

**IN THE SUPERIOR COURT OF RABUN COUNTY
STATE OF GEORGIA**

UNITED COMMUNITY BANK,)
)
 Plaintiff,)
)
 v.)
)
 SELAF WATERFALL DEVELOPMENT CO.,)
 LLC, SELAF WATERFALL COUNTRY CLUB,)
 LLC, SELAF WATERFALL WATER)
 AND SEWER, LLC, and SELAF WATERFALL)
 HOLDING CO., LLC)
)
 Defendants.)

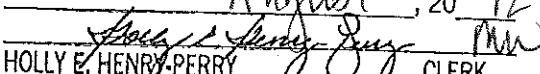
Civil Action
 File No. 2012-CV-0315-S

CONSENT ORDER APPOINTING PERMANENT RECEIVER

WHEREAS, this matter having come before this Court on Plaintiff United Community Bank (“UCB” or “Plaintiff”) Verified Complaint and Petition for Appointment of a Receiver;

WHEREAS, UCB is the owner and holder of that certain Promissory Note dated April 15, 2012, executed and delivered from Defendants SELAF Waterfall Development Co., LLC, SELAF Waterfall Country Club, LLC, and SELAF Waterfall Water and Sewer, LLC (“Borrowers”) to UCB in the original principal amount of \$7,425,000.00 (the “Note”);

WHEREAS, the Note is secured by that certain Deed to Secure Debt and Security Agreement from Borrowers to UCB dated April 15, 2010, recorded April 19, 2010, Deed Book A36, Page 1, Rabun County, Georgia records (the “Security Deed”) conveying certain real property lying and being in land lots 5, 6 and 15, 1st District and Land Lot 91, 5th District, Rabun County, Georgia, all as more fully described in the Security Deed. The property is currently being used as a country club and golf course facility. The Security Deed secures, *inter alia*, the payment of the Note and any other sums advanced to protect and preserve the Property that is the subject of the Security Deed;

FILED IN OFFICE OF CLERK SUPERIOR COURT
 RABUN COUNTY, GEORGIA. THIS 2nd DAY OF
August, 20 12

 HOLLY E. HENRY-PERRY CLERK

WHEREAS, the Note is further secured by, among other things, that certain (i) Assignment of Rents and Leases and Proceeds from Members from Borrowers to UCB, dated April 15, 2010, recorded April 19, 2010, Deed Book A36, Page 30, Rabun County, Georgia records (the "Assignment of Rents"); (ii) Assignment of Contract Documents from Borrowers to UCB, dated April 15, 2010 ("Assignment of Contracts"); and (iii) Security Agreement, from Borrower(s) to UCB dated April 15, 2010 (the "Security Agreement");

WHEREAS, the Note is guaranteed by that certain Contract of Guaranty from SELAF Waterfall Holding Co., LLC ("Guarantor," and together with the Borrowers, the "Defendants") dated April 15, 2010 (the "Guaranty");

WHEREAS, "Loan Documents" shall mean the Note, Security Deed, Assignment of Rents, Assignment of Contracts, Security Agreement, Guaranty and all documents, instruments and agreements executed between Borrowers, Guarantors and Lender or by Borrower or Guarantors in favor of Lender in connection therewith or pursuant thereto.

WHEREAS, Borrowers, Guarantors and UCB agree and stipulate to the appointment of a Receiver.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Hays Financial Consulting, LLC hereby is appointed Receiver ("Receiver") with all rights and authority as provided for under the Loan Documents and as further provided under applicable law to take immediate custody and control of the real and personal property including, without limitation, equipment, inventory, accounts, documents, contract rights, chattel paper, instruments, alcohol licenses, tobacco licenses, business licenses, any other government permits and other assets (such property and assets, collectively, the "Property") owned by Borrowers and

related to or used in connection with the operation of the Property¹, to maintain and operate the same, and to collect, hold and preserve the rents, issues, profits and revenues therefrom for the benefit of Plaintiff. All costs and expenses of the Receiver, including Receiver's fees, attorney's fees, costs and compensation shall be at the cost and expense of Defendants and secured by the Loan Documents;

2. Upon execution of this Order, the Receiver shall have authority to take exclusive possession, control, management and custody of the Property;

3. Upon execution of this Order, the Receiver shall have authority to take custody of the Property including any and all cash, proceeds, product, offspring, security deposits, rents, issues, profits, revenues and accounts relating to the Property or arising out of the Borrowers' ownership of the Property and otherwise due and payable to Borrowers;

4. Borrowers and their current or former officers, directors, members, employees, agents, representatives and/or any entity controlled by Borrowers (collectively, "Borrowers' Representatives") be and the same hereby are ordered to immediately deliver to the Receiver all of the Property and to fully cooperate with the Receiver including, without limitation, providing the Receiver all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, saving accounts, money market accounts, and all other demand deposit accounts, insurance policies, inventory, supplies, reservation lists, owners' lists, association records, computer databases, sales brochures, sales and marketing materials, club records, and any and all other documents and tangible things owned by Borrowers or used in and for the operation of the Property. Borrowers and Borrowers' Representatives shall also immediately turn over to the

The Property shall not include Lots 49 and 50 of Lake Burton Club, Phase I, Unit 6, Block J as shown on that certain "Final Plat of Lake Burton Club, Phase I, Unit 6 Block J, Lots 48, 49 and 50" dated July 12, 2012, and to be filed at Plat Book ____, page ____, in the Office of the Rabun County Clerk of Court, Rabun County, Georgia (the "Plat"), and Borrowers, subject to Lender's consent, shall continue to be able to reserve easements over Lot 48 of Lake Burton Club, Phase I, Unit 6, Block J, as such Lot 48 is shown on the Plat.

Receiver all cash, proceeds, product, offspring, security deposits, rents, issues, profits, revenues and accounts relating to the Property. Any failure by Borrowers or Borrowers' Representatives to cooperate with the Receiver as provided herein shall render Borrowers or Borrowers' Representatives in contempt of this Order and subject to sanctions by this Court. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to compel the cooperation of the Borrowers and Borrowers' Representatives or any other foregoing persons acting on behalf of or for Borrowers, to comply fully and completely with this Order. If necessary, the Receiver may request of this Court letters rogatory or commissions or supplemental orders as necessary to require out-of-state directors, officers, employees, agents, representatives, managers, attorneys, accountants, banks, contractors, subcontractors, or any other person acting in participation with Borrowers or Borrowers' Representatives, through the court of appropriate jurisdiction to comply with any of the orders of this Court;

5. Borrowers or Borrowers' Representatives are hereby immediately, preliminarily and permanently enjoined from: (a) interfering with the Receiver; (b) collecting any revenues from the Property, or withdrawing funds from any bank or other depository account relating to the Property or paying any funds derived from the operation of the Property to or for the benefit of themselves or to any party other than the Receiver or UCB; (c) removing, destroying or depleting any assets relating to the Property; (d) terminating, or causing to be terminated, any license, permit, lease, contract or agreement relating to the Property or the operation of any of the businesses on the Property; (e) remaining in possession of the Property or otherwise interfering with the operation of the Property or the Receiver's discharge of its duties hereunder; or (f) destroying any of Borrowers' Books and Records, deleting any information from computers or computer records or databases, or taking any other action to destroy or remove materials or

information concerning the Property. Any failure by Borrowers or Borrowers' Representatives to comply with the terms and conditions of this Order shall render Borrowers or Borrowers' Representatives in contempt of this Order and subject to sanctions by this Court;

~~6. Within forty-five (45) days of taking control and possession under this Order, the~~
Receiver shall file an inventory itemizing all personal property of which it has taken control or possession and shall promptly file supplemental inventories of any personal property subsequently coming into the receivership estate;

7. The Receiver is hereby authorized to hire, employ, retain, and terminate consultants, brokers, professionals and any other personnel or employees, which the Receiver deems necessary to assist it in the discharge of its duties. The Receiver is further authorized to retain legal counsel to represent it and assist it with the performance of its duties as set forth herein;

8. The Receiver shall be paid for its services at the blended hourly rate not to exceed \$250.00. In addition, the Receiver shall be reimbursed for all expenses incurred by the Receiver on behalf of the Property. The Receiver, its management company, its consultants, agents, employees, legal counsel, and professionals shall be paid on a monthly basis. The Receiver shall bill for its services on a monthly basis in accordance with the fee schedule. To be paid on a monthly basis, the Receiver must file a statement of account with the Court and serve a copy on all parties each month for the time and expense incurred in the preceding calendar month. At the Receiver's discretion, this statement of account may accompany the monthly reports filed by Receiver pursuant to this Order. If no objection thereto is filed and served on or within ten (10) days following service thereof, such statement of account may be paid. If an objection is timely filed and served, such statement of account shall not be paid absent further order of the Court. In

the event objections are timely made to fees and expenses, objected to fees and expenses will be paid within ten (10) days of an agreement among the parties or entry of a Court order adjudicating the matter;

9. Subject to further orders of this Court, the Receiver is authorized to operate, manage, control and conduct the Property and its business and incur the expenses necessary in such operation, management, control, and conduct in the ordinary and usual course of business, and do all things and incur the risks and obligations ordinarily incurred by owners, managers, and operators of similar properties and no such risks or obligations so incurred shall be the personal risk or obligation of the Receiver, but shall be a risk or obligation of the receivership estate;

10. The Receiver shall prepare on a monthly basis, commencing forty-five (45) days after its appointment, so long as the Property shall remain in its possession or care, reports setting forth all receipts and disbursements, cash flow, changes in the assets in its charge, claims against the assets in its charge, and other relevant operational issues that have occurred during the preceding month. The Receiver is directed to file such reports with the Clerk of this Court. The Receiver shall serve a copy of this report on the attorneys of record for the parties and may serve any other interested parties who request the same;

11. The Receiver shall pay only those bills which are reasonable and necessary for the operation of the Property and shall allocate funds in the following order of priority: (a) the fees and expenses incurred by the Receiver and its professionals in managing the Property; (b) the costs and expenses of operating the Property including employees' payroll, health insurance and other benefits to employees currently in effect (excluding compensation or benefits of any kind owed to Borrowers or their employees (collectively, the "Owner Parties"), commissions due employees or independent contractors, utilities, business insurance, hazard, liability, workers'

compensation and any other insurance premiums related to the protection of the interests of the Property, sales, tax, general and special taxes or assessments levied on the real property and improvements thereon; (c) payments to creditors including any employee wages, health insurance and other benefits to employees currently in effect and federal or state employee withholdings which relate to the previous period prior to the appointment of the Receiver (except no wages or benefits will be paid to Owner Parties without either a stipulation from all Parties or Court approval provided to the Receiver), and which are, in the Receiver's judgment, bona fide expenses reasonably necessary for the continued operation of the Property. The Receiver shall obtain Court approval prior to making capital expenditures (other than emergency capital expenditures to protect the Property from immediate damage, and individuals on or about the property from immediate threats to health and safety) or payment of unsecured debt (other than ordinary and necessary trade accounts payable), or payments other than those ordinarily and necessarily incurred in the operation of the Property. After reserving sufficient funds as the Receiver deems reasonable to cover one month of the expenses of the receivership, the Receiver may pay at its discretion any remaining amounts to the UCB to reduce the amounts due, owing and unpaid by Borrowers and reduce the accrual of interest on such amounts;

12. Neither the Receiver nor UCB shall be liable for any expenses incurred with regard to the Property prior to the Receiver taking possession of the Property, nor shall the Receiver or UCB be required to use any rents or other revenues collected after the Receiver takes possession of the Property for payment of any expenses incurred with regard to the Property prior to the Receiver's taking possession of the Property (the "Commencement Date"). The Receiver may, in its sole and absolute discretion, pay expenses incurred with regard to the Property prior to the Commencement Date if the Receiver deems payment of said expenses necessary for the continued

operation of the Property. It shall be incumbent upon the Receiver, in the Receiver's sole and absolute discretion, to make the determination which expenses incurred prior to the Commencement Date or incurred in the normal and ordinary course of business with regard to the Property and/or are necessary for the continued operation of the Property. The Receiver's determination shall be binding on the parties hereto;

13. The Receiver is authorized to negotiate, make, enter into, or modify contracts or agreements affecting any part or all of the Property including, without limitation, any and all leases affecting the Property, and to immediately terminate any existing contract, agreement or instrument which is not, in the Receiver's sole and absolute discretion, deemed commercially reasonable or beneficial to the operation of the Property. The Receiver shall not be bound by any contract between Borrowers and any third party that the Receiver does not expressly assume in writing;

14. The Receiver may demand, and make reasonable, good faith efforts to collect, and receive all rents, subrents, issues and profits for the Property or any part of it that are owed, unpaid, and uncollected as of the Effective Date of this Order, or hereafter to become due, and may compromise or give acquittance for rents and profits, payments, income or proceeds that may become due.

15. The Receiver may execute and deliver in its own name as Receiver, such documents and instruments as are necessary or appropriate to consummate authorized transactions (including, but not limited to, all documents required by any financial institution to take possession of or transfer any deposit or operating accounts)

16. The Receiver may enter into such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as the Receiver may in its reasonable discretion deem appropriate or desirable.

17. Any security or other deposits which tenants have paid to Borrowers or their agents and which are not paid to the Receiver, and over which the Receiver has no control, shall be obligations of the Borrowers and not the Receiver. Any other security or other deposits which the tenants or other third parties have paid or may pay to the Receiver, if otherwise refundable under the terms of their leases or agreements with the Receiver, shall be expenses of the Property and refunded by the Receiver in accordance with the leases or agreements;

18. The Receiver shall pay all lawful debts of the business, open and maintain checking and savings accounts and the like, and do all things and incur the risks and obligations ordinarily incurred by owners, managers, and operators of similar businesses and enterprises, and no risk or obligation so incurred shall be the personal risk or obligation of the Receiver but shall be a risk or obligation of the receivership estate;

19. The Receiver may open and maintain Borrowers' accounts in the name of the receivership estate, in a federally insured lending institution;

20. The Receiver may institute and prosecute all suits as may be reasonably necessary in the Receiver's judgment to protect the Property, and to defend all such suits and actions as may be instituted against the Receiver;

21. The Receiver is authorized and empowered to establish bank accounts at any bank the Receiver deems appropriate for the deposit of monies and funds collected and received in connection with its administration of the Receivership Estate, provided that all funds on deposit are insured by an agency of the United States Government;

22. The Receiver may obtain and pay any reasonable price for any lawful license and, to the extent permitted by law, exercise the privileges of any existing license issued in connection with the Property or any business transacted with respect to it, until further order of the Court, and to do all things necessary to protect and maintain said licenses;

23. Except as otherwise provided in this Order, the Receiver shall hold and retain all money that may come into the Receiver's possession, custody, and control by virtue of its appointment and not expended for any other authorized purpose, until further order of this Court, or until the sale of the Property under the terms of the Loan Documents;

24. The Receiver is hereby authorized to make appropriate notification as needed to the United States Postal Service to forward delivery of any mail addressed to the Business to any Post Office box or other mail depository controlled by the Receiver;

25. Receiver shall maintain adequate insurance covering the Property to the same extent and in the same manner as it has heretofore been insured, or as in the judgment of Receiver may seem fit and proper, and to cause all presently existing policies to be amended by (i) adding Receiver and the receivership estate as an additional insured within ten (10) calendar days of the entry of this Order and (ii) obtaining additional insurance providing liability coverage or otherwise covering the Property and its operations, and such insurance expense shall be deemed a normal, ordinary and necessary operating expense of the Property. If there are insufficient funds in the receivership estate to procure adequate insurance, Receiver is directed to immediately petition the Court for instructions. During the period in which the Property is uninsured or underinsured, the Receiver shall not be personally responsible for any liability or claims arising therefrom;

26. Given the urgency of the situation to appoint a Receiver, the Receiver accepts this appointment without time for independent verification that appropriate insurance is in place on the property or that appropriate liability or other insurance is in place to protect the assets and the receiver estate. Receiver has no responsibility or liability until such time as Receiver can confirm that such insurance is in place or acquire the appropriate insurance; provided, however, that Receiver shall verify that appropriate insurance is in place within ten (10) calendar days of the date of this Order;

27. Borrowers shall immediately provide the Receiver with all available insurance information for both existing and prior insurance policies including, without limitation, all applications, policies, riders, correspondence, endorsements, claims and other information. Further, Borrowers shall (i) to advise the insurance agent(s) of this Order in writing, (ii) designate all authority over the policies to the Receiver, and (iii) take no action with regard to terminating or modifying existing insurance policies;

28. Any insurance broker, agent, carrier, or underwriter is specifically ordered by the Court to cooperate with the Receiver by timely furnishing the following: (i) copies of all insurance policies including any riders, endorsements and applications with respect to policies related to the Receiver Estate, (ii) loss history for five consecutive years or for as long as insurance has been in force if less than five years, (iii) premium payment history including current status, and (iv) any correspondence with insurance agents, brokers and companies. Policies shall be endorsed by the Defendant naming the Receiver as Named Insured and Loss Payee effective the date of this Order as appropriate to the type of coverage, and evidence of this policy endorsement shall be promptly supplied to the Receiver. The Receiver is hereby authorized to

engage insurance brokers and consultants as necessary to properly insure the assets of the Receivership.

29. Nothing contained within this Order, nor the grant or exercise of any powers provided for herein by the Receiver shall cause said Receiver to be considered a past or present owner, operator or other potentially responsible or liable party pursuant to any provision of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601, *et seq.*; the Hazardous Site Response Act (HSRA), O.C.G.A. § 12-8-90, *et seq.*; or incur liability based on ownership or operation of the Property pursuant to any other statutory, regulatory, common law or strict liability theory. Furthermore, to the extent hazardous substances, wastes or constituents are known or discovered to be present upon the Property, the Receiver shall not be considered to be in any direct or indirect contractual relationship with any party responsible for such substances, wastes or constituents pursuant to CERCLA and/or HSRA, and shall instead be considered to be acting solely in a "fiduciary capacity" with respect to the Property, pursuant to 42 U.S.C. § 107(n) of CERCLA and §12-8-92(7)(C) of HSRA;

30. The Receiver shall have authority and be authorized to take possession of all bank accounts containing funds associated with the Business whether in the name of the Borrowers, or any other agents of Borrowers, wherever located, and to open transfer and change all bank and trade accounts relating to the assets, so that all such accounts are in the name of the Receiver;

31. The Receiver shall have authority and be authorized to sign checks on and otherwise withdraw funds from any accounts owned by or in the name of the Borrowers, or for operation of the Business, howsoever they be named. The Receiver shall also be authorized to add or delete signers, including those currently authorized on the account(s). The representatives of

the Receiver initially designated with authority over these accounts shall be Henry P. Lorber, Michael H. McClellan, and S. Gregory Hays;

32. In addition, the Receiver shall have the authority to open and maintain bank accounts in the name of the Receiver for the use in administering and preservation of the Borrowers businesses, using the Federal Employer Identification Number of the Borrowers businesses, at the Receiver's discretion;

33. To succeed to, take physical possession of, manage, operate, and/or renew, any licenses or permits, including but not limited to all business licenses or permits, malt beverage, wine and/or distilled spirits licenses or permits ("Alcohol Licenses"), and tobacco licenses or permits ("Tobacco Licenses") that are presently held by the Borrowers or any of their related parties with respect the businesses located at The Lake Burton Club, Rabun County, GA;

34. To coordinate with the Georgia Department of Revenue, Rabun County, or any agent acting on their behalf, appropriate and necessary notices to all agencies, vendors, distributors, utility companies, taxing authorities, and other individuals and/or entities that have existing contractual or other relationships with the borrowers. to effectuate any transfers, renewals, or modification of any accounts, licenses or permits, including but not limited to any tax accounts, business license accounts, Alcohol Licenses, Tobacco Licenses, as necessary, to Receiver;

35. Nothing contained within this Order, nor the grant or exercise of any powers provided for herein by the Receiver shall cause said Receiver, its affiliates and any employees and agents of Receiver or such affiliates, including, without limitation, any individuals named on the Alcohol Licenses, to be considered a past or present owner, operator or other potentially responsible or liable party in connection with the Alcohol Licenses. The Receivership Estate

shall indemnify, defend, and hold Borrowers, its affiliates and any employees and agents of Borrower or such affiliates, including, without limitation, any individuals named on the Alcohol Licenses, harmless from any and all third party liabilities, damages, or claims arising from and after the date of this Order arising, ~~resulting from or caused by the Receiver, its affiliates and any~~ employees and agents of Receiver or such affiliates, including, without limitation, any individuals named on the Alcohol Licenses, in connection with the Alcohol Licenses or the beverage operations at the Property during the Receiver's appointment, unless and except to the extent the same results from the gross negligence or willful misconduct of Borrowers its affiliates and any employees and agents of Borrower or such affiliates, including, without limitation, any individuals named on the Alcohol Licenses.

36. Nothing in this Order shall in any way alter or limit UCB's right to proceed with a foreclosure sale of the Property without further Order or leave of Court;

37. Subject to the provisions of this Order, the Receiver shall remain in exclusive control of the Property, until the completion of any sale or foreclosure sale of same, or until further order of this Court;

38. Receiver shall not have a duty to obtain any environmental reports, engineering reports or other reports, tests or investigations concerning the condition of the Property unless (i) it is requested in writing by UCB or (ii) it receives notice from a governmental authority of a possible violation of applicable laws, ordinances or regulations.

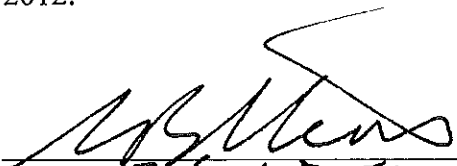
39. Receiver may, at any time, resign as the receiver under this Order by providing thirty (30) days prior written notice to the Court, UCB's counsel and Borrowers, whereupon the Court will entertain an emergency motion to appoint a substitute receiver.

40. Without limiting any other rights or immunities the Receiver may have at law or in equity, the Receiver shall have no liability for acts or omissions made by or on behalf of it in its capacity as the Receiver of the Property, so long as such acts and omissions are made in good faith, without gross negligence, and in a manner that the Receiver reasonably believes is in the best interest of the Property.

41. The Court shall retain jurisdiction and supervision of all matters concerning the Receiver and the receivership. The Receiver may seek instructions and additional authority from the Court upon written notice to UCB and Borrowers.

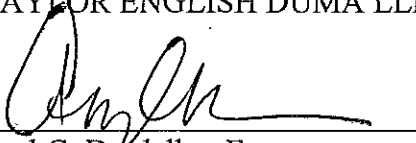
42. Nothing contained in this Order shall constitute or be deemed to constitute any waiver, release or impairment of any kind of any of the rights, powers and remedies of UCB under the Loan Documents or applicable law, all of which rights, powers and remedies remain in full force and effect.

This the 1st day of August, 2012.


Senior Judge Robert B. Struble
Superior Court Judge
Rabun County, Georgia
Sitting by Designation

Prepared and Presented by:

TAYLOR ENGLISH DUMA LLP

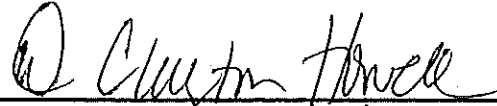


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*by a/k/a
w/express
permission*

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