Storage Fees	34,379.40
Insurance	7,006.40
TOTAL AMOUNT OF OBLIGATION	$6,229,598.72

From this amount, together with accrued interest through the date of judgment, the Borrower is due a set off in the amount of the Transfer Value to be applied to the Obligation (the "Count I Judgment Amount"), together with attorney's fees and costs that may be requested by motion post judgment. The Court has determined the Transfer Value to be $1,000,000. The Court believes that the fair market value as of the date of the Transfer is to be considered in establishing the right to a deficiency, but the amount obtained from the sale of the collateral determines the amount of the deficiency. The sale amount of $625,000 establishes a deficiency amount of $5,604,598.72, together with accrued interest, attorney's fees and costs. The Court directs the Clerk of Court to enter judgment as to Larry S. Hymen, as Assignee of G3 Tampa, LLC in the amount of $5,604,598.72.

107. As to Count II, the Bank seeks the Count I Judgment Amount as to both Kearney and Harris in excess of the Liability Limitations, in the amount determined in Count I, due to breaches of their obligations under the Loan Documents to ensure the Aircraft was airworthy, appropriately insured, and not leased without the consent of the Bank. The Court has determined that the conduct of Defendants, based on the particular facts of this case, is not sufficient to establish liability in excess of the Liability Limitations.

108. As to Count III, which is an alternative to Count II, pursuant to the Loan Documents, there are limitations (the "Liability Limitations") on the guaranties executed by and sought to be enforced against the Guarantors, such that the damages sought in Count II as against each Defendant are capped by applicable Liability Limitations.

Accordingly, the Court finds that the Count I Judgment Amount is limited to $638,968.75 as to Harris and Seeger, and to $3,407,620.35 as to Kearney. The Court finds that the Bank has proven liability and amount as to Count III, as to all Guarantors.

Harris	$ 638,968.75
Seeger	$ 638,968.75
Kearney	$ 3,407,620.35

109. The Loan Documents also include liability for reimbursement of the Bank's attorney's fees, court costs and related compensable expenses incurred in prosecuting and enforcing its rights and remedies pursuant to the Loan Documents, including attorney's fees and costs paid by the Bank to its counsel as compensation and reimbursement for its efforts to enforce the Loan Documents in the Assignment Action and this litigation. The Court finds that the Bank is entitled to seek a determination as to its entitlement to attorney's fees and costs after the entry of judgment as to its claims as set forth in the Complaint and the judgment shall reserve jurisdiction to consider those claims.

IV. CONCLUSIONS OF LAW

JURISDICTION

1. The Court's jurisdiction is based on diversity. Federal courts sitting in diversity apply the forum state's choice of law rules. See Boardman Petroleum, Inc. v. Federated Mutual Insurance Co., 135 F.3d 750 (11th Cir. 1998). The Court therefore applies Florida conflicts of law rules to determine what law controls substantive issues.

Under Florida law, courts will enforce contractual choice of law provisions unless the law of the chosen forum contravenes strong public policy of the forum. Mazzoni Farms, Inc. v. E.I. DuPont de Nemours & Co., 761 So.2d 306, 311 (Fla. 2000). In this case, the parties agreed that the Note and Credit Agreement would be governed by and construed in accordance with Florida law.

LOAN DOCUMENTS

The Bank has alleged that the Obligors are liable to the Bank under the Loan Documents for the Obligation.

2. To establish breach of contract, the Bank is required to show: (a) a valid contract; (2) material breach; and (3) damages. Geoffrey Todd Hodges, Trustee v. Eugene Buzzeo, 193 F.Supp.2d 1279, 1283 (M.D. Fla. 2002), citing Abruzo v. Haller, 628 So.2d 1338, 1340 (Fla. 1st DCA 1992).

3. The Obligors do not dispute that the Loan Documents create a valid contract or that the Bank provided consideration for the same through the funding of the loan proceeds that were used to acquire the Aircraft, such that the first element is established.

4. The Obligors do not dispute that G3 Tampa, LLC, the Borrower, failed to make the payment due on the Obligation in June, 2009, together with all subsequent payments as well as the payments due under the Swap Agreement, such that a material breach is established.

5. The Bank has been damaged by the Obligors' breach of the Loan Documents. As of the Transfer Date, the fair market value of the Aircraft , $1,000,000.,was substantially less than the amount owed on the Obligation,

$6,229,598.72. This establishes that the Bank is entitled to a deficiency judgment on the Note as to Count I and on the Guaranties as to Count II or Count III.

SUBSTITUTE KEARNEY GUARANTY

6. The Court finds that the evidence and testimony presented reflects the intent of the Bank and Bing Charles W. Kearney, Jr. that the Substitute Kearney Guaranty was intended by the parties to be the applicable and enforceable Loan Document as to Bing Charles W. Kearney, Jr.'s guaranty of the Obligation.

DEFENSES

7. First Defense. Satisfaction. Defendants have not established that the fair market value of the collateral exceeded the amount of the debt due; therefore this defense is overruled.

SET OFF CREDIT

8. **Second Defense.** The Guarantors have asserted as an affirmative defense that they are due Set Off Credit against the Obligation for the fair market value of the Aircraft as of the date of the Transfer. The Guarantors have the burden of persuasion as to the Set Off Credit raised as an affirmative defense.

9. The Guarantors did not provide evidence as to the value of the Aircraft as of the date of Transfer.

10. At Trial, the Bank opined that the Aircraft had a value of $1,000,000 as the Transfer Value as of the date of the Transfer. The Bank as owner of the Aircraft can

provide opinion testimony as to the value of the Aircraft. Electro Services, Inc. v. Exide Corp., 847 F.2d 1524 (11th Cir. 1988); Tampa Bay Shipbuilding & Repair Co. v. Cedar Shipping Co., Ltd., 320 F.3d 1213 (11th Cir. 2003).

11. To the extent that the Borrower seeks to testify as to the value of the Aircraft as of the date of the Assignment Action, it is held to the same standard as the Bank and its members or officers are required to have particularized knowledge within the field or other similar attributed that provide a degree of reliability to their testimony. None of the Guarantors established the requisite degree of particularized knowledge to permit them to testify as to value.

12. The Guarantors' opinion as to value of the Aircraft on the date of the Assignment is not admissible, and, if it is admissible, is entitled to less weight than a person who has particularized knowledge in the field.

13. **Third Defense.** Estoppel. Defendants have not established the presence of any conduct by the Bank that would estop the Bank from enforcing the agreements; therefore this defense is overruled.

14. Fourth Defense. Failure to Mitigate Damages. Defendants have not established the presence of any conduct by the Bank which amounts to a failure to mitigate damages, including the "Generic Lease Request," the Abandonment Objection or the Maintenance Obligation; therefore this defense is overruled.

15. Fifth Defense. Breach of Credit Agreement. Defendants have not established that Plaintiff Breached the Credit Agreement, and therefore overruled.

16. Sixth Defense. Unclean Hands. This case is an action at law. Defendants have not established that the Bank engaged in a course of inequitable conduct which include the alleged "Generic Lease Breach", the "Recording" and the "Attorney Communications." This defense is overruled.

17. Seventh Defense. Avoidable Consequences. Defendants have not the presence of any conduct

18. Eighth Defense. Good Faith and Fair Dealing. Defendants have not established a breach of any agreement by Plaintiff; therefore this defense is overruled.

19. Ninth Defense. Payment. Defendants have not disputed the amount of the debt due or show that the fair market value of the collateral exceed the amount due; therefore this defense is overruled.

20. Tenth Defense. Contributory Negligence. Defendants have not the presence of any conduct that amounts to contributory negligence; therefore this defense is overruled.

21. Eleventh Defense. Condition Precedent. Defendants have not established that Plaintiff failed to perform any condition precedent; therefore this defense is overruled.

22. Twelfth Defense. Standing. This defense was abandoned; therefore it is overruled.

COUNT II SUIT ON GUARANTIES (GROSS NEGLIGENCE)

GROSS NEGLIGENCE

23. The Bank contends that Managers Kearney and Harris acted with gross negligence in entering into the Unconsented Lease and prior Unconsented Leases, by deliberately and knowingly abandoning the Maintenance Obligations, and by allowing the Insurance Policy to lapse.

24. Gross negligence is shown by demonstrating a party's knowledge of the existence of circumstances which constitute a clear and present danger amounting to more than normal peril, but the party still undertakes a conscious, voluntary act or omission which is likely to result in injury.

MAINTENANCE OBLIGATION

25. The Credit Agreement included provisions which were intended to preserve the value of the Aircraft, in which the Bank had a security interest. The Maintenance Obligation is one such provision.

26. Due to its nature, the Aircraft is subject to rigorous regulatory requirements. The logbooks which document that maintenance and inspections have been done are a vital part of the Aircraft, and are necessary to preserve its value. Regular maintenance and inspections avoid the prohibitive costs and uncertainties to restore an Aircraft to airworthy status.

INSURANCE POLICY

27. 14 C.F.R. Sec. 91.501 governed the conduct of G3 Tampa, LLC in its operation of the Aircraft.

28. The Seeger Formula includes charges that are not permitted under applicable law and that do not constitute Direct Costs of operating the Aircraft within the meaning of the Insurance Policy. No member of G3 Tampa, LLC explained the hourly charge or linked the hourly charge with allowable Direct Expenses of the Aircraft, which are not otherwise overhead or required to be apportioned on a reasonable pro rata basis. (7/12/2012, p. 87-91; 7/17/2012, p. 133, 140).

29. Defendants misconstrue operating expenses with Direct Expenses. G3 Tampa, LLC's documents reflect that when Direct Expenses are deducted from the price paid for the Planet Hollywood Unconsented Lease, G3 Tampa, LLC violated the Industrial Aid Restriction in the Insurance Policy. Ex. 1, 3, 19, 25, 32, 44, 46; D. Ex. 5.

30. The Bank contends that the Direct Costs for a flight are those stated in 14 C.F.R. Sec. 91.501(d), and the Direct Costs referred to in the applicable insurance policy would be construed consistent with the statutory definition. The Bank contends that the assessment of other costs under the Seeger Formula to third parties on flights that violate Chapter 91 also violate the Industrial Aid Exclusion and invalidate the Insurance Policy.

31. A violation of the Industrial Aid Exclusion voids the Insurance Policy and relieves the insurer from any liability under the policy. The Planet Hollywood Unconsented Lease violated the Industrial Aid Exclusion. Ex. 32.

UNCONSENTED LEASE

32. The Disputed Bank Exhibits support the Bank's theory that G3 Tampa, LLC intended to and did consummate an Unconsented Lease regardless of whether G3 Tampa, LLC executed the lease agreement executed by or on behalf of the Planet Hollywood Unconsented Lease. D. Ex. 40.

33. The Unconsented Lease violated the terms of the Credit Agreement, which requires prior written consent by the Bank.

34. The purpose of requiring consent from the Bank is to allow the Bank to evaluate particular facts, so that the Bank can evaluate the risk of impairment to the value of the collateral in which the Bank has security interest. When the Loan was granted to G3 Tampa, LLC, the Aircraft was in the custody of local businessmen well known to the Bank. The lease of an Aircraft to unknown third parties exposes the Bank to the risk of total loss of the Aircraft, should the third party take the Aircraft and disappear, or to substantial impairment, should the third party crash the Aircraft.

35. The Unconsented Lease violated the terms of the Credit Agreement, and the terms of the Unconsented Lease may have theoretically voided coverage available under the applicable insurance policy. The fact is that nothing happened on the flight that damaged the Aircraft. The failure to perform the Maintenance Obligation has the

same effect whether it is subjectively intentional, or unintentional due to lack of funds to pay for the Maintenance Obligation. The failure to perform the Maintenance Obligation is a breach of the Credit Agreement which impaired the value of the collateral. The Court is not convinced that the facts of this case show that the Bank sustained more damages than it otherwise would have due to Defendants' actions or omissions. The Court concludes that the enforcement of unlimited guaranties due to the presence of gross negligence is not warranted.

36. The Court concludes that any liability of the Guarantors should be entered pursuant to Count III, subject to the limitations on the guaranties, and therefore dismisses Count II with prejudice.

COUNT III SUIT ON GUARANTIES

37. The Bank has established the liability of the Guarantors, subject to the limitations of the guaranty agreements in effect.

COUNT V - DECLARATORY RELIEF

The Bank seeks a declaratory judgment as to the Attorney Communications made on behalf of the Bank in connection with its efforts to negotiate with the Obligors as to the delinquent Obligation.

38. Declaratory judgments require the showing of: (a) a bona fide present need for a declaration; (b) a present, ascertainable state of facts or controversy as to a state of facts; (c) some immunity, power, privilege or right of the complaining party is

dependent on the facts or the law applicable to the facts; (d) some person or persons who have or may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; (e) the antagonistic parties are all before the court; and (f) the relief sought is not merely the giving of legal advice or answering questions arising from curiosity. Ch. 86.011, Florida Statutes.

39. The Court finds that a definite and concrete controversy is present, that the facts of this claim are ascertainable, that the Guarantors have asserted claims against the Bank, that all of the parties are before the Court, and that the Bank is in need of a declaration as to its obligations and defenses.

ATTORNEY COMMUNICATIONS

40. The Attorney Communications fall within the Business Exception and were expressly limited to a narrow discussion of the delinquent Obligation that was the subject of the Demand Letter and Settlement Meeting. Because the Attorney Communications were limited to attorneys with connections to Obligors or their companies, the Bank had an expectation, which was fulfilled, that the communications would be treated as confidential by the recipients.

41. At Trial, the Guarantors all conceded that they authorized the transmittal of the Attorney Communications Correspondence. (7/12/2012, p. 145-146; 7/17/2012, p. 167-169, 198. The Guarantors continued to contend they were damaged by the Communications, but were unable to identify any exhibit that evidenced such damages. (7/12/2012, p. 135-136; 7/17/2012, p. 167-169, 198-199.). The Court finds that the record is devoid of any evidence that establishes quantifiable damages that can be linked to the Attorney Communications.

42. The Court finds that declaratory judgment should be rendered in favor of the Bank and against the Guarantors that the Attorney Communications do not violate the Regions Code and do not give rise to a cause of action in favor of the Guarantors against the Bank. Accordingly, it is

ORDERED that:

As to Count I, a final default judgment in favor of Regions Bank and against Defendant Larry S. Hyman as Assignee of G3 Tampa, LLC in the amount of $5,604,598.72 shall be entered;

As to Count II, Count II is **dismissed with prejudice**;

As to Count III, a joint and several final judgment shall be entered in favor of Regions Bank and against Guarantors as follows:

Tracy J. Harris, Jr.	$	638,968.75
Brian Seeger	$	638,968.75
Bing Charles Kearney, Jr.	$	3,407,620.35

As to Count V, the entry of a final judgment in favor of Plaintiff Regions Bank and against Tracy Harris, Jr., Brian Seeger and Bing Charles W. Kearney, Jr. that the

Attorney Communications do not violate the Regions Code and do not give rise to a cause of action against Regions Bank.

The Court **reserves jurisdiction** for the determination of attorney's fees and costs. The Clerk of Court shall enter the above final judgments shall close this case.

DONE and ORDERED in Chambers, in Tampa, Florida on this 28th day of September, 2012.

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies to:
All parties and counsel of record