall attempt to sell, mortgage or transfer the Vessels or any of the appurtenances or parts thereof, or to change the flag of the Vessel without the written consent of Mortgagee and its successors and assigns, or shall cease to be a citizen of the United States of America as defined by 46 USC 12102, or shall cease to be entitled to own or operate the Vessel as a United States flag vessel; or

(c) the Vessel shall be libeled or levied upon or taken by virtue of any attachment or execution or seized by any governmental authority, and shall not have been released from such libel, levy, attachment, execution or seizure within fifteen (15) days; or

(d) the Owner shall remove or attempt to remove the Vessel beyond the limits of the United States of America, except on voyages with the intention of returning to the United States of America, and except with the prior written consent of the Mortgagee or its successors and assigns, or shall abandon the Vessel in a foreign port; or

(e) default shall be made in the prompt and faithful performance or observance of any other of the covenants, conditions or agreements on the part of the Owner to be performed and observed in this Mortgage;

(f) Owner shall fail to obtain or maintain in full force and effect insurance required by this Mortgage, or

(g) in event of default as described or defined in the Note and Loan Documents.

If any such event of default occurs, Mortgagee may, at its option, do any one or more of the following:

(1) declare the Indebtedness to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, and thereafter shall bear interest at the rate per annum specified in the Note, provided, however, that if before any sale of any of the mortgaged property all defaults shall have been remedied and removed and full performance made by the Owner to the satisfaction of the Mortgagee and its successors and assigns, and all installments of principal and interest in arrears and the reasonable charges and expenses of the Mortgagee and its successors, assigns, agents and attorneys shall have been paid, then in every case, the Mortgagee and its successors and assigns may waive any such default by written notice to that effect to the Owner; but no such waiver or other waiver shall extend to or effect any subsequent or other default or impair any rights or remedies consequent thereon;

(2) recover judgment for any amount due on the Indebtedness, either by the terms of any instrument evidencing or securing the Indebtedness or by virtue of such declaration, and collect the same out of any property of the Owner;

(3) retake the Vessel without legal process, wherever the same may be, and the Owner shall forthwith upon demand of the Mortgagee surrender to the Mortgagee or its successors and assigns possession of the Vessels, and the Mortgagee or its successors and assigns may hold, lease, charter, operate or otherwise use the Vessel for such time and upon such terms as it may deem to be for its best advantage, accounting only for the net profits, if any, arising from such use of the Vessel, and charging upon all receipts from the use of the Vessel, or from the sale of the Vessel, by court proceedings or pursuant to the following Subsection (4), all costs, expenses, charges, damages or losses by reason of such use; and if at any time the Mortgagee or its successors or assigns shall avail itself of the rights herein given to retake the Vessel, and does retake the same, the Mortgagee shall have the right to dock the Vessel for a reasonable time at any dock, pier or other premises of the Owner without charge, or to dock at any other place at the cost and expense of the Owner; and

(4) retake the Vessel without legal process wherever the same may be, and the Owner shall forthwith upon demand of the Mortgagee or its successors and assigns surrender to the Mortgagee or its successors and assigns possession of the Vessel, and the Mortgagee or its successors and assigns may sell the same at public sale, free from any claim of or by the Owner of any nature whatsoever, by first publishing notice of any public sale for ten (10) consecutive days, except Sundays, in some newspaper of general circulation published at or near the place designated for such sale, and by mailing notice of such sale to the owner at its last known address and such sale may be held at such place and at such time as the Mortgagee or its successors and assigns in such notice may have specified, or such sale may be adjourned by the Mortgagee or its successors and assigns from time to time by announcement at the time and place appointed for such sale or for such adjourned sale and without further notice or publication the Mortgagee or its successors and assigns may make such sale at any time and place to which the same shall be so adjourned; and such sale may be conducted without bringing the Vessel to the place designated for such sale and in any such manner as the Mortgagee or its successors and assigns may deem to be for its best advantage, and the Mortgagee or its successors and assigns may become the purchaser at such sale.

In the event of default, Mortgagee and its successors and assign hereby irrevocably are appointed the true and lawful attorneys of the Owner in its name and stead to make all necessary transfers of the Vessel, and for that purpose it or they shall execute all necessary instruments of assignment and transfer, the Owner hereby ratifying and confirming all that its attorney or attorneys shall lawfully do by virtue hereof. Nevertheless, the Owner shall, if so requested by the Mortgagee or its successors and assigns, ratify and confirm any such sale by executing and delivering to the purchaser or purchasers of the Vessels, such proper Bills of Sale, conveyances, instruments of transfer and releases as may be designated in such request.

The Owner covenants and agrees that in addition to any and all other rights, powers and remedies elsewhere in this Mortgage granted to and conferred upon the Mortgagee or its successors and assigns, in any suit

to enforce any of their rights, powers or remedies, the Mortgagee, its successors and assigns shall be entitled as a matter of right and not as a matter of discretion to the appointment of a receiver of the Vessel, and that any receiver so appointed shall have full rights and powers to use and operate the Vessel.

Section 3. In the event the Vessel shall be arrested or detained by a Marshal or other officer of any court at law, equity or admiralty jurisdiction in any country or nation of the world or by any government or other authority and shall not be released from arrest or detention within fifteen (15) days from the arrest or detention, the Owner does hereby authorize and empower any officer of the Mortgagee or its successors and assigns in the name of the Owner or its successors or assigns to apply for and receive possession of and/or take possession of such Vessel, with all rights and powers that the Owner or its successors and assigns might have, possess and exercise in any such event; and this power of attorney shall be irrevocable and may be exercised not only by the officials hereinabove named but also by an appointee or appointees of any such official with full power of substitution to the same extent as if said appointee or appointees has been named as one of the attorneys above named by express designation, but the Mortgagee shall not be under any obligation to act in connection with the rights given in this paragraph.

The Owner also authorizes and empowers the officials above specified or their appointees, or any of them, to appear in the name of the Owner, its successors or assigns, in any court of any country or nation of the world where a suit is pending against such Vessel, because of or on account of any alleged lien against such Vessel, from which such Vessel has not been released, and to take such actions as may seem proper toward the defense of such suit and the discharge of such lien, and all expenditures made or incurred by them, or any of them, for the purpose of such defense and/or discharge shall be a debt due from the Owner, its successors and assigns, to Mortgagee and its successors and assigns, and shall be secured by the lien of this Mortgagee in like manner and extent as if the amount and description thereof were written herein.

Section 3. Each and every power and remedy herein specifically given to the Mortgagee and/or its successors or assigns shall be cumulative and shall be in addition to every other power and remedy herein specifically given or now or hereafter existing at law, in equity, admiralty or by statute, and each and every power and remedy, whether specifically herein given or otherwise existing, may be exercised from time to time and as often and in such order as may be deemed expedient by the Mortgagee or its successors and assigns, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other power or remedy. No delay or omission by the Mortgagee or by any of the holders of the Note in the exercise of any right or power or in the pursuance of any remedy accruing upon any default as above defined shall impair any such right, power or remedy or be construed to be a waiver thereof or of any such event of default or to be any acquiescence therein; nor shall the acceptance by the Mortgagee or its successors and assigns of any security or any payment of or on account of the Indebtedness maturing after any event of default under this Mortgage or any payment on account of any past default be construed to be a waiver of any right to take advantage of any future event of default under this Mortgage or of any past event of default not completely cured thereby.

Section 4. The proceeds of the sale of the Vessel, and the net earnings from any management, charter or other use of the Vessel by the Mortgagee or its successors or assigns under any of the powers above specified, and the proceeds of any claim for damages on account of the Vessel received by the Mortgagee or its successors and assigns while exercising any such power and the proceeds of any judgment collected by the Mortgagee or its successors and assigns for any default hereunder, shall be applied as follows:

First: To the payment of all expenses and charges, including the expense of any sale, the expense of any retaking and any other expenses or advances made or incurred by the Mortgagee or its successors and assigns in the protection of its rights or the pursuance of its remedies hereunder and to the payment of any damages sustained by the Mortgagee or its successors and assigns from the default or defaults of the Owner, all with interest as provided herein, and to provide adequate indemnity against liens claiming priority over this Mortgage;

Second: To the payment of the Indebtedness, any renewal and/or extensions thereof and all other sums secured hereby, due or which may be declared due under this Mortgage, with interest to the date of such payment; and

Third: Any surplus thereafter remaining shall belong and be paid or returned to the Owner.

In the event that the proceeds are insufficient to pay the amounts specified in paragraphs "First" and "Second" above, the Mortgagee or its successors and assigns shall be entitled to collect the balance from the Owner.

Section 6. If the Owner shall make default in the observance or performance of any of the covenants, conditions or agreements in this Mortgage on its part to be performed or observed, the Mortgagee or its successors and assigns may, in its discretion, do any act or make any expenditures necessary to remedy such default, including without limitation of the foregoing, entry upon the Vessel to make repairs, and the Owner shall promptly reimburse the Mortgagee or its successors and assigns with interest at the rate specified in the Note for any and all expenditures so made or incurred, and until the Owner has so reimbursed the Mortgagee or its successors and assigns for such expenditures, the amount thereof shall be secured by the lien of this Mortgage in like manner and extent as if the amount and description thereof were written herein; but the Mortgagee or its successors and assigns, though privileged so to do, shall be under no obligation to the Owner to make any such expenditures nor shall the making thereof relieve the Owner of any default in that respect. The Owner shall also reimburse the Mortgagee or its successors and assigns for any and all advances and expenses made or incurred by the Mortgagee or its successors and assigns at any time in lawfully retaking the Vessel or otherwise protecting its rights hereunder, and for any and all damages sustained by the Mortgagee or its successors and assigns from or by reason of any default or defaults of the Owner.

ARTICLE III

Section 1. Until one or more of the events of default hereinabove described, the Owner shall be permitted to retain actual possession and use of the Vessel.

Section 2. All covenants and agreements of the Owner herein contained shall bind the Owner, its successors and assigns, and shall inure to the benefit of the Mortgagee and its successors and assigns. Following any assignment hereof, any reference herein to "Mortgagee" shall be deemed to refer to the assignee.

Section 3. The references to the "Note" throughout this Mortgage shall cover and include any and all renewals for any period, extensions for any period, increases, amendments, supplements and/or rearrangements thereof, as provided in such Note.

Section 4. If any provision of this Mortgage shall be invalid under the provisions of 46 USC 31322 or under the provisions of any other law, such invalid provisions shall be deemed deleted from this Mortgage, but the validity of the Mortgage shall not otherwise be affected.

Section 5. All notices, requests and communications hereunder shall be in writing and shall be sufficient if delivered or sent by registered or certified mail to the Mortgagee at 1900 West Nicholson Street, Suite 315, Seattle, Washington 98119 and to the Owner at the address indicated at the beginning of this Mortgage. Either party may, by proper written notice hereunder to the other party, change the address to which notices shall thereafter be sent to it. Any such notice, request or communication so addressed and mailed shall be deemed to be given when so mailed, and any such notice, request or communication so delivered shall be deemed to be given when received by the Mortgagee or the Owner, as the case may be.

IN WITNESS WHEREOF, on the day and year first above written, the Owner has executed this Mortgage in multiple counterparts, each of which counterparts, duly executed and delivered, shall be deemed an original instrument.

ATLANTIC PROST HOLDINGS LTD

By 

ACKNOWLEDGMENT

STATE OF] Washington, DC
] ss. Dated June 29th, 2005.
COUNTY OF]

BEFORE ME, the undersigned authority, a notary public in and for said county and state, on this 29th day June, 2005 personally appeared William Phillips known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

SEAL

[Signature]
Notary Public in and for the State of Washington, DC
Residing at 1133 Connecticut Ave, N.W., Washington, DC
My commission expires on February 29, 2011
Notary Name: CHARLOTTE E. GARDNER

PRIOR AND SUBSEQUENT LIENS AFFIDAVIT

STATE OF] Washington, DC
] ss. Dated: June 29th, 2005.
COUNTY OF]



I/We, the undersigned, in pursuance of the provision of 46 USC 31323, do hereby certify that at the time of executing a certain Preferred Marine Mortgage on the ATLANTIC FROST, O/N 232733 that there is no maritime lien, prior mortgage or other obligation of liability upon the said vessel known to the undersigned mortgagor except:

NONE

It is further certified that without the consent of the Mortgagee under this mortgage, there will not be incurred after the execution of the Mortgage, and before the Mortgagee has had a reasonable time in which to file same, any contractual obligation creating a lien upon the vessel other than lien for wages for stevedores employed directly by the owner-master of the vessel, wages of the crew of the vessel, general average or salvage including contract salvage, in respect to said vessel.

ATLANTIC FROST HOLDINGS LLC

[Signature]

SUBSCRIBED AND SWORN TO before me this 27th day of June, 2006.

Chad J. [Signature]
NOTARY PUBLIC in and for the State
of Washington, residing at 1133
Constitution Ave, SW, Seattle, WA
My Commission expires February 2, 2008



PROMISSORY NOTE

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: ATLANTIC FROST HOLDINGS LLC
PO BOX 2840
FALL RIVER, MA 02722-2840

Lender: COLUMBIA STATE BANK
SEATTLE LPO
719 2ND AVENUE, SUITE 500
SEATTLE, WA 98104

Principal Amount: \$1,000,000.00

Initial Rate: 7.000%

Date of Note: June 29, 2005

PROMISE TO PAY. ATLANTIC FROST HOLDINGS LLC ("Borrower") promises to pay to COLUMBIA STATE BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million & 00/100 Dollars (\$1,000,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on July 1, 2006. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning August 1, 2005, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the rate of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an index which is the base rate of Columbia State Bank as published on its website www.columbiastatebank.com (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 6.000% per annum. The interest rate to be applied to the unpaid principal balance of this Note will be at a rate of 1.000 percentage point over the Index, resulting in an initial rate of 7.000% per annum. **NOTICE:** Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: COLUMBIA STATE BANK, LOAN OPERATIONS MS-8120, 1102 BROADWAY PLAZA TACOMA, WA 98402.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$5.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the total sum due under this Note will bear interest from the date of acceleration or maturity at the variable interest rate on this Note. The interest rate will not exceed the maximum rate permitted by applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**PROMISSORY NOTE
(Continued)**

Loan No: 00001

Page 3

**BEFORE SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.
BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.**

BORROWER:

ATLANTIC FROST HOLDINGS LLC

By: **[REDACTED]**
WILLIAM D. PHILLIPS, Member of ATLANTIC FROST HOLDINGS LLC

By: **[REDACTED]**
TIMOTHY J. KENNEDY, Member of ATLANTIC FROST HOLDINGS LLC

For: **[REDACTED]**
LESLIE KAHN, Member of ATLANTIC FROST HOLDINGS LLC

APPROVED UNDER THE SECURITIES REGISTRATION ACT OF 1933 AND THE SECURITIES ACT OF 1933.

Document Type: MORTGAGE
Batch Number: 414373
Document ID: 4328084
User ID: SCANNER5
Filed Date/Time: 29-SEP-2005 10:50 AM

KIM MARINE DOCUMENTATION, INC.
180 Nickerson St., Suite 212
Seattle, Washington 98109
(206) 682-7013

AMENDMENT TO PREFERRED MORTGAGE

Mortgagor: ATLANTIC FROST HOLDINGS LLC, 100%
P. O. Box 2640
Falls River, Massachusetts 02721

Mortgagee: COLUMBIA STATE BANK, 100%
719 Second Avenue, Suite 500
Seattle, WA 98104

Vessel: ATLANTIC FROST, O/N 282733

Whereas, a certain Preferred Mortgage in the amount of ONE MILLION AND NO/100THS (\$1,000,000.00) U. S. Dollars on the vessel ATLANTIC FROST, O/N 282733 was filed with NVDC, the United States Coast Guard as of July 5, 2005 at 10:41AM, in Batch #387509 and Doc ID# 3955489, it is agreed by both the above mentioned Mortgagor and Mortgagee that while the amount of the Preferred Mortgage remain unchanged, terms and conditions of the Promissory Note be amended, and it is also agreed that a copy of the Promissory Note attached to the existing Preferred Mortgage be replaced with a copy of the New Promissory Note, which is attached to this instrument. It is also agreed that the Mortgagor, for the purposes of securing the payment of the said debt, and the interest thereon, by these presents does grant, bargain, sell and mortgage unto the said Mortgagee, in addition to the whole of the said Vessel, together with all of the mast, bowsprit, anchors, cables, chains, rigging, tackle, apparel and furniture secured by the Preferred Mortgage and the amendment to the Preferred Mortgage set forth above, all fishing rights of whatsoever nature now held, or which may in the future be held or inured including, but not limited to, Moratorium, License Limitation Program (LLP), and other participatory catch rights, if any.

It is further agreed, that the mortgage herein described remains in all aspects a valid and subsisting undertaking by the undersigned parties.

Date: 8-22-05, 2005.

Date: 9-14-05, 2005.

MORTGAGOR:

MORTGAGEE:

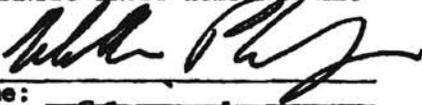
ATLANTIC FROST HOLDINGS LLC

COLUMBIA STATE BANK

By

Name:

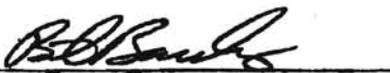
Title:


Charan

By

Name:

Title:


Bill Barclay
Senior Vice President

STATE OF Maryland)
COUNTY OF Montgomery) ss. Dated: 8/22, 2005.

I certify that William D Phillips signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Member of ATLANTIC FROST HOLDINGS, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

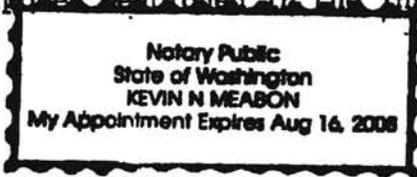


Jose Interiano
Print Name: Jose Interiano
NOTARY PUBLIC in and for the State
Of MD, residing at Prince George's Co.
My commission expires: 3/17/09

Jose Interiano
Notary Public
State of Maryland
My Comm. expires 3/17/09

STATE OF Washington)
COUNTY OF KING) ss. Dated: 9/14, 2005.

I certify that Bill Barday signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the S.V.P. of COLUMBIA STATE BANK to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Kevin N Meason
Print Name: KEVIN N MEASON
NOTARY PUBLIC in and for the State
of WA, residing at 8/16/08
My commission expires: 8/16/08

[SEAL]

PRIOR AND SUBSEQUENT LIENS AFFIDAVIT

STATE OF Maryland)
) ss. Dated: 8/22, 2005.
COUNTY OF Montgomery)

I/WE, the undersigned, in pursuance of the provisions of 46 USC 31323, do hereby certify that at the time of executing a certain Amendment to Preferred Mortgage on the ATLANTIC FROST, O/N 282733 in favor of COLUMBIA STATE BANK that there is no maritime lien, prior mortgage or other obligation of liability upon said vessel known to the undersigned Mortgagor except:

NONE

It is further certified that without the consent of the Mortgagee under the mortgage, there will not be incurred after the execution of this mortgage amendment, and before the mortgagee has had a reasonable time in which to record same, any contractual obligation creating a lien upon the vessel other than lien for wages for stevedores employed directly by the owner-master, or agent of the vessel, wages of the crew of the vessel, general average salvage, including contract salvage, in respect to said vessel.

ATLANTIC FROST HOLDINGS LLC

By [Signature]

SUBSCRIBED AND SWORN to before me this 22 day of August, 2005.



[Signature]
Print Name: Jose Interiano
NOTARY PUBLIC in and for the State
of MD, residing at Prince George's
My commission expires: 3/17/09

Jose Interiano
Notary Public
State of Maryland
My Comm. expires 3/17/09

PROMISSORY NOTE

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: ATLANTIC FROST HOLDINGS LLC
PO BOX 2840
FALL RIVER, MA 02722-2840

Lender: COLUMBIA STATE BANK
SEATTLE LPO
719 2ND AVENUE, SUITE 500
SEATTLE, WA 98104

Principal Amount: \$1,000,000.00

Initial Rate: 7.000%

Date of Note: June 29, 2005

PROMISE TO PAY. ATLANTIC FROST HOLDINGS LLC ("Borrower") promises to pay to COLUMBIA STATE BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million & 00/100 Dollars (\$1,000,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on July 1, 2006. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning August 1, 2005, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an index which is the base rate of Columbia State Bank as published on its website www.columbiabank.com (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The index currently is 6.000% per annum. The interest rate to be applied to the unpaid principal balance of this Note will be at a rate of 1.000 percentage point over the index, resulting in an initial rate of 7.000% per annum. NOTICE: Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: COLUMBIA STATE BANK, LOAN OPERATIONS MS-8120, 1102 BROADWAY PLAZA TACOMA, WA 98402.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 8.000% of the unpaid portion of the regularly scheduled payment or \$5.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the total sum due under this Note will bear interest from the date of acceleration or maturity at the variable interest rate on this Note. The interest rate will not exceed the maximum rate permitted by applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Loan No: 00001

PROMISSORY NOTE
(Continued)

Page 2

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEY'S FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorney's fees and Lender's legal expenses, whether or not there is a lawsuit, including attorney's fees, expenses for bankruptcy proceedings including efforts to modify or vacate any automatic stay or injunction, and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

GOVERNING LAW. This Note 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 Note has been assigned by Lender in the State of Washington.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of KING County, State of Washington.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower 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. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

LINE OF CREDIT. This Note evidences a revolving line of credit. Advances under this Note may be requested either orally or in writing by Borrower or as provided in this paragraph. Lender may, but need not, require that all oral requests be confirmed in writing. All communications, instructions, or directions by telephone or otherwise to Lender are to be directed to Lender's office shown above. The following persons currently are authorized to request advances and authorize payments under the line of credit, and Lender receives from Borrower, at Lender's address shown above, written notice of revocation of their authority: **WILLIAM D. PHILLIPS**, Member of ATLANTIC FROST HOLDERS LLC; and **THOMOTHY J. KENNEDY**, Member of ATLANTIC FROST HOLDERS LLC. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note or any other may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs. Lender will have no obligation to advance funds under this Note if: (A) Borrower or any guarantor is in default under the terms of this Note or any agreement that Borrower or any guarantor has with Lender, including any agreement made in connection with the signing of this Note; (B) Borrower or any guarantor ceases doing business or is insolvent; (C) any guarantor seeks, obtains or otherwise attempts to bank, reifyify or revoke such guarantor's guarantee of this Note or any other loan with Lender; (D) Borrower has applied funds provided pursuant to this Note for purposes other than those authorized by Lender; or (E) Lender in good faith believes itself insecure.

ASSIGNMENT TO "INTEREST AFTER DEFAULT." The paragraph titled "INTEREST AFTER DEFAULT" is amended to read as follows: Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note to 4.000, percentage points over the index. The interest rate will not exceed the maximum rate permitted by applicable law.

SUCCESSOR'S OBLIGATIONS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

NOTIFY US OF UNACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your creditworthiness to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: **COLUMBIA STATE BANK 1102 BROADWAY PLAZA TACOMA, WA 98402.**

GENERAL PROVISIONS. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waives presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may review or amend frequently and for any length of time this loan or release any party or guarantor or collateral or hazard, fail to make upon or perfect Lender's security interest in the collateral, and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

Document Type: MORTGAGE
Batch Number: 530353
Document ID: 5993214
User ID: SCANNER4
Filed Date/Time: 01-SEP-2006 10:40 AM

KIM MARINE DOCUMENTATION, INC.
180 Nickerson St., Suite 212
Seattle, Washington 98109
(206) 682-7013, kim@kimmarine.com

AMENDED TO PREFERRED MORTGAGE

Mortgagor: ATLANTIC FROST HOLDINGS, LLC
P. O. Box 2640
Fall River, MA 02721

Mortgagee: COLUMBIA STATE BANK, 100%
719 Second Avenue, Suite 500
Seattle, Washington 98104

Amount: \$1,000,000.00 U.S. Dollars
As contemplated by Title 46 Sec 3132(b) (3)

Vessel: ATLANTIC FROST, O/N 282733

This Amended to the Preferred Mortgage (Batch# 387509 and Doc ID# 3955489) is made as of the 16th day of August, 2006 by and between ATLANTIC FROST HOLDINGS, LLC, ("Mortgagor") and COLUMBIA STATE BANK, ("Mortgagee").

WITNESSETH

WHEREAS, ATLANTIC FROST HOLDINGS, LLC granted a Preferred Mortgage in the amount of \$1,000,000.00 in favor of COLUMBIA STATE BANK as of June 29, 2005, and the same was filed with NVDC at the United States Coast Guard as of July 5, 2005 at 10:41 AM in Batch #387509 and Doc ID#3955489,

WHEREAS, the Preferred Mortgage set forth above was amended as of September 14, 2005 and the same was filed with NVDC at the United States Coast Guard as of September 29, 2005 at 10:50AM in Batch #414373 and Doc ID#4328084,

WHEREAS, Mortgagor and Mortgagee wish to amend the Preferred Mortgage to modify the terms of the certain Promissory Note secured by the Preferred Mortgage set forth above,

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration receipt of which is hereby acknowledged, Mortgagor and Mortgagee hereby covenant, declare and agree as follows:

1. Certain Defined Terms. All capitalized terms used in this Agreement and not otherwise defined have the meanings of specified in the original Mortgage. The rules of construction and interpretation specified in the Preferred Mortgage apply to this Amendment and are incorporated herein by this reference.

ORIGINAL

KIM MARINE DOCUMENTATION, INC.
180 Nickerson St., Suite 212
Seattle, Washington 98109
(206) 682-7013, kim@kimmarine.com

AMENDED TO PREFERRED MORTGAGE

Mortgagor: ATLANTIC FROST HOLDINGS, LLC
P. O. Box 2640
Fall River, MA 02721

Mortgagee: COLUMBIA STATE BANK, 100%
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Seattle, Washington 98104

Amount: \$1,000,000.00 U.S. Dollars
As contemplated by Title 46 Sec 3132(b) (3)

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NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration receipt of which is hereby acknowledged, Mortgagor and Mortgagee hereby covenant, declare and agree as follows:

1. Certain Defined Terms. All capitalized terms used in this Agreement and not otherwise defined have the meanings of specified in the original Mortgage. The rules of construction and interpretation specified in the Preferred Mortgage apply to this Amendment and are incorporated herein by this reference.

ORIGINAL

2. the amount of the Preferred Mortgage remains as ONE MILLION AND NO/100THS (\$1,000,000.00) US Dollars.

3. Terms of the existing Promissory Note are amended as specified in the new Promissory Note which is executed by the Mortgagor, and William D. Phillips as co-borrower individually. A copy of the new Promissory Note is attached hereto as Exhibit "A".

4. It is agreed that the Mortgagor, for the purposes of securing the payment of said debt, and the interest thereon as amended and restated, by these presents does grant, bargain, sell mortgage unto the Mortgagee in addition to the whole of the vessel, together with all the mast, bowsprit, anchors, cables, chains, riggings, tackle, apparel, furniture and all fishing rights. "Fishing Rights" means all right, or priviles, to harvest, process, sell fish, sable-fishes, cod, shellfish and fishery product whether now existing or hereafter arising, whether or not such rights or privileges are based on prior catch histories, vessel capacities, ownership arrangements, community investments, or other factors. Fishing rights include but not limited to all rights, quotas, privileges and Limited License Program(LLP).

5. **Renewal Mortgage Rule.** The Preferred Mortgage secures, among other things, the obligations of the Mortgagor to Mortgagee arising under that certain Amended and Restated Note, Loan Agreement, and Security Agreement. Mortgagor acknowledges that the indebtedness and obligations have not been satisfied, accordingly, Mortgagor and Mortgagee intend that this Amendment to Preferred Mortgage set forth herein before shall retain the priority of the Original Preferred Mortgage set forth above pursuant, among other things, to the Renewal Mortgage Rule and the holding in "MERCHANT & MARINE BANK v THE T.E. WELLS 289F2d. 188 (5th Cir 1961).

6. **No Further Amendment.** Except as expressly modified by this Amendment, all terms, covenants and conditions of the Preferred Mortgage remain unchanged and in full force and effect and Mortgagor hereby ratifies and confirms each of its covenants, agreement and obligations arising thereunder.

PRIOR AND SUBSEQUENT LIENS AFFIDAVIT

STATE OF WA)
) ss. Dated: 8/16/06, 2006.
COUNTY OF KING)

I/WE, the undersigned, in pursuance of the provisions of 46 USC 31323, do hereby certify that at the time of executing a certain Amendment to Preferred Mortgage on the ATLANTIC FROST, O/W 282733 in favor of COLUMBIA STATE BANK that there is no maritime lien, prior mortgage or other obligation of liability upon said vessel known to the undersigned Mortgagor except:

Second Preferred Mortgage for \$2,065,292.18 in favor of VIKING COMMUNITY BANK, Trustee for the benefit of EKSPORTFINANS ASA and no other.

It is further certified that without the consent of the Mortgagee under the mortgage, there will not be incurred after the execution of this mortgage amendment, and before the Mortgagee has had a reasonable time in which to record same, any contractual obligation creating a lien upon the vessel other than lien for wages for stevedores employed directly by the owner-master, or agent of the vessel, wages of the crew of the vessel, general average salvage, including contract salvage, in respect to said vessel.

ATLANTIC FROST HOLDINGS LLC

By [Signature]
Name: William D. Phillips
Member

SUBSCRIBED AND SWORN to before me this 16TH day of August, 2006.



[Signature]
Print Name: KEVIN N MEABON
NOTARY PUBLIC in and for the State
of WA, residing at Snohomish.
My commission expires: 8/16/08

[SEAL]

Cg

**COMMERCIAL LINE OF CREDIT
AGREEMENT AND NOTE**

Columbia State Bank
719 2nd Ave., Ste 580
Seattle, Washington 98104
(206)982-1988

69700-0309	August 1, 2006	12 months	\$1,000,000.00	August 1, 2007
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LOAN PURPOSES: Working Capital & Issuance of Standby Letters of Credit

BORROWER INFORMATION

William D Pahlke
13301 Manor Stone Dr
Germantown, MD 20874

Atlantic First Holdings LLC
PO Box 2668
Fall River, MA 02721-2668

LINE OF CREDIT AGREEMENT AND NOTE. This Commercial Line of Credit Agreement and Note will be referred to in this document as the "Agreement".

LENDER. "Lender" means Columbia State Bank whose address is 719 2nd Ave., Ste 580, Seattle, Washington 98104, its successors and assigns.

BORROWER. "Borrower" means each person or legal entity who signs this Agreement.

PROMISE TO PAY. For value received, receipt of which is hereby acknowledged, on or before the Maturity Date, the Borrower promises to pay the principal amount of One Million and 00/100 Dollars (\$1,000,000.00) or such lesser amount as shall have been advanced by Lender, from time to time, to or on behalf of Borrower under this Agreement, and all interest and any other charges, including service charges, to the order of Lender at the office at the address noted above or at such other place as Lender may designate in writing. The Borrower will make all payments in lawful money of the United States of America.

PAYMENT SCHEDULE. This Agreement will be paid according to the following required payment schedule: Monthly payments of accrued and unpaid interest. All payments received by the Lender from the Borrower for application to the Line of Credit may be applied to the Borrower's obligations under the Line of Credit in such order as determined by the Lender.

ADVANCES BY LENDER. Advances of principal, repayment, and redemptions may be made under this Agreement from time to time, but Lender, in its sole discretion and subject to provisions related to obligations and discretionary advances, may refuse to make advances or redemptions hereunder during any period(s) this Agreement is in default. All advances made will be charged to a loan account in Borrower's name on Lender's books, and the Lender shall debit such account for the amount of each advance made to, and credit to such account the amount of each repayment made by Borrower. If the Lender furnishes the Borrower with a statement of Borrower's loan account, such statement shall be deemed to be correct, accepted by, and binding upon Borrower, unless Lender receives a written statement exception from Borrower within 10 days after such statement has been furnished.

INTEREST RATE AND SCHEDULED PAYMENT CHANGES. The initial variable interest rate on this Agreement will be 9.250% per annum. This interest rate may change on August 2, 2006 and every day thereafter. Each date on which the interest rate may change is called the "Change Date." Beginning with the first Change Date, Lender will calculate the new interest rate based on Columbia Bank Base Rate, as published on Columbia Bank's website www.columbiabank.com in effect on the Change Date (the "Index") plus 1.000 percentage points (the "Margin"). If the Index is not available at that time, Lender will choose a new Index which is based on comparable information. The Index is used solely to establish a base from which the actual rate of interest payable under this Agreement will be calculated, and is not a reference to any actual rate of interest charged by any lender to any particular borrower.

Nothing contained herein shall be construed as to require the Borrower to pay interest at a greater rate than the maximum allowed by law. If, however, from any circumstances, Borrower pays interest at a greater rate than the maximum allowed by law, the obligation to be fulfilled will be reduced to an amount computed at the highest rate of interest permissible under applicable law and if, for any reason whatsoever, Lender ever receives interest in an amount which would be deemed unlawful under applicable law, such interest shall be automatically applied to amounts owed. In Lender's sole discretion, or as otherwise allowed by applicable law, an increase in the interest rates will result in a higher payment amount. Interest on this Agreement is calculated on a 365/360 day basis. The unpaid balance of this loan shall, while any Event of Default exists under this Agreement or any other agreement related to the loan, be subject to a Default Rate of interest equal to 3.000 percentage points over the applicable interest rate in effect at time of Default, and after Maturity, whether by acceleration or otherwise, shall be subject to a Post-Maturity Rate of interest equal to the same fixed or variable rate basis in effect before maturity.

LATE PAYMENT CHARGE. If any required payment is more than 10 days late, then at Lender's option, Lender will assess a late payment charge of \$3.00 or 5.000% of the amount past due, whichever is greater.

LINE OF CREDIT TERMS. This is a Discretionary Agreement. The Borrower and Lender agree that the Borrower may request an advance of all or part of the Line of Credit Limit. The Lender may, at its sole discretion, refuse to make advances under this Agreement.

Advances. Borrower and Lender agree that Borrower may borrow up to the maximum amount of principal more than one time. Additional principal advances thereafter will be made to the Borrower subject to the following conditions:

- Advances of principal, repayment, and redemptions may be made under this Agreement from time to time but Lender, in its sole discretion, may refuse to make advances or redemptions hereunder during any period(s) this Agreement is in default.
- Advances under this Agreement may be requested orally or in writing by the Borrower or by an authorized person.
- The total of any advances requested and unpaid principal cannot exceed One Million and 00/100 Dollars (\$1,000,000.00).
- All advances made will be charged to a loan account in Borrower's name on Lender's books, and the Lender shall debit such account the amount of each advance made by, and credit to such account the amount of each repayment made by Borrower. Lender shall provide to Borrower periodic statements of Borrower's loan account, which shall be deemed to be correct, excepted by, and binding upon Borrower unless Lender receives a written statement of exception from Borrower within 10 days after such statement is furnished.

Suspension and Termination. Advances under this Agreement will be available until August 1, 2007, the Maturity Date. The Maturity Date is the date the Line of Credit expires, the date the Line of Credit is cancelled by Borrower, or the date the Line of Credit is cancelled by the Lender due to an occurrence of default, whichever is earlier. On the Maturity Date, no further advances will be made available to the Borrower.

Loan Type Conversion. Provided no default or event of default shall have occurred, the Borrower may, at its option, apply for conversion of this Agreement into a Term loan 30 days prior to the Maturity Date. However, the Lender shall have no obligation to approve the Borrower's application.

SECURITY TO NOTE. Security (the "Collateral") for this Agreement is granted pursuant to the following security document(s):

- Preferred Ship Mortgage - Atlantic Fleet, Barge 262733, ID# 262733 at Bath, ME in the amount of \$1,000,000.00, dated June 25, 2002.

RIGHT OF SET OFF. To the extent permitted by law, Borrower agrees that Lender has the right to set off any amount due and payable under this Agreement against all Borrower's accounts with Lender. This shall include all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future.

DISHONORED ITEM FEE. If Borrower makes a payment on the loan with a check or preauthorized charge which is later dishonored, a fee in the amount of \$25.00 will be charged.

DEFAULT. Upon the occurrence of any one of the following events of default, Lender, at its option, may declare all indebtedness of Borrower to Lender under this Agreement, to be immediately due and payable: (a) Borrower's failure to make a payment on time or in the amount due; (b) any default by Borrower under any loan agreement, security agreement, mortgage, or other agreement executed in connection with this Agreement; (c) the death, dissolution, or termination of existence of Borrower; (d) Borrower is generally not paying Borrower's debts as such debts become due; (e) the commencement of any proceeding under bankruptcy or insolvency laws by or against Borrower or the appointment of a receiver; (f) any other indebtedness of Borrower to Lender or to any other creditor shall become due and remains unpaid after acceleration of the maturity or any maturity; (g) any writ of attachment, garnishment, execution, tax lien or similar instrument is issued against any of Borrower's property; (h) Borrower's business is sold to or merged with any other business, individual, or entity; (i) Lender, in good faith, believes Borrower's ability to repay its indebtedness under this Agreement, or Lender's ability to recover on any Collateral, is or soon will be impaired, there being of the very essence.

OTHER APPLICABLE AGREEMENTS. If this Agreement is secured by a security agreement, mortgage, deed of trust, trust deed, security deed or loan agreement of even or previous date, it is subject to all the terms thereof.

GENERAL WAIVERS. To the extent permitted by law, the Borrower severally waives any required notice of presentment, demand, acceleration, intent to accelerate, protest and any other notice and defense due to extensions of time or other indulgence by Lender or to any substitution or release of collateral. No failure or delay on the part of Lender, and no course of dealing between Borrower and Lender, shall operate as a waiver of such power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right.

JOINT AND SEVERAL LIABILITY. If permitted by law, each Borrower executing this Agreement is jointly and severally bound.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Agreement is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Agreement without invalidating the remainder of either the affected provision or this Agreement.

SURVIVAL. The rights and privileges of the Lender hereunder shall inure to the benefits of its successors and assigns, and this Agreement shall be binding on all heirs, executors, administrators, assigns and successors of Borrower.

ASSIGNABILITY. Lender may assign, pledge or otherwise transfer this Agreement or any of its rights and powers under this Agreement without notice, with all or any of the obligations owing to Lender by Borrower, and in such event the assignee shall have the same rights as if originally named herein in place of Lender. Borrower may not assign this Agreement or any benefit accruing to it hereunder without the express written consent of the Lender.

ORAL AGREEMENTS DISCLAIMER. Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

GOVERNING LAW. This Agreement is governed by the laws of the state of Washington except to the extent that federal law controls.

HEADING AND GENDER. The headings preceding text in this Agreement are for general convenience in identifying subject matter, but have no limiting impact on the text which follows any particular heading. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require.

ATTORNEYS' FEES AND OTHER COSTS. If legal proceedings are instituted to enforce the terms of this Agreement, Borrower agrees to pay all of the costs of the Lender in connection therewith, including reasonable attorneys' fees, to the extent permitted by law.

ADDITIONAL PROVISIONS. Prior Note. This is a secured rewrite of the Promissory Note from Atlantic Frost Holdings LLC to Lender dated June 29, 2005 in the Original Amount of \$1,000,000.00, subsequently modified July 7, 2006.

Payment. Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning September 1, 2006, with all subsequent interest payments to be due on the same day of each month after that.

WAIVER OF JURY TRIAL. All parties to this Agreement knowingly and voluntarily waive, to the fullest extent permitted by law, any right to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, between them arising out of, in connection with, related to, or incidental to the relationship established in connection with this Agreement or any other instrument, document, or agreement executed or delivered in connection with this Agreement or the related transactions.

By signing this Agreement, Borrower acknowledges reading, understanding, and agreeing to all its provisions and receipt thereof.

X 
William D Phillips Date
Individually

Atlantic Frost Holdings LLC
X 
By: William D Phillips Date
Its: Member

CHANGE IN TERMS AGREEMENT

Columbia State Bank
Seattle CDC #1 0616
719 2nd Ave., Box 989
Seattle, Washington 98104

COPY

Loan Number: 906002177
Principal Balance: \$951,369.26
Line of Credit Limit: \$928,000.00

Agreement Change Date: June 1, 2010

BORROWER INFORMATION
Akanado Frost Holdings LLC
PO Box 2648
Fall River, MA 02722-2648

William D Phillips
13301 Manor Stone Dr
Geneva, MD 20874

BORROWER. The term "Borrower" means each party identified above.

LENDER. The term "Lender" means Columbia State Bank whose address is P.O. Box 2156, Tacoma, Washington 98401-2156, its successors and assigns.

DESCRIPTION OF THE EXISTING DEBT.

A Commercial Line of Credit Agreement and Note dated June 1, 2009 in the original amount of \$1,000,000.00 with a maturity date of June 1, 2010.

COLLATERAL. The following items are the security documents related to the Agreement:

- Preferred Ship Mortgage- w/v Akanado Frost Reg #2E2733, O/N #2E2733
- All Equipment of Akanado Frost

TERMS AND PROVISIONS. In consideration of the promises contained in this Agreement and in the instruments evidencing the Existing Debt, and of other good and valuable consideration, the sufficiency of which is acknowledged by the execution of this Agreement, Borrower agrees to the following provisions:

1. The instrument evidencing the Existing Debt is modified and supplemented as follows:

This Change in Terms is for the purpose of extending the maturity date three (3) months from June 1, 2010 to September 1, 2010. The original payment schedule of monthly interest will remain the same through the maturity date at which time all unpaid accrued interest and principal will be due.

A \$36,000.00 principal payment is required before extending.

2. **Ratification and Continued Validity.** Except for the terms expressly modified by this Agreement, by signing this Agreement Borrower acknowledges that Borrower is still bound by the terms of the instrument and prior modifications, extensions, and supplements evidencing the Existing Debt as if they were fully set forth and repeated in this Agreement and that those terms will continue to bind Borrower as provided in the Agreement and those instruments. Lender's consent to this Agreement does not waive the right to strictly enforce Lender's rights under this Agreement or the instruments evidencing the Existing Debt. Lender's consent to this Agreement does not mean that Lender must enter into another agreement like this one in the future.

Lender and Borrower intend that this Agreement does not replace the Existing Debt but replaces it as modified.

5. **Other Responsibilities for the Debt.** Lender and Borrower intend that anyone else who is liable for the Existing Debt, including, without limitation, co-signers, guarantors, and co-borrowers, are not relieved of any obligation except as expressly referred to in this Agreement or other writing. Borrower agrees that the liability of each person who signed the instruments evidencing the Existing Debt, whether primary or secondary, continues in full force and effect, even if that person does not sign this Agreement. This promise applies not only to this Agreement but also to any extension, modification, or other agreement Borrower makes with Lender that represents a debt which includes co-signers, guarantors, co-borrowers, and others having similar liability. Borrower understands that this Agreement is contingent on the continued liability of each person who signed the documents evidencing the Existing Debt, whether or not that person signs this Agreement.

4. **Promises and Gender.** In this Agreement, whenever the circumstances or the context so requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa.

5. **Release/Assumes Terms.** Borrower agrees that if Lender delays or forgoes enforcing Lender's rights under this Agreement in any particular instance, Lender retains the right to strictly enforce the same provision in any other instance, or later in the same instance. Every person signing this Agreement waives, to the extent allowed by law, presentment, demand, protest, and notice of dishonor. Every person signing this Agreement agrees that Lender may renew, extend, supplement, or otherwise modify the debt represented by this Agreement and the documents evidencing the Existing Debt without the permission of any other person who is liable, and such modification will not release or reduce the liability of any party, even if that party does not sign this Agreement.

ORAL AGREEMENTS DISCLAIMER. Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

By signing this Change in Terms Agreement, each Borrower acknowledges reading, understanding, and agreeing to all its provisions and receiving a copy.

X  Date: 6/30/10
By: William D Phillips, Individually

Athletic Prost Holdings LLC
X  Date: 6/30/10
By: William D Phillips
Lic: Member

By signing this Change in Terms Agreement, Lender acknowledges reading, understanding, and agreeing to all its provisions.

Columbia State Bank
X  Date: 6/30/10
By: 

Atlantic Frost Holdings
90002177

COPY

EXTENSION AGREEMENT

This EXTENSION AGREEMENT (this "Agreement") is entered into as of October 22, 2010, by and among ATLANTIC FROST HOLDINGS LLC, a Delaware limited liability company ("Atlantic Frost"), THE ESTATE OF WILLIAM D. PHILLIPS (the "Estate"), COLUMBIA STATE BANK, a Washington corporation ("Lender"), and TIMOTHY J. KENNEDY, an individual ("Kennedy"). Atlantic Frost and the Estate are sometimes referred to in this Agreement collectively as the "Borrowers." This Agreement is entered into with respect to the following facts:

A. Lender, Atlantic Frost, and William D. Phillips entered into that certain Business Loan Agreement dated June 1, 2009 (as amended, the "Loan Agreement"), pursuant to which Lender provided to Borrower a loan facility in the original amount of One Million Dollars (\$1,000,000.00). The loan provided pursuant to the Loan Agreement constituted a renewal and extension of previous loans first provided to Atlantic Frost in 2005 and secured by, among other security, a First Preferred Mortgage against the vessel ATLANTIC FROST, Official Number 282733 (the "Vessel"), which mortgage was recorded with the U.S. Coast Guard on July 5, 2005 under Document ID 3955489 (as amended, the "Mortgage").

B. The obligations of Atlantic Frost and William D. Phillips under the Loan Agreement are evidenced by a Commercial Line of Credit Agreement and Note dated June 1, 2009 (the "Note") and are secured by the Mortgage and a first-priority security interest in all equipment related to the Vessel. In addition, in connection with the Loan Agreement Kennedy provided a Commercial Loan Guaranty dated June 1, 2009 (the "Guaranty"), by which Kennedy unconditionally and irrevocably guaranteed payment and performance of all of Borrowers' obligations to Lender. The Loan Agreement, the Note, the Mortgage, the Guaranty, and all other Related Documents as defined in the Loan Agreement are collectively referred to in this Agreement as the "Loan Documents."

C. Pursuant to that certain Changes In Terms Agreement dated June 1, 2010 and signed by Borrowers and Lender, the original maturity date under the Note was extended from June 1, 2010 to September 1, 2010.

D. William D. Phillips died on August 10, 2010, and his wife, Janet Phillips, has been appointed Personal Representative of his estate.

E. Upon the terms and conditions set forth in this Agreement, the parties to this Agreement wish to further extend the maturity date under the Note to January 1, 2011.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the parties agree as follows:

1. Amendment of Maturity Date. Lender and Borrowers hereby agree that the term "Maturity Date", as such term is used in the Note, shall hereafter mean January 1, 2011. During the period of such extension, Borrowers shall continue to pay all accrued interest on a

BTB

monthly basis; on the Maturity Date, Borrowers shall pay all accrued interest and the outstanding principal balance.

2. Payments on Interest and Overdraft.

2.1 Upon execution of this Agreement, Borrowers shall pay to Lender Eight Thousand Five Hundred Thirty and 73/100 Dollars (\$8,530.73), which is the amount of outstanding interest accrued under the Note through September 30, 2010; such payment will leave an outstanding principal balance as of September 30, 2010 in the amount of Nine Hundred Twenty-Eight Thousand Dollars (\$928,000.00). However, notwithstanding the terms of the Note, Borrowers shall not be required to further reduce the principal balance by \$36,000 on November 1, 2010.

2.2 Upon execution of this Agreement, Borrowers shall cause Atlantic Frost to deposit Eight Thousand Seven Hundred Sixty-Five and 33/100 Dollars (\$8,765.33) in its checking account maintained with Lender in order to cover an overdraft on such account.

3. Payment of Expenses. Upon request by Lender, Borrowers shall reimburse Lender for all reasonable expenses, including legal fees, incurred by Lender in connection with this Agreement.

4. Consent of Guarantor and Confirmation of Guaranty. Kennedy hereby consents to this Agreement and the extension of the Maturity Date and confirms that the Guaranty remains in full force and effect.

5. Compliance with Covenants. Borrowers agree that they will comply with all of the payment terms and covenants under the Loan Documents, as such documents may be amended or restated from time to time.

6. No Other Amendment. Except as expressly amended by this Agreement, the Loan Documents remain in full force and effect. Except for the extension of the Maturity Date as set forth herein, nothing in this Agreement is intended to waive, modify, or otherwise affect any covenant, term, or condition in any of the Loan Documents.

Signatures appear on the following page

EXECUTED as of the date set forth above.

ATLANTIC FROST HOLDINGS LLC

ESTATE OF WILLIAM D. PHILLIPS

By: Janet Phillips, Personal Representative of
the Estate of William D. Phillips
Its: Member and Authorized Agent

By: Janet Phillips
Its: Personal Representative

COLUMBIA STATE BANK


TIMOTHY J. KENNEDY

By: William Barclay
Its: Senior Vice President

EXECUTED as of the date set forth above.

ATLANTIC FROST HOLDINGS LLC

Estate of William D. Phillips

By: *Janet K. Phillips P.E.*

By: Janet Phillips, Personal Representative of
the Estate of William D. Phillips
Its: Member and Authorized Agent

ESTATE OF WILLIAM D. PHILLIPS

Janet K. Phillips P.E.

By: Janet Phillips
Its: Personal Representative

COLUMBIA STATE BANK

TIMOTHY J. KENNEDY

By: William Barclay
Its: Senior Vice President

EXECUTED as of the date set forth above.

ATLANTIC FROST HOLDINGS LLC

ESTATE OF WILLIAM D. PHILLIPS

By: Janet Phillips, Personal Representative of
the Estate of William D. Phillips
Its: Member and Authorized Agent

By: Janet Phillips
Its: Personal Representative

COLUMBIA STATE BANK

TIMOTHY J. KENNEDY



By: William Barclay
Its: Senior Vice President

ADDITIONAL EXTENSION AGREEMENT

This ADDITIONAL EXTENSION AGREEMENT (this "Agreement") is entered into as of January 21, 2011, by and among ATLANTIC FROST HOLDINGS LLC, a Delaware limited liability company ("Atlantic Frost"), THE ESTATE OF WILLIAM D. PHILLIPS (the "Estate"), COLUMBIA STATE BANK, a Washington corporation ("Lender"), and TIMOTHY J. KENNEDY, an individual ("Kennedy"). Atlantic Frost and the Estate are sometimes referred to in this Agreement collectively as the "Borrowers." This Agreement is entered into with respect to the following facts:

A. Lender, Atlantic Frost, and William D. Phillips entered into that certain Business Loan Agreement dated June 1, 2009 (as amended, the "Loan Agreement"), pursuant to which Lender provided to Borrower a loan facility in the original amount of One Million Dollars (\$1,000,000.00). The loan provided pursuant to the Loan Agreement constituted a renewal and extension of previous loans first provided to Atlantic Frost in 2005 and is secured by, among other security, a First Preferred Mortgage against the vessel ATLANTIC FROST, Official Number 282733 (the "Vessel"), which mortgage was recorded with the U.S. Coast Guard on July 5, 2005 under Document ID 3955489 (as amended, the "Mortgage").

B. The obligations of Atlantic Frost and William D. Phillips under the Loan Agreement are evidenced by a Commercial Line of Credit Agreement and Note dated June 1, 2009 (the "Note") and are secured by the Mortgage and a first-priority security interest in all equipment related to the Vessel. In addition, in connection with the Loan Agreement Kennedy provided a Commercial Loan Guaranty dated June 1, 2009 (the "Guaranty"), by which Kennedy unconditionally and irrevocably guaranteed payment and performance of all of Borrowers' obligations to Lender. The Loan Agreement, the Note, the Mortgage, the Guaranty, and all other Related Documents as defined in the Loan Agreement are collectively referred to in this Agreement as the "Loan Documents."

C. Pursuant to that certain Changes In Terms Agreement dated June 1, 2010 and signed by Borrowers and Lender, the original maturity date under the Note was extended from June 1, 2010 to September 1, 2010.

D. Pursuant to that certain Extension Agreement dated October 22, 2010, the maturity date under the Note was further extended from September 1, 2010 to January 1, 2011.

E. The Borrowers have requested an additional extension of the maturity date under the Note to enable them to continue to negotiate a potential sale of the Vessel.

F. Upon the terms and conditions set forth in this Agreement, the parties to this Agreement wish to further extend the maturity date under the Note to April 1, 2011.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the parties agree as follows:

1. Amendment of Maturity Date. Lender and Borrowers hereby agree that the term "Maturity Date", as such term is used in the Note, shall hereafter mean April 1, 2011. During the period of such extension, Borrowers shall continue to pay all accrued interest on a monthly basis; on the Maturity Date, Borrowers shall pay all accrued interest and the outstanding principal balance.

2. Payment of Expenses. Upon request by Lender, Borrowers shall reimburse Lender for all reasonable expenses, including legal fees, incurred by Lender in connection with this Agreement.

3. Consent of Guarantor and Confirmation of Guaranty. Kennedy hereby consents to this Agreement and the extension of the Maturity Date and confirms that the Guaranty remains in full force and effect.

4. Compliance with Covenants. Borrowers agree that they will comply with all of the payment terms and covenants under the Loan Documents, as such documents may be amended or restated from time to time.

5. No Other Amendment. Except as expressly amended by this Agreement, the Loan Documents remain in full force and effect. Except for the extension of the Maturity Date as set forth herein, nothing in this Agreement is intended to waive, modify, or otherwise affect any covenant, term, or condition in any of the Loan Documents.

EXECUTED as of the date set forth above.

ATLANTIC FROST HOLDINGS LLC

ESTATE OF WILLIAM D. PHILLIPS

Janet K. Phillips, P.R. Estate of Phillips
By: Janet Phillips, Personal Representative of
the Estate of William D. Phillips
Its: Member and Authorized Agent

Janet K. Phillips, P.R. Estate of Wm. D. Phillips
By: Janet Phillips
Its: Personal Representative

COLUMBIA STATE BANK

TIMOTHY J. KENNEDY

By: William Barclay
Its: Senior Vice President

Jan 26 11 02:54p

A

2

p.2

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the parties agree as follows:

1. Amendment of Maturity Date. Lender and Borrowers hereby agree that the term "Maturity Date", as such term is used in the Note, shall hereafter mean April 1, 2011. During the period of such extension, Borrowers shall continue to pay all accrued interest on a monthly basis; on the Maturity Date, Borrowers shall pay all accrued interest and the outstanding principal balance.

2. Payment of Expenses. Upon request by Lender, Borrowers shall reimburse Lender for all reasonable expenses, including legal fees, incurred by Lender in connection with this Agreement.

3. Consent of Guarantor and Confirmation of Guaranty. Kennedy hereby consents to this Agreement and the extension of the Maturity Date and confirms that the Guaranty remains in full force and effect.

4. Compliance with Covenants. Borrowers agree that they will comply with all of the payment terms and covenants under the Loan Documents, as such documents may be amended or restated from time to time.

5. No Other Amendment. Except as expressly amended by this Agreement, the Loan Documents remain in full force and effect. Except for the extension of the Maturity Date as set forth herein, nothing in this Agreement is intended to waive, modify, or otherwise affect any covenant, term, or condition in any of the Loan Documents.

EXECUTED as of the date set forth above.

ATLANTIC FROST HOLDINGS LLC

ESTATE OF WILLIAM D. PHILLIPS

By: Janet Phillips, Personal Representative of the Estate of William D. Phillips
Its: Member and Authorized Agent

By: Janet Phillips
Its: Personal Representative

COLUMBIA STATE BANK


TIMOTHY J. KENNEDY


By: William Barclay
Its: Senior Vice President

3.1 (b) (ix)

GIEK, Guarantee No. 100130

CO-OPERATION AGREEMENT

Whereas

Columbia State Bank ("the Bank") and Garant-Institutt for Eksportfinans ("GIEK") ("the Parties") have issued separate guarantees ("the Guarantees") to Eksportfinans ASA ("the Lender") for the latter's loan agreement dated November 24, 2004 ("Loan Agreement") with Atlantic Frost Seafoods LLC, U.S.A. ("the Debtor") for deliveries of production/packing equipment for pelagic fish from First Process AS, Norway ("the Exporters") to Atlantic Seafoods LLC, USA ("the Buyer").

the Parties hereby agree as follows:

1. INFORMATION

During the term of the Loan Agreement the Parties will exchange information concerning circumstances which have or may have relevance for the Guarantees.

2. CONSULTATION

If one of the Parties is planning to take steps against the Debtor, the Buyer, the Lender or the Exporters which possibly may have relevance for the Guarantees, the Parties shall consult with each other in advance.

3. CO-OPERATION IN CASE OF DEFAULT

In case the Debtor defaults on its obligations under the Loan Agreement or there is danger of such default, the Parties shall seek to co-operate for the purpose of averting losses and/or take steps for the purpose of recovering incurred losses.

If the Parties fail to reach an agreement as to what steps to take, they shall make a best effort to divide the claim against the Borrower between the Parties in accordance with their respective interests in the claim as set out in Clause 4 below.

4. DISTRIBUTION OF LIABILITY AND RECOVERY

During the term of the Loan Agreement the liability of the Parties under the Guarantees shall, at any time, be 30% for the Bank and 70% for GIEK. Recovered amounts shall be distributed in the same proportion.

In case one guarantor has special collateral etc., the proceeds of such collateral etc. shall be shared pro rata.

In case the Bank's claim against the Debtor is transferred to a third party, including but not limited to the Exporters, such party shall enter into and be bound by the provisions of this agreement.

GIRK, Guarantee No. 100130

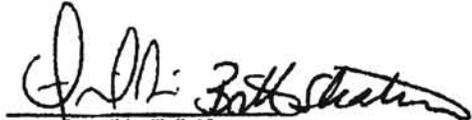
5. LAW AND JURISDICTION

This agreement shall be governed by and construed in accordance with Norwegian law and each Party hereby irrevocably submit to the jurisdiction of Oslo City Court.

November 23rd 2004

November 30th 2004


Columbia State Bank


Garant-Instituttet for
Eksportkreditt

ASSIGNMENT OF PREFERRED SHIP MORTGAGE

Mortgagor: ATLANTIC FROST HOLDINGS LLC
1 Water Street
Fall River, MA 02721

Assignor: COLUMBIA STATE BANK
719 2ND Avenue, Suite 500
Seattle, WA 98104

Assignee: COLUMBIA ASSET RECOVERY GROUP LLC
Attention: Timothy Kennedy
7643 NE Champagne Point Pl.
Kirkland, Washington 98034

Vessel: ATLANTIC FROST, O/N 282733

Know all men by these presents: That COLUMBIA STATE BANK, for and in consideration of the sum of Ten Dollars (\$10.00) and certain other valuable consideration, the receipt of which is hereby acknowledged, without warranty, recourse or liability of any kind, hereby assigns unto COLUMBIA ASSET RECOVERY GROUP LLC, a Washington limited liability company, all of the interest now held or hereafter acquired in and to that certain Preferred Mortgage made and executed by ATLANTIC FROST HOLDINGS LLC, as mortgagor, thereunto mortgaging the whole of the vessel ATLANTIC FROST, O/N 282733, to COLUMBIA STATE BANK, as mortgagee, which Preferred Mortgage was executed on June 29, 2005 and recorded with the U.S. Coast Guard National Vessel Documentation Center on July 5, 2005 at 10:41 a.m. in Batch 387509 as Document ID 3955489. A prior amendment of this Preferred Mortgage was executed on September 14, 2005 and recorded on September 29, 2005 at 10:50 a.m. in Batch 414373 as Document ID 4328084. A second amendment of this Preferred Mortgage was executed on August 16, 2006 and recorded on September 1, 2006, at 10:40 a.m. in Batch 530353 as Document ID 5993214.

The above described Preferred Mortgage was given to secure the payment of a ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00 USD) indebtedness to COLUMBIA STATE BANK, as originally evidenced by a promissory note dated as of June 29, 2005.

DATED: August 4, 2011

COLUMBIA STATE BANK

By Barbara A. Hegstrom
Name: Barbara A. Hegstrom
Its: Vice President

ACKNOWLEDGEMENT

STATE OF WASHINGTON)
) SS.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Barbara A. Hegstrom is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Vice President of COLUMBIA STATE BANK to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated August 4, 2011.

(Seal or stamp)



Cecilia A Kakela
(Signature)

Cecilia A Kakela
(Print Name)

Residing at Bainbridge Is.
My appointment expires 11-21-12

ASSIGNMENT OF LOAN

FOR VALUABLE CONSIDERATION, Columbia State Bank, a Washington state banking corporation ("Assignor"), hereby assigns, grants, sells, transfers and conveys to COLUMBIA ASSET RECOVERY GROUP LLC, a Washington limited liability company, without warranty, recourse or liability of any kind or nature whatsoever, all of Assignor's right, title and interest in and to Columbia State Bank Loan No. 906002177 to Atlantic Frost Holdings LLC and William D. Phillips, as co-borrowers, including the Bank's interest as lender under that certain Business Loan Agreement, that certain Commercial Line of Credit Agreement and Note, that certain Commercial Loan Guaranty and that certain Security Agreement, all dated as of June 1, 2009, and that certain Preferred Mortgage, dated June 29, 2005, as amended.

IN WITNESS WHEREOF, Assignor has executed this Assignment to be effective as of the 4th day of August 2011.

ASSIGNOR:

COLUMBIA STATE BANK

By: Barbara A. Hegstrom
Printed Name: Barbara A. Hegstrom
Its: Vice-President

ASSIGNMENT AND ASSUMPTION OF COOPERATION AGREEMENT

1. **Assignment.** For valuable consideration, Columbia State Bank, a Washington state banking corporation ("Assignor"), hereby assigns, transfers, conveys and delegates to Columbia Asset Recovery Group LLC, a Washington limited liability company ("Assignee"), all of Assignor's interest, rights, obligations, duties, and liabilities of any kind under that certain Cooperation Agreement dated November 30, 2004 between Assignor and Garanti-Institutet for Rkspportfinans, a copy of which is attached hereto.

2. **Assumption.** Assignee hereby accepts the assignment set forth in Section 1 above, and hereby assumes and agrees to be bound by the Cooperation Agreement and to fully perform and discharge all of Assignor's obligations, duties and liabilities thereunder. Assignee hereby agrees to indemnify, defend, and hold Assignor harmless from and against any and all claims, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, arising

3. **Counterparts.** This Assignment and Assumption may be executed in counterparts, each of which when so executed will be deemed an original and all of which when taken together constitute one and the same agreement.

4. **Attorneys' Fees.** In the event of any litigation brought to enforce or interpret or otherwise arising out of this Assignment and Assumption, the substantially prevailing party shall be entitled to an award of its reasonable attorneys' fees and

5. **Governing Law.** This Assignment and Assumption shall be governed by and construed in accordance with the Laws of the State of Washington without regard to conflicts-of-laws principles.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption to be effective as of the 4th day of August, 2011.

ASSIGNOR:

ASSIGNEE:

Columbia State Bank

Columbia Asset Recovery Group LLC

By: Barbara A. Hegstrom
Printed Name: Barbara A. Hegstrom
Its: Vice-President

By: Tim Kennedy
Printed Name: Timothy J. Kennedy
Its: Sole Member

3.1 (b) (ix)

CHEK, Guarantee No. 100130

CO-OPERATION AGREEMENT

Whereas

Columbia State Bank ("The Bank") and Garant-bank for Eksportnaza ("GEBK") ("The Parties") have issued separate guarantees ("The Guarantees") to Eksportnaza ASA ("The Lender") for the latter's loan agreement dated November 23, 2004 ("Loan Agreement") with Atlantic Frost Seafoods LLC, U.S.A. ("The Debtor") for delivery of production/packing equipment for pelagic fish from First Process AS, Norway ("the Exporters") to Atlantic Seafoods LLC, USA ("The Buyer").

The Parties hereby agree as follows:

1. INFORMATION

During the term of the Loan Agreement the Parties will exchange information concerning circumstances which have or may have relevance for the Guarantees.

2. CONSULTATION

If one of the Parties is planning to take steps against the Debtor, the Buyer, the Lender or the Exporters which possibly may have relevance for the Guarantees, the Parties shall consult with each other in advance.

3. CO-OPERATION IN CASE OF DEFAULT

In case the Debtor defaults on its obligations under the Loan Agreement or there is danger of such default, the Parties shall seek to co-operate for the purpose of averting losses and/or take steps for the purpose of recovering incurred losses.

If the Parties fail to reach an agreement as to what steps to take, they shall make a best effort to divide the claim against the Borrower between the Parties in accordance with their respective interests in the claim as set out in Clause 4 below.

4. DISTRIBUTION OF LIABILITY AND RECOVERY

During the term of the Loan Agreement the liability of the Parties under the Guarantees shall, at any time, be 30% for the Bank and 70% for GEBK. Recovered amounts shall be distributed in the same proportion.

In case one guarantor has special collateral etc., the proceeds of such collateral etc. shall be shared pro rata.

In case the Bank's claim against the Debtor is transferred to a third party, including but not limited to the Exporters, such party shall enter into and be bound by the provisions of this agreement.

GHEK, Guarantee No. 100190

8. LAW AND JURISDICTION

This agreement shall be governed by and construed in accordance with Norwegian law and each Party hereby irrevocably submit to the jurisdiction of Oslo City Court.

November 23rd 2004

November 23rd 2004


Colvada State Bank

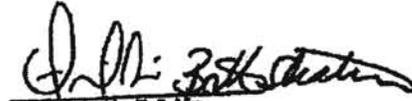

Exportkredit

EXHIBIT B

LOAN PURCHASE AND ASSIGNMENT AGREEMENT

THIS LOAN PURCHASE AND ASSIGNMENT AGREEMENT ("Agreement") is entered into this 4th day of August, 2011, by and among COLUMBIA STATE BANK, a Washington state banking corporation (the "Bank"), as Seller, COLUMBIA ASSET RECOVERY GROUP LLC, a Washington limited liability company d/b/a Atlantic Frost Asset Recovery ("NEWCO"), as Purchaser, and Timothy J. Kennedy, an individual ("Kennedy").

Recitals

A. Pursuant to a Business Loan Agreement dated as of June 1, 2009, the Bank, as lender, extended a \$1,000,000 line of credit to Atlantic Frost Holdings LLC, a Delaware limited liability company ("AFH"), and William D. Phillips, an individual ("Phillips"), as co-borrowers, under Loan Number 906002177 (hereinafter, the "Loan"). The Loan was the last of a series of renewals and restatements of a line of credit originally extended by the Bank to AFH in June of 2005.

B. The indebtedness of AFH and Phillips to the Bank for the Loan is evidenced, in part, by a Commercial Line of Credit Agreement and Note, also dated as of June 1, 2009.

C. The Commercial Line of Credit Agreement and Note recites that the Loan is secured, in part, by a Commercial Security Agreement, also dated as of June 1, 2009. A UCC financing statement relating to the Commercial Security Agreement and predecessor security agreements was filed with the Delaware Secretary of State, UCC Filing Section under Initial Filing No. 5292470, which was subsequently amended by Amendment Filing Nos. 2009 2080080 and 2010 1053556.

D. The Commercial Line of Credit Agreement and Note also recites that the Loan is secured, in part, by a Preferred Mortgage dated as of June 29, 2005 against the vessel ATLANTIC FROST, Official Number 282733. The Preferred Mortgage was amended by amendments dated September 14, 2005 and August 16, 2006. The Preferred Mortgage was filed with the Vessel Documentation Office of the United States Coast Guard on July 5, 2005 at 10:41 a.m. in Batch 387509 as Document ID 3955489. The September 14, 2005 amendment was filed on September 29, 2005 at 10:50 a.m. in Batch 414373 as Document ID 4328084. The August 16, 2006 amendment was filed on September 1, 2006 at 10:40 a.m. in Batch 530353 as Document ID 5993214.

E. Pursuant to a Commercial Loan Guaranty also dated as of June 1, 2009, Kennedy unconditionally guaranteed all of AFH's and Phillips' obligations to the Bank under the Loan.

F. Pursuant to a Change in Terms Agreement dated as of June 1, 2010, the original June 1, 2010 maturity date of the Loan was extended to September 1, 2010.

G. Phillips died in a plane crash on August 10, 2010.

H. Pursuant to an Extension Agreement dated as of October 22, 2010, the maturity date of the Loan was further extended to January 1, 2011.

I. Pursuant to an Additional Extension Agreement dated as of January 21, 2011, the maturity date of the Loan was further extended to April 1, 2011.

J. The Loan is now in default, by virtue of the co-borrowers' failure to repay the Loan by the extended maturity date of April 1, 2011.

K. Through August 1, 2011, the Bank has verified the following amounts are due and owing the Bank under the Loan:

Outstanding Principal:	\$ 928,000.00
Accrued Interest:	\$ 37,648.45
Legal Fees and Expenses:	\$ 60,423.61
Total through 8/1/11:	\$1,026,071.94

Interest continues to accrue on the Loan from August 1, 2011 forward at the per diem rate of \$270.66 per day, and the Bank may incur additional legal fees and expenses in connection with the Loan prior to closing of the transaction contemplated by this Agreement.

L. In 2004, the Bank agreed to co-guaranty a portion of a loan made by Eksportfinans ASA (the "Eksportfinans Loan") to Atlantic Frost Seafoods LLC ("AFS"), an affiliate of AFH, to finance AFS' purchase of certain seafood processing and packaging equipment from First Process AS, Norway. In connection with that guaranty, the Bank entered into a Cooperation Agreement dated November 30, 2004 (the "Cooperation Agreement") with the other co-guarantor of the Eksportfinans Loan, Garanti-Instituttet for Eksportfinans ("GIEK").

M. The Bank has made demand on Kennedy for payment of the amounts owing under the Loan pursuant to the Commercial Loan Guaranty. Kennedy has instead proposed to purchase the Loan through a new entity he has established for that purpose, NEWCO.

N. The Bank has agreed to sell, and NEWCO has agreed to purchase, the Loan on the terms and conditions set forth below.

Terms and Conditions

IT IS HEREBY AGREED:

1. Subject to the terms and conditions of this Agreement, the Bank hereby agrees to sell without warranty of any kind, and NEWCO hereby agrees to purchase, the entirety of the Loan, including the Bank's interest as lender under the Business Loan Agreement, the Commercial Line of Credit Agreement and Note, the Commercial Loan Guaranty and the Commercial Security Agreement, all dated as of June 1, 2009, and the Preferred Mortgage, dated June 29, 2005, as amended (collectively, the "Loan Documents").

2. As the purchase price for the Loan, NEWCO shall pay to the Bank at closing the total sum of One Million Twenty Six Thousand Seventy One and 94/100 Dollars (\$1,026,071.94), plus an amount equal to additional interest accrued and any additional legal fees and expenses incurred in connection with the Loan from August 1, 2011 through the date of closing. The purchase price will be funded by a loan from Bank to Kennedy, the proceeds of which Kennedy will loan to NEWCO.

3. Subject to the terms and conditions of this Agreement, the Bank also hereby agrees to assign to NEWCO all of the Bank's interest, rights and obligations under the Cooperation Agreement, and NEWCO hereby agrees to assume and be bound by the Cooperation Agreement and to perform any and all obligations of the Bank thereunder. NEWCO and Kennedy further agree to defend, indemnify and hold the Bank harmless from any and all claims, liabilities, obligations or expenses of any kind arising under or relating to the Cooperation Agreement, including without limitation any claim by GIEK thereunder. The obligations of NEWCO and Kennedy under this paragraph 3 shall survive the closing of this Agreement.

4. Without limiting the provisions of paragraph 3 of this Agreement, NEWCO and Kennedy also agree to defend, indemnify and hold the Bank harmless from any and all claims, demands, liabilities, obligations or expenses of any kind arising out of or relating to the Loan, any efforts to enforce the Loan, or the F/V ATLANTIC FROST, except claims, demands, liabilities, obligations or expenses attributable to the gross negligence or willful misconduct of the Bank. The obligations of NEWCO and Kennedy under this paragraph 4 shall also survive the closing of this Agreement.

5. At closing, the Bank shall deliver to NEWCO the following documents:
 - a. An original Assignment of Loan in the form attached hereto as Exhibit A, duly executed by an authorized officer of the Bank;
 - b. An original Assignment of Preferred Mortgage in the form attached hereto as Exhibit B, duly executed by an authorized officer of the Bank;
 - c. An original Assignment and Assumption of Cooperation Agreement in the form attached hereto as Exhibit C, duly executed by an authorized officer of the Bank;
 - d. Copies of the Loan Documents;
 - e. A ledger history of the Loan reflecting the principal and interest the Bank contends are due and owing under the Loan through the date of this Agreement, as set forth in Recital K above; and
 - f. A copy of the Cooperation Agreement.

6. At closing, NEWCO shall deliver to the Bank an original Assignment and Assumption of Cooperation Agreement in the form attached hereto as Exhibit C, duly executed by an authorized member of NEWCO.

7. The closing of the transaction contemplated by this Agreement shall take place in the offices of the Bank by no later than August 12, 2011.

8. Should NEWCO require further information or cooperation from the Bank in connection with its subsequent efforts to collect the Loan, the Bank shall reasonably provide such information or cooperation, provided that nothing herein shall be interpreted to require the Bank to disclose any information or documents with respect to which the Bank may owe a duty to preserve the confidentiality of the same pursuant to any financial privacy laws or other applicable laws.

9. NEWCO and Kennedy hereby acknowledge that the Bank's verification of the amount of principal, interest, and legal fees and expenses due and owing to the Bank in connection with the Loan is provided solely to facilitate NEWCO's collection of the Loan from AFH and/or the Estate of Phillips. Such verification is made without warranty from or recourse to Bank and is not intended to establish any basis for liability on the part of the Bank to NEWCO, Kennedy, or any other person or entity.

EXHIBIT C

16, 2006 amendment was filed on September 1, 2006 at 10:40 a.m. in Batch 530353 as Document ID 5993214.

6. Pursuant to a Commercial Loan Guaranty also dated as of June 1, 2009, Timothy J. Kennedy ("Kennedy") unconditionally guaranteed all of AFH's and Phillips' obligations to the Bank under the Loan.

7. Pursuant to a Change in Terms Agreement dated as of June 1, 2010, the original June 1, 2010 maturity date of the Loan was extended to September 1, 2010.

8. Phillips died in a plane crash on August 10, 2010.

9. Pursuant to an Extension Agreement dated as of October 22, 2010, the maturity date of the Loan was further extended to January 1, 2011.

10. Pursuant to an Additional Extension Agreement dated as of January 21, 2011, the maturity date of the Loan was further extended to April 1, 2011.

11. The Loan is now in default, by virtue of the co-borrowers' failure to repay the Loan by the extended maturity date of April 1, 2011.

12. As an authorized officer of the Bank, I can verify that through August 1, 2011, the following amounts are due and owing the Bank under the Loan:

Outstanding Principal:	\$ 928,000.00
Accrued Interest:	\$ 37,648.33
Legal Fees and Expenses:	\$ 60,423.61
Total through 8/1/11:	\$1,026,071.94

Interest continues to accrue on the Loan from August 1, 2011 forward at the per diem rate of \$270.66 per day.

13. Attached as Exhibit A is a true and correct copy of the ledger history on the Loan reflecting the outstanding principal balance and accrued interest due and owing the Bank under the Loan through August 1, 2011. This ledger also reflects some, but not all, of the \$60,423.61 in legal fees and expenses incurred by the Bank in connection with the Loan, as the Bank's policy is to post such fees and expenses to this ledger only once a loan is assigned to the special credits department of the Bank. The ledger also does not reflect \$11,427.50 for legal services

rendered and expenses incurred during the month of July, 2011, included in the total above, but not yet invoiced and paid.

Barbara A. Hegstrom
Barbara A. Hegstrom

SUBSCRIBED AND SWORN to before me this 4th day of August, 2011.



Cecilia Kakela
(Signature of Notary)

Notary Public in and for the State of
Washington, residing at Bozinger B.
My Commission expires 11-21-12

EXHIBIT D

Exhibit A
Loan Ledger History

View Go Reverse Tools Window Help
 Printer Friendly Home Page

Account	908802177	Atlanta Fed	Branch	02/20/2011			
LT	WD NA		Account	Non-Account			
History View	History	Description	Amount	Balance	Reference	Principal	Interest
06/25/2008		Rate Change	0.00	616,468.23	EFF 06/25/2008 LP 025E	0.00	0.00
06/25/2008		Advance	2,708.03	619,176.26	DDA 7000 947818	2,708.03	0.00
06/25/2008		Advance	4,890.25	624,066.51	EFF 06/25/2008 D DDA 7000	0.00	4,890.25
06/02/2008		Interest Payment	3,888.78	627,955.29	DDA 7000 947818	0.00	3,888.78
06/01/2008		Interest Payment	3,783.71	631,739.00	DDA 7000 947818	0.00	3,783.71
11/02/2008		Interest Payment	3,888.78	635,627.78	EFF 11/01/08 D DDA 7000	0.00	3,888.78
11/02/2008		Advance	52,277.00	687,904.78	DDA 7000 947818	52,277.00	0.00
12/07/2008		Interest Payment	3,783.71	691,688.49	DDA 7000 947818	0.00	3,783.71
01/04/2009		Interest Payment	4,144.74	695,833.23	EFF 01/04/09 D DDA 7000	0.00	4,144.74
02/01/2009		Interest Payment	4,138.75	699,971.98	DDA 7000 947818	0.00	4,138.75
02/27/2009		Principal Pay-Down	39,000.00	660,971.98	DDA 7000 947818	39,000.00	0.00
03/07/2009		Interest Payment	3,651.82	664,623.80	DDA 7000 947818	0.00	3,651.82
06/28/2009		Advance	153,850.00	818,473.80	DDA 7000 947818	153,850.00	0.00
04/07/2010		Interest Payment	3,888.28	822,362.08	DDA 7000 947818	0.00	3,888.28
05/05/2010		Interest Payment	4,472.85	826,834.93	EFF 05/07/10 D DDA 7000	0.00	4,472.85
06/03/2010		Advance	0.00	826,834.93		0.00	0.00
06/03/2010		Interest Payment	4,505.71	831,340.64	DDA 7000 947818	0.00	4,505.71
06/03/2010		Principal Payment	38,000.00	793,340.64	DDA 7000 947818	38,000.00	0.00
07/07/2010		Interest Payment	4,580.44	797,921.08	EFF 08/07/10 D DDA 7000	0.00	4,580.44
08/02/2010		Interest Payment	4,528.80	802,449.88	DDA 7000 947818	0.00	4,528.80
08/22/2010		Advance	0.00	802,449.88		0.00	0.00
10/22/2010		Rate Change	0.00	802,449.88	DDA 7000 947818	0.00	0.00
10/29/2010		Overdraft Fee Chg	0.00	802,449.88	DDA 7000 947818	0.00	0.00
10/31/2010		Overdraft Fee Chg	0.00	802,449.88	DDA 7000 947818	0.00	0.00
11/07/2010		Advance	464.97	802,914.85	DDA 7000 947818	464.97	0.00

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**COLUMBIA ASSET RECOVERY
GROUP, LLC, a Washington Limited
Liability Corporation,**

Plaintiff,

v.

**JOSEPH R. KELLY, as the Successor,
Personal Representative of
THE ESTATE
OF WILLIAM D. PHILLIPS,**

Defendant.

Civil No.PJM 12-cv-3191

ORDER GRANTING SUMMARY JUDGMENT

UPON CONSIDERATION of the Motion for Summary Judgment filed by Plaintiff Columbia Asset Recovery Group, LLC (the "Motion") and good cause therefor having been shown, and the Court finding that Plaintiff is entitled to Judgment as a matter of law it is, this ___ day of _____, 2013, by the United States District Court for the District of Maryland,

ORDERED that summary judgment is entered in favor of Plaintiff Columbia Asset Recovery Group, LLC; and it is further

ORDERED that Judgment in the amount of \$1,168,281.91 is awarded to plaintiff, Columbia Asset Recovery Group. This sum includes prejudgment interest accrued through the date of filing.

DATED this ___ day of _____, 2013.

United States District Judge