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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

ORIGINAL

Case No. 2010-CP-32-05481

Hook Point, LLC,

Respondent

v.

Branch Banking and Trust Company, First
Reliance Bank, and Allan Risinger,

Defendants,

Of whom Branch Banking and Trust
Company is,

Appellant.

RECORD ON APPEAL

Frank R. Ellerbe, III
Wilson W. McDonald
ROBINSON, McFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, South Carolina 29202
(803) 779-8900

Attorneys for Appellant

Thornwell F. Sowell
David C. Dick
SOWELL GRAY STEPP & LAFFITTE, LLC
Post Office Box 1149
Columbia, South Carolina 29211
(803) 929-1400

Frederick A. Gertz
GERTZ & MOORE
Post Office Box 456
Columbia, South Carolina 29202
(803) 252-1524

Attorneys for Respondent

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ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS

Hook Point, LLC,

2010 DEC 23

Civil Action No.:

28

Plaintiff,

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SO

2010CP3205481

vs.

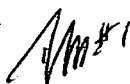
EX PARTE TEMPORARY
RESTRAINING ORDER

Branch Banking and Trust Company, First
Reliance Bank, and Allan Risinger,

Defendants.

THIS MATTER comes before me pursuant to the motion of Plaintiff, Hook Point, LLC ("Hook Point"), for an *ex parte* temporary restraining order, pursuant to Rule 65(b), SCRPC. Plaintiff has also moved for a preliminary injunction, which motion the Court shall consider at a hearing to be held as stated herein with notice to Defendants First Reliance Bank ("First Reliance") and Branch Banking and Trust Company ("BB&T"). In support of their motion, Plaintiff submitted the Affidavit of Hook Point. The Court has carefully reviewed the specific facts of the Affidavit, and the Verified Complaint, and the Court grants Plaintiff's motion for an *ex parte* temporary restraining order.

This action and motion arise from a certain instrument denominated as Letter of Credit No. 970001231, dated December 16, 2007, issued by First Reliance securing certain specifically limited performance of Hook Point to BB&T (the "Letter of Credit"), for the payment of interest under that certain Loan Agreement, dated November 16, 2007, and related documents providing for a Term Loan in the amount of \$5,100,000 and a Line of Credit not to exceed \$2,000,000, on the grounds that BB&T has wrongly presented the Letter of Credit for payment knowing that the Plaintiff, Hook Point is not substantially in default of the limited purpose for which the Letter of Credit was issued, as it only owes approximately \$70,000 in interest.



Pursuant to Rule 65(b), SCRPC, the Court "can issue a temporary restraining order without providing notice where it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon." *Leo Zabinski v. Bright Acres Associates*, 346 S.C. 580, 600-01, 553 S.E.2d 110, 120 (2001)(quoting Rule 65(b), SCRPC). To obtain a temporary injunction, the moving party must demonstrate that (1) it would suffer irreparable harm if the injunction is not granted, (2) it will likely succeed on the merits of the litigation, and (3) there is no adequate remedy at law. *Scratch Golf Co. v. Dunes West Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004); *MailSource, LLC v. M.A. Bailey & Associates*, 356 S.C. 363, 367-68, 588 S.E.2d 635, 638 (App. Ct. 2003).

The Court finds that Plaintiff meets each required element. Plaintiff will suffer immediate and irreparable injury, loss, and damage and will lack an adequate remedy at law if their request for an *ex parte* Temporary Restraining Order is not granted.

In conclusion, Plaintiff has satisfied the standard of Rule 65(b), SCRPC, and each element required to obtain a temporary restraining order. It clearly appears that immediate and irreparable injury, loss, and damage will result to Plaintiff before notice can be served upon Defendants and a hearing held. The Court issues this *Ex Parte* Temporary Restraining Order without notice to Defendants based upon the foregoing.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. For a period that shall expire on 31 DEC 10, which is within ten (10) days of the entry of this *Ex Parte* Temporary Restraining Order, Defendant First Reliance is prohibited, restrained, and enjoined from paying, settling, crediting, or otherwise honoring that certain Letter of Credit Number 970001231;

2. For a period that shall expire on 31 DEC 10, which is within ten

(10) days of the entry of this *Ex Parte* Temporary Restraining Order, Defendant BB&T is prohibited, restrained, and enjoined from presenting or seeking to collect that certain Letter of Credit Number 970001231;

3. The hearing on Plaintiff's motion for a preliminary, injunction is hereby scheduled before the Hon. F. KNOX McMAHON on 31 DEC 10 at 10:00 AM in the Lexington County Courthouse, and Plaintiff shall provide Defendants with notice of this hearing.

4. In the event that the hearing on Plaintiff's motion for a preliminary injunction is continued, this *Ex Parte* Temporary Restraining Order shall remain in full force and effect until the hearing occurs, as Plaintiff has shown good cause.

5. The Court issues this *Ex Parte* Temporary Restraining Order on December 23, 2010.

6. This *Ex Parte* Temporary Restraining Order shall be filed forthwith in the Office of the Lexington County Clerk of Court and entered of record.

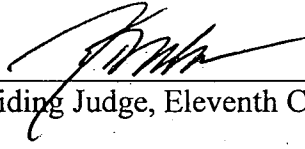
7. Plaintiff shall serve a copy of this *Ex Parte* Temporary Restraining Order upon Defendants with their Summons and Complaint in accordance with the provisions of Rule 4, SCRPC.

8. Defendants are hereby notified that on two (2) days notice to Plaintiff or on such shorter notice to Plaintiff as the Court may prescribe, Defendants may appear and move to dissolve or modify this *Ex Parte* Temporary Restraining Order. In the event that Defendants so appear and move, the Court shall proceed to hear and determine their motion as expeditiously as the ends of justice require.

[Signature]

8. This matter is being heard without bond as the instrument is adequate security for any costs.

AND IT IS SO ORDERED.


Presiding Judge, Eleventh Circuit

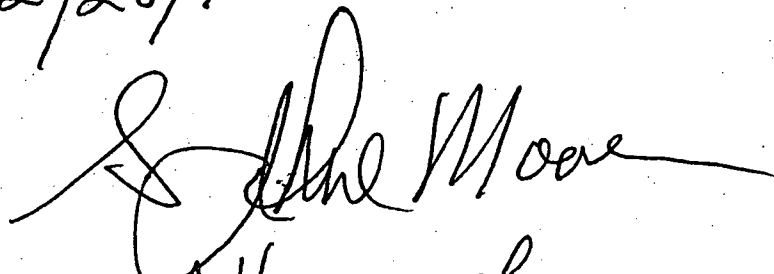
Lexington, South Carolina
December 23, 2010

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2010 DEC 23 3:28

FILED

Service Accepted
On behalf of First Reliance
Bank. 12/23/10


Attorney for
First Reliance Bank

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-32-5481

Hook Point LLC

Branch Banking & Trust Company

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Order Granting Preliminary Injunction

Dated at Lexington, South Carolina, this 7 day of Jan, 20 11.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this 14 day of Jan, 20 11 to attorneys of record or to parties (when appearing pro se) as follows:

Thomwell Sowell #1

S. Jahue Moore

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Copies & mailed on 1/13/11
LCF 583 (11/00)

Beth A. Carrington
CLERK OF COURT

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Hook Point, LLC,

Civil Action No.: 2010-CP-32-05481

Plaintiff,

vs.

**ORDER GRANTING
PRELIMINARY INJUNCTION**

Branch Banking and Trust Company, First
Reliance Bank, and Allan Risinger,

Defendants.

This matter is before the Court on the motion of the Plaintiff Hook Point, LLC ("Hook Point") for a Preliminary Injunction enjoining: [i] the Defendant Branch Banking and Trust Company ("BB&T") from drawing on a letter of credit issued by the Defendant First Reliance Bank ("First Reliance"); and [ii] the Defendant First Reliance from paying BB&T under the letter of credit.

Procedural Background

This action was commenced by a summons and complaint filed December 23, 2010 asserting seven causes of action alleging typical lender liability claims. On the same day Plaintiff Hook Point sought and obtained a temporary restraining order pursuant to the Order of the Hon. R. Knox McMahon, which provided *inter alia* for a hearing on Plaintiff's motion for a preliminary injunction on Friday, December 31, 2010, which was continued until Tuesday, January 4, 2011 by agreement of the parties.

Facts

The underlying facts relevant to the present motion are largely undisputed. Hook Point is the developer of a single residential subdivision located on approximately 19

acres fronting on Lake Murray on S.C. Highway #378 known as "Panama Pointe." In order to finance the required subdivision improvements and to retire a prior acquisition loan, Hook Point sought a loan from BB&T. On or about September 6, 2007, BB&T issued a Commitment Letter to Hook Point. The Commitment Letter agreed to lend Hook Point \$5,100,000 for the completion of "development and residential lots at Panama Pointe" and to provide a line of credit in the maximum amount of \$2,000,000 for the construction of houses upon certain terms and conditions. The Commitment Letter listed the collateral for the loan as:

3. Collateral: *The Loan will be secured by a first lien mortgage (the "Mortgage") on Panama Pointe with all lots and improvements near Lexington, South Carolina and an assignment of all architectural/engineering documents and construction contracts. (the "Collateral").*

*W/pe
#2* In addition, the Commitment Letter required a \$1,500,000 letter of credit approved by BB&T as follows:

23. Covenants: *The Borrower shall adhere to the following covenants, which shall be included, along with other covenants, in a loan agreement to be executed by the Bank and the Borrower at or prior to the Loan closing:*

(A) *Other: Collateral/Interest Reserve Option:*

Presales of 50% \$750,000 L/C, Presales of 40% \$900,000 L/C; Presales of 30% \$1,050,000 L/C, Presales of 20% \$1,200,000 L/C. \$1,500,000 L/C with less than 20% presales. 10% deposit required on all pre sales

Letter of Credit approved by BB&T and issuing bank with unconditional draws. Maturity of letter to extend 90 days after loan maturity. Letter of credit to be used as last resort for interest carry.

Subsequently, on November 16, 2007, Hook Point and BB&T entered into a formal loan agreement (the "Loan Agreement"). On the same day, First Reliance Bank issued the Letter of Credit which is the subject of this action (the "Letter of Credit"). The Letter of Credit allows draws and partial draws on presentation of a draft accompanied by:

1) The original letter of credit. 2) A notarized, sworn statement by the Beneficiary, or an officer thereof, that a) The Borrower has failed to perform its obligations to the Beneficiary under the Loan Agreement and Promissory Note dated November 16, 2007, executed by and between Hook Point, LLC as Borrower and Branch Banking & Trust Company as Lender b) The amount of the draft does not exceed the amount due to the Beneficiary under the obligation; and; c) The signer has the authority to act for the Beneficiary with regards to the Letter of Credit.

The Letter of Credit is secured by a deposit of roughly \$310,000 in cash on deposit with First Reliance, and several real properties owned by an affiliate of Hook Point. In the event of a draw on the Letter of Credit, First Reliance has the right to foreclose on these properties and take the cash deposit.

On December 21, 2010, BB&T delivered to First Reliance a demand letter seeking to draw the full amount of the Letter of Credit, i.e. \$1,500,000. The demand states that its presentment is accompanied by:

- WSP
#3
1. The Sight Draw as required by the Letter of Credit;
 2. The original Letter of Credit; and
 3. A notarized statement from BB&T officer that (a) Hook Point, LLC ("Borrower") has failed to perform its obligations under the Loan Agreement and Promissory Note dated November 16, 2007, (b) the draw amount does not exceed the obligations of Borrower to BB&T and (c) as signor, I have authority to act for BB&T as it relates to the Letter of Credit.

The Letter of Credit expires, by its terms, on February 13, 2010. First Reliance, through its counsel, has agreed to extend the Letter of Credit for up to one (1) year.

Hook Point and BB&T differ in numerous respects as to their relative culpability and the status of the Loan; however, they are in agreement that there is at least \$70,000 in interest due and owing under the terms of the Loan Documents. There may be a conflict in logic concerning admitted amounts that are due and challenges to the validity of the transactions themselves; but, the court finds that it is reasonable at this point to accept the positions taken at the hearing.

Plaintiff's Position

Hook Point contends in its pleadings, affidavits and testimony of one of its members that BB&T, to the extent any draw would be proper, is limited solely to accrued and unpaid interest and not the full amount of the Letter of Credit. Hook Point seeks a Preliminary Injunction seeking to enjoin BB&T from claiming any more than the accrued and unpaid interest and seeking to enjoin First Reliance from paying any more than such amount. Hook Point concedes that BB&T is entitled to make a partial draw on the Letter of Credit for the accrued and unpaid interest.

Application of Law

WPM
#4

The Letter of Credit states that it shall be "governed by federal law applicable to the Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina . . . except to the extent that such laws are inconsistent with the 2006 Revision of Uniform Customs and Practice for Documentary Credits" The laws of South Carolina governing letters of credit are found in Article 5 of the Uniform Commercial Code, South Carolina Code Ann. § 36-5-101, *et seq.* (1976) (the "UCC"). (There are no federal laws preempting or conflicting with the laws of South Carolina on the relevant issues.)

The Uniform Customs and Practice for Documentary Credits ("UCP") is silent as to the impact of fraud in the presentation of documents under a letter of credit. The South Carolina Uniform Commercial Code does provide specific rules governing such fraud which are not inconsistent with the UCP's silence and therefore govern this transaction.

South Carolina Code Ann. § 36-5-109(b) (1976) provides that:

If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may

temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(1) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(3) all of the conditions to entitle a person to the relief under the law of this State have been met; and

(4) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (a)(1).

WPK
HS

Even if it were to be argued that the UCP's silence is somehow inconsistent with the UCC, the overwhelming weight of authority provides that Section 5-109's fraud exception continues to apply in credit transactions made subject to the UCP.¹ "Although there is a dearth of case law in South Carolina dealing with the limited fraud exception under [former fraud section of the S.C. Code], the Court can look with some assurance to other jurisdictions because all other states have, like South Carolina, adopted substantially verbatim the U.C.C. provisions concerning letters of credit." *Airline Reporting Corp. v. First Nat. Bank of Holly Hill*, 832 F.2d 823, 827 (4th Cir. 1987) (applying South Carolina law).

¹ *Mid-America Tire, Inc. v. PTZ Trading Ltd.*, 95 Ohio St.3d 367, 385, 768 N.E.2d 619, 635 - 636 (Ohio 2002); *W. Sur. Co. v. Bank of S. Oregon*, 257 F.3d 933 (C.A. 9 2001); *3Com Corp. v. Banco do Brasil, S.A.*, 171 F.3d 739, 747 (C.A. 2 1999); *E & H Partners v. Broadway Natl. Bank*, 39 F.Supp.2d 275, 285 (S.D.N.Y. 1998); *Prairie State Bank v. Universal Bonding Ins. Co.*, 24 Kan.App.2d 740, 746, 953 P.2d 1047 (1998); *Offshore Trading Co., Inc. v. Citizens Natl. Bank of Fort Scott, Kansas*, 650 F.Supp. 1487, 1491-1492 (D.C. Kan. 1987); *First Commercial Bank v. Gotham Originals, Inc.*, 64 N.Y.2d 287, 295, 486 N.Y.S.2d 715, 719, 475 N.E.2d 1255, fn. 4 (1985); *Wyle v. Bank Melli of Tehran, Iran*, 577 F.Supp. 1148, 1164 (N.D. Ca. 1983); *Harris Corp. v. Natl. Iranian Radio & Television*, 691 F.2d 1344, 1354-1355, fn. 19 (C.A. 11 1982); *Cappaert Ent. v. Citizens & S. Internatl. Bank of New Orleans*, 486 F.Supp. 819, 829 (E.D. La. 1980); *KMW Internatl. v. Chase Manhattan Bank, N.A.*, 606 F.2d 10, 15, fn. 3 (C.A. 2 1979); *Stromberg-Carlson Corp. v. Bank Melli Iran*, 467 F.Supp. 530, 532, fn. 5 (S.D.N.Y. 1979); *United Bank Ltd. v. Cambridge Sporting Goods Corp.*, 41 N.Y.2d 254, 258, 392 N.Y.S.2d 265, 360 N.E.2d 943, fn. 2 (1976); *Intraworld Indus., Inc.*, 461 Pa. 343, 336 A.2d 316. See, also, 7A Lawrence 430, Section 5-101:23, and at 435, Section 5-101:30 (Rev. 2001); 6B Hawkland & Miller, at 5-47, Section 5-103:3 (Rev. 2001).

Section 36-5-109 provides that the Court may issue an injunction when an applicant makes a claim of fraud and certain criteria are met. In this case, Hook Point has alleged fraud in its complaint, affidavits, and testimony. Hook Point has asserted fraud in the inducement to provide the Letter of Credit and fraud in the presentation by BB&T. Therefore, the Court must examine the four prerequisites for the granting of a preliminary injunction listed in Section 36-5-109.

Hook Point seeks a preliminary injunction to prevent BB&T from drawing on the Letter of Credit, and First Reliance from paying on the Letter of Credit in excess of the interest accrued and owing. The relief sought is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer, and thus meets the first prerequisite under the statute.

WJM
#6
As to the second prerequisite, BB&T will not be adversely affected and is adequately protected against any loss that it may suffer if the injunction is granted if the Letter of Credit is extended and if the Court requires a bond to protect BB&T from any loss of the use of funds if it is ultimately determined that it should have been allowed to draw the full amount under the Letter of Credit.

To analyze the third criteria of the U.C.C., the Court must look at the common law requirements for a temporary injunction. The issuance of a preliminary injunction is authorized by Rule 65, SCRPC. The purpose of a preliminary injunction is to avoid irreparable injury to a plaintiff before final adjudication of an action. *Helsel v. City of North Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) (citing *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973)). South Carolina courts have established two conditions for the granting of a temporary injunction. First,

the complaint must allege facts sufficient to constitute a cause of action for injunctive relief. *Columbia Broadcasting Sys., Inc. v. Custom Recording Co., Inc.*, 258 S.C. 465, 471, 189 S.E.2d 305, 308 (1972) (quoting *Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296 (1911)). Second, when all of the circumstances are considered, it must appear that "the injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation." *Id.* In making this determination, courts consider (1) the likelihood of irreparable harm if the injunction is denied; (2) the relative harm to the plaintiff if the injunction is not granted and to the defendant if it is granted; (3) plaintiff's likelihood of success on the merits; and (4) the public interest. Flanagan, James F., *South Carolina Civil Procedure*, 508 (2nd ed. 1996); *Wynock v. Carroll*, 289 S.C. 338, 340, 345 S.E.2d 503, 504 (Ct. App. 1986).

WPK #7
Irreparable harm means that the injunction is reasonably necessary to protect the rights of the plaintiff pending the litigation. *Johnson v. Phillips*, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993). It does not mean that the injury is beyond the possibility of compensation in damages. Flanagan at 508, citing *Bethel Methodist Episcopal Church v. Greenville*, 211 S.C. 442, 45 S.E.2d 841 (1947).

In this case, the Plaintiff has sufficiently established that it will be significantly and irreparably harmed if the injunction is not granted. The Letter of Credit with First Reliance is secured by certain cash and real property. If the Letter of Credit is fully drawn upon, First Reliance indicates that it will foreclose on the properties securing the Letter of Credit. Once the properties are foreclosed on and/or sold, these properties are lost to the Plaintiff and undermine any realistic ability to continue as a viable entity. Additionally, the Plaintiff is like to lose money or other deposits it has with First

Reliance. The Plaintiff will suffer significant irreparable harm if the injunction is not granted, and the inability to continue business means that it has no adequate remedy at law.

On the other hand, it is not likely that BB&T will be harmed if the injunction is granted, as long as First Reliance follows through with its agreement to extend the Letter of Credit for up to one year, and the Court will require a bond to cover any additional potential losses. These measures effectively remove substantial risk facing BB&T.

WPK
#8

The third South Carolina common law requirement for an injunction is the same as the fourth prerequisite of Section 36-5-109. The Plaintiff is required to show a likelihood of success on the merits. While the court has concerns about this prong, the Plaintiff has a document signed by the bank which contains the express condition that the Plaintiff alleges fraudulently induced it into the transaction and which Plaintiff claims was violated in BB&T's attempted draw on the Letter of Credit. The testimony offered by the witness, Mr. Dooley, seems the most reasonable explanation of why the commitment letter even had language about using the Letter of Credit for accumulated interest and only as a last resort was included. Other courts have held that "fraud in the inducement of the issuance of a letter of credit is grounds for a court to grant injunctive relief against the payment of such letter of credit to the beneficiary who perpetrated such fraud." *Mid-America Tire, Inc. v. PTZ Trading Ltd.*, 768 N.E.2d 619, 628 (Ohio 2002).

The Letter of Credit provides that BB&T must confirm that "[t]he amount of the draft does not exceed the amount due to the Beneficiary under the obligations." Plaintiff contends BB&T provided a fraudulent affidavit that incorrectly confirmed the amount of the draft did not exceed the amount due under the obligations because of the limitation in

the Commitment Letter which specifically provides that the Letter of Credit will only be used as a last resort for interest payments. Thus, Plaintiff contends that the presentation of the Letter of Credit was fraudulent, and Plaintiff has presented sufficient evidence of a likelihood of success on the merits.

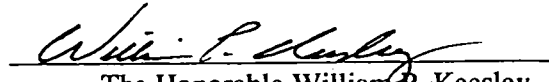
As a final prerequisite, the Plaintiff must show that it is not against public policy to grant the injunction. Here, it is in the public's interest to make sure fraud is not committed. Section 36-5-109 is based on the premise that although letters of credit are generally payable on their face, fraud is a viable defense. Indeed, 36-5-109 specifically grants the Court the authority to issue an injunction when fraud is claimed. It is in the public's best interest to allow this injunction so that a hearing on the merits of the fraud allegations can be decided before allowing BB&T to draw on the Letter of Credit.

*WPK
#9*

NOW THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that Plaintiff's motion for a preliminary injunction is granted **SUBJECT TO THE FOLLOWING** that: [1] BB&T be permitted to immediately draw on the Letter of Credit in the amount of \$70,000.00 representing the minimum amount of accrued and unpaid interest that was admitted on the record; [2] the expiration of the Letter of Credit is extended for one (1) year from its current expiration date; and [3] within ten (10) days of the filing hereof Hook Point shall post a bond in the amount of \$50,000 pending the outcome of this action to secure any losses that BB&T may suffer as a result of a delayed payment under the Letter of Credit and the loss of having the present use of those funds. Nothing contained in this order prevents BB&T from submitting future drafts on the Letter of Credit, so long as those submissions are only for accrued interest, to the extent

that such interest continues to be unpaid. The court was advised after the hearing (though not on the record) that the actual accrued interest is currently \$83,892.04.

AND IT IS SO ORDERED.


The Honorable William P. Keesley
Judge, Eleventh Judicial Circuit

Lexington, South Carolina

January 7, 2011

#10

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Hook Point, LLC,

FILED

IN THE COURT OF COMMON PLEAS

2010 DEC 23 2:12:34
Civil Action No.:

BETH A. CARRIGG
Plaintiff
CLERK OF COURT
LEXINGTON SC

vs.

VERIFIED COMPLAINT

(Jury Demand)

Branch Banking and Trust Company, First
Reliance Bank, and Allan Risinger,

Defendants.

2010CP3205481

Plaintiff Hook Point, LLC ("Hook Point"), complaining of the defendants Branch Banking and Trust Company ("BB&T"), First Reliance Bank ("First Reliance"), and Allan Risinger ("Risinger"), alleges as follows:

FACTS

1. Hook Point is a South Carolina limited liability company with its principal place of business in Lexington County.
2. On information and belief, Defendant BB&T is either a South Carolina or North Carolina banking association authorized to conduct business and conducting business in Lexington County as a successor to Lexington State Bank.
3. On information and belief, Defendant First Reliance is a South Carolina bank with its principal place of business in Florence County.
4. On information and belief, Defendant Risinger is a citizen and resident of Lexington County, South Carolina, and a senior loan officer for BB&T.
5. Hook Point is operated with the purpose of creating a residential subdivision. In February 2005, Hook Point purchased approximately 19 acres fronting on

Lake Murray and S.C. Highway #378 for the purpose of developing a residential subdivision named Panama Pointe Subdivision ("Panama Pointe"). Panama Pointe was initially designed to be a subdivision for large upscale homes.

6. On or about September 6, 2007, BB&T and Risinger issued a Commitment Letter to Hook Point, a true copy of which is attached hereto as **Exhibit A**. This Commitment Letter purported to lend Hook Point \$5,100,000 for the completion of "development and residential lots at Panama Pointe." Among other things, the Commitment Letter requires a \$1,500,000 letter of credit approved by BB&T as collateral for the \$5,100,000 loan and states: "Letter of credit to be used as last resort for interest carry."

7. On or about November 16, 2007, Hook Point and BB&T entered into a formal loan agreement (the "Loan Agreement"), a true copy of which is attached hereto as **Exhibit B**, and the referenced loan was funded by BB&T.

8. On or about December 16, 2007, First Reliance issued a Letter of Credit No. 970001231, securing certain specifically limited performance of Hook Point to BB&T (the "Letter of Credit"), for the payment of interest under that certain Loan Agreement, dated November 16, 2007, and related documents providing for a Term Loan in the amount of \$5,100,000 and a Line of Credit not to exceed \$2,000,000.

9. The majority of the loan was used to pay off the existing mortgage on the Panama Pointe property, with the remaining funds used to install the infrastructure for the subdivision, including roads, sewer, and water.

10. Furthermore, BB&T extended a Line of Credit in the amount of \$2,000,000. The Commitment Letter states: "The proceeds of the Line shall be used by

the Borrower to complete residential construction for Panama Pointe Subdivision.” The Line of Credit was imperative to the Panama Pointe project for funding the construction of the planned homes, the success of the project, and the payback of the loan.

11. After completion of the infrastructure work, Hook Point began construction on the first home. During the construction, it became apparent that the market for large upscale homes had evaporated. Hook Point spent significant time, money, and resources to develop alternative plans to maximize the financial benefit of the Panama Pointe project. On several occasions, BB&T and Risinger instructed Hook Point it was not allowed to proceed with its revised subdivision plans, and to stop construction and wait for the economy to recover.

12. Between August 2008 and January 2010, and unbeknownst to Hook Point, BB&T unilaterally modified the Line of Credit to effectively terminate the Line of Credit. The effect of this unilateral action was to disable the Plaintiff in its efforts to develop Panama Point and sell lots and houses in the development. The further resulting effect was to frustrate the Purpose of the Loan and the Line, as set forth in paragraph 2 of the Commitment Letter. On information and belief, this action by BB&T was unfair, deceptive, and taken in bad faith. As a result, Hook Point has not been able to develop the Project and has been harmed by its inability to develop the Project.

13. Hook Point has also been harmed by the wrongful conduct of BB&T and Allan Risinger.

14. On December 21, 2010, BB&T delivered to First Reliance Bank a letter attached hereto as **Exhibit C**. This letter is a demand for payment of \$1,500,000

"evidenced by your Irrevocable Letter of Credit No. 970001231." This is the same letter of credit referenced in paragraph 6 above "to be used as last resort for interest carry."

15. There is currently due to BB&T approximately \$70,000 in interest. Therefore, there is no justification whatsoever for BB&T to seek a \$1,500,000 draw on the letter of credit. Any payment by First Reliance Bank in excess of \$70,000 will cause Hook Point irreparable harm, for which it has no adequate remedy at law.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract as to BB&T)

16. Each allegation contained above is realleged and incorporated by reference.

17. BB&T voluntarily entered into valid and enforceable agreements with Plaintiff as evidenced by Exhibits A and B.

18. In these agreements, BB&T agreed to provide a Line of Credit of \$2,000,000 for the completion of residential construction at Panama Pointe.

19. Plaintiff has requested funds pursuant to the Line of Credit and has been denied by BB&T. Furthermore, BB&T unilaterally and without notice effectively terminated the Line of Credit.

20. BB&T's failure to provide funds under the agreements for the Line of Credit and the termination of the Line of Credit breached the agreements with Plaintiff.

21. As a result of these breaches of contracts, Plaintiff has suffered damages for which they are entitled to recover. In addition, Plaintiff seeks attorneys' fees, costs, prejudgment interest and all other actual and compensatory damages.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract with Fraudulent Act as to BB&T)

22. Each allegation contained above is realleged and incorporated by reference.

23. Plaintiff and BB&T entered into a valid contract for a Loan and a Line of credit as evidenced by Exhibits A and B.

24. BB&T breached this contract by failing to honor the \$2,000,000 Line of Credit.

25. BB&T exercised fraudulent intent and was dishonest by misrepresenting the terms of the Loan, the Line of credit, and the letter of credit.

26. Plaintiff has been damaged by the fraudulent intent and dishonesty relating to the breach of contract. As a result of BB&T's fraudulent and dishonest actions accompanied with the breach of contract, Plaintiff is entitled to recovery as deemed just and proper by this Court and also is entitled to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION
**(Breach of Implied Covenant of Good Faith and Fair Dealing
as to BB&T)**

27. Each allegation contained above is realleged and incorporated by reference.

28. BB&T is in breach of the agreements entered into with Plaintiff.

29. In addition to the express terms of the agreements, the agreements contained an implied covenant of good faith and fair dealing.

30. BB&T breached its implied duty of good faith and fair dealing in connection with the agreements by misrepresenting material facts to Plaintiff, inducing

them to enter into a fraudulent transaction, and improperly directing the actions of the Plaintiff.

31. Due to BB&T's breach of the implied covenant of good faith and fair dealing, Plaintiffs have suffered damages in an amount to be proven at trial.

FOR A FOURTH CAUSE OF ACTION
(Fraud in the Inducement as to BB&T and Risinger)

32. Each allegation contained above is realleged and incorporated by reference.

33. Defendants BB&T and Risinger represented to Plaintiff Hook Point that the above-referenced letter of credit was "to be used as a last resort for interest carry."

34. The representations made by Defendants BB&T and Risinger to Plaintiff were false, were known or should have been known by Defendants to be false when made, and were reasonably relied upon by the Plaintiff to its resulting detriment and harm.

35. The representations were material to Plaintiff's decision to enter into the loan and agreements with BB&T; they were false and fraudulent and were made with an intent that they be acted upon by the Plaintiff; Plaintiff was ignorant of their falsity; and Plaintiff reposed trust and confidence in the Defendants and had a right to rely upon the representations.

36. As a result of Defendants' fraud, Plaintiff has been damaged as alleged hereinabove and is entitled to a judgment against Defendants, jointly and severally, for actual and punitive damages, plus pre-judgment interest, costs and attorneys' fees.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation as to BB&T and Risinger)

37. Each allegation contained above is realleged and incorporated by reference.

38. The representations made by Defendants BB&T and Risinger to Plaintiff were false and should have been known by Defendants to be false. The Defendants had a pecuniary, selfish interest in making the representations, because of their interest in having and inducing Plaintiff to enter into the above-referenced loan. The representations were reasonably relied upon by Plaintiff to its resulting detriment and harm.

39. The negligent and reckless representations by Defendants were material to Plaintiff's decision to enter into the loan and agreements with BB&T; they were false and made with a negligent or reckless disregard for the truth; they were made with an intent that they be acted upon by the Plaintiff; Plaintiff was ignorant of their falsity; and Plaintiff reposed trust and confidence in the Defendants and had a right to rely upon the representations.

40. Defendants owed a duty to see that complete and truthful information was communicated to the Plaintiff and to not conceal any information from the Plaintiff. The Defendants have breached their duty to Plaintiff in a reckless disregard for the Plaintiff's rights.

41. As a result of Defendants' negligent and reckless misrepresentations, Plaintiff has been damaged as alleged hereinabove and is entitled to a judgment against Defendants, jointly and severally, for actual and punitive damages, plus pre-judgment interest, costs and attorneys' fees.

FOR A SIXTH CAUSE OF ACTION
(Unfair Trade Practices Act as to BB&T and Risinger)

42. Each allegation contained above is realleged and incorporated by reference.

43. The misrepresentations by Defendants BB&T and Risinger constitute an unfair and/or deceptive act or practice in trade or commerce, with a resulting harm to Plaintiff.

44. These unfair and/or deceptive acts or practices are capable of repetition or otherwise affect the public.

45. These unfair and/or deceptive acts or practices were willful and a knowing violation of S.C. Code § 39-5-20.

46. As a result of Defendants' unfair and/or deceptive acts or practices, including a willful violation of the South Carolina Unfair Trade Practices Act, Plaintiff has been damaged, has suffered an ascertainable loss of money or property, and is entitled to a judgment against Defendants, jointly and severally, for actual damages, treble damages, plus pre-judgment interest, costs and attorneys' fees.

FOR A SEVENTH CAUSE OF ACTION
(Injunctive Relief as to all Defendants)

47. Each allegation contained above is realleged and incorporated by reference.

48. Plaintiff seeks an injunction preventing and enjoining First Reliance from honoring the request by BB&T in its letter of December 21, 2010, until this matter can be heard on the merits.

49. The injunction sought by Plaintiff is necessary to prevent irreparable harm to Plaintiff who is without an adequate remedy at law.

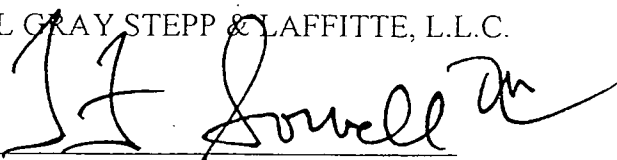
50. Defendants, by attempting to collect or disburse the funds securing the Letter of Credit, are expected to continue to cause harm to Plaintiff unless Defendants are enjoined.

51. Plaintiff is entitled to a temporary restraining order, a preliminary injunction, and a permanent injunction, including but not limited to, forever prohibiting (1) the Defendant First Reliance from paying, honoring, setting over, crediting or otherwise settling any sums alleged to be due under that certain instrument denominated as Letter of Credit No. 970001231, dated December 16, 2007, issued by First Reliance securing certain specifically limited performance of Hook Point to BB&T for the payment of interest under that certain Loan Agreement, dated November 16, 2007, and related documents providing for a Term Loan in the amount of \$5,100,000 and a Line of Credit not to exceed \$2,000,000; and (2) prohibiting the Defendant BB&T from presenting for payment or otherwise seeking to collect any sums alleged to be due under the letter of credit.

WHEREFORE, Plaintiff seeks judgment against the Defendants, jointly and severally, for actual damages, punitive damages, treble damages, pre-judgment interest, costs and attorneys' fees, a temporary restraining order, a preliminary injunction, a permanent injunction, and for such other and further relief as is just and proper.

[Signature page follows]

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Thornwell F. Sowell
David Dick
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

and

Frederick A. Gertz
Gertz & Moore
Post Office Box 456
1416 Laurel Street (29201)
Columbia, SC 29202
(803) 252-1524

Attorneys for Plaintiff

Columbia, South Carolina
December 23, 2010

PLAINTIFF DEMANDS A JURY TRIAL



Branch Banking & Trust Co.

309 Columbia Avenue
Lexington, SC 29072
(803) 359-5111
Fax (803) 359-6683

September 6, 2007

EXHIBIT A

Hook Point, LLC
111 E Main St., STE B
Lexington, SC 29072

COMMITMENT LETTER

Dear Bert, Tom, Ronald and Cliff:

Branch Banking and Trust Company ("Bank") is pleased to offer you the following commitment (the "Commitment") for a loan (the "Loan"). The terms and conditions of this Commitment are as follows:

1. Borrower: Hook Point, LLC (the "Borrower").
2. Purpose: The proceeds of the Loan shall be used by the Borrower to complete development and residential lots for Panama Pointe Subdivision. The proceeds of the Line shall be used by the Borrower to complete residential construction for Panama Pointe Subdivision. (the "Project").
3. Collateral: The Loan will be secured by a first lien mortgage (the "Mortgage") on Panama Pointe with all lots and improvements near Lexington, South Carolina and an assignment of all architectural/engineering documents and construction contracts. (the "Collateral").

(FOR SC COMMERCIAL REAL ESTATE LOANS ONLY) -- Waiver of Appraisal Rights. Pursuant to Section 29-3-680 of the South Carolina Code of Laws, as amended, the Borrower and all Guarantors shall be required to waive and relinquish all statutory appraisal rights in connection with the Loan.

4. Amount: The maximum principal amount of the Loan shall be \$5,100,000.00 or 75% of the discounted retail value of the collateral, whichever is less. The maximum principal amount of the Line shall be \$2,000,000 or 80% of the discounted retail value of the collateral, whichever is less. There will be a limit of up to five spec homes at one time.

5. Advances: The proceeds of the Loan shall be advanced when requested by the Borrower. Advances to be made after inspection and approval by Bank. Each inspection is \$350.00.
6. Interest Rate: The interest rate on the Loan shall be the variable rate per annum of Prime plus .25%.
7. Repayment Terms: Accrued interest only shall be repayable monthly beginning 30 days from loan closing. One final payment of all remaining principal and accrued interest shall be due in full 36 months from loan closing. There will be a \$1,700,000 curtailment 21 months after loan closing. Then the \$1,700,000 curtail will be on an annual basis. (Every 12 months).
8. Guarantors: Bert Dooley, Thomas Wingard, Ronald Vaughn, and Clifford Wingard shall be required to guarantee and execute appropriate documents at Loan closing to evidence the obligation.
9. Commitment/Origination Fee: An origination fee of \$25,500.00 or ½% shall be payable by Borrower to Bank at Loan closing. Each residential construction note will have a \$300 fee.
10. Prepayment: Bank shall charge no prepayment premium should Borrower choose at any time to prepay part or all of the remaining principal balance due on the Loan.
11. Documentation: At Loan closing, the Borrower shall execute a promissory note, Mortgage, Loan Agreement, and other related documents and instruments satisfactory to the Bank to evidence and secure the Loan.
12. Survey and Flood Hazard Certification: Prior to the Loan closing, the Bank shall require the receipt of a satisfactory survey of the Collateral. The surveyor must provide certification that the improvements are not located in a special flood hazard area.
13. Title Insurance: Prior to the Loan closing, the Bank shall receive a standard ALTA mortgagee title insurance binder, and promptly after the Loan closing, the Bank shall receive a standard ALTA mortgagee title insurance policy covering the Mortgage satisfactory to the Bank as to coverage and amount. The binder and policy shall show no exceptions to coverage not acceptable to the Bank.
14. Hazard Insurance: At the Loan closing, the Borrower shall furnish Bank a hazard insurance policy for the replacement cost of the Collateral naming Bank as mortgagee/loss payee. The insurance company issuing the policy must be acceptable to the Bank.

15. Lot Releases: Lot release curtailments will be 75% of the gross sales price.
16. Appraisal: Prior to the Loan closing, the Bank, in its sole discretion, shall select and engage an appraiser from its approved appraiser registry to prepare, at the Borrower's expense, three (3) copies of an appraisal on the Collateral. The appraisal shall conform to all applicable Appraisal laws, rules and regulations and shall be satisfactory to the Bank in all respects. Upon review and approval, the appraisal must reflect a Collateral Value of not less than \$6,800,000.
17. Environmental Site Assessment: Prior to the Loan closing, the Borrower shall provide the Bank with a satisfactory environmental assessment at least Phase I level on the Collateral from an environmental engineering company acceptable to the Bank.
18. Credit Qualifications: This Commitment is issued in reliance upon the accuracy and completeness of all information furnished by or for the Borrower and any co-signers or guarantors and is subject to the continued accuracy and completeness of all such information. The extension of credit by the Bank pursuant to this Commitment is subject to the condition precedent that the Borrower and any co-signers or guarantors shall after the date hereof maintain a financial condition acceptable to the Bank in its sole discretion. In addition, the Loan is conditioned upon there being no material adverse change which threatens the Borrower's ability to repay the Loan or pledge the Collateral to secure repayment.
19. Financial Information: While the Loan is outstanding, the Borrower shall provide the Bank with annual financial statements within 120 days of the Borrower's fiscal year end. Also, all co-signers and guarantors shall furnish annual financial statements and tax returns. In addition, Borrower shall supply Bank with such other financial information as the Bank may reasonably request from time to time. All financial information shall be prepared in accordance with GAAP and must be certified true and correct by the Borrower.
20. Expenses: All expenses associated with the Loan are to be paid by the Borrower. These expenses shall include, but are not limited to, the attorneys' fees, appraisal fee, surveyor's fee, environmental engineer's fee, and all necessary recording fees.
21. Attorney's Opinion: The Bank shall require a legal opinion letter from Borrower's attorney, which must be acceptable to the Bank and Bank's counsel.

22. Banking Relationship: The Borrower agrees to maintain its primary depository account(s) with the Bank.
23. Covenants: The Borrower shall adhere to the following covenants, which shall be included, along with other covenants, in a loan agreement to be executed by the Bank and the Borrower at or prior to the Loan closing:

(A) Other: Collateral/Interest Reserve Options:

Presales of 50% \$750,000 L/C, Presales of 40% \$900,000 L/C, Presales of 30% \$1,050,000 L/C, Presales of 20% \$1,200,000 L/C. \$1,500,000 L/C with less than 20% presales. 10% deposit required on all pre sales

Letter of Credit approved by BB&T and issuing bank with unconditional draws. Maturity of letter to extend 90 days after loan maturity. Letter of credit to be used as last resort for interest carry.

24. Conflicting Provisions: If any of the provisions of this commitment letter shall be construed to conflict with any terms or provisions contained in the Loan Documents, then the Loan Documents shall take priority.

This Commitment is open for your acceptance until the close of business on September 24th, 2007 (the "Expiration Date"), at which time this Commitment expires if not accepted and returned to the Bank. In addition, this Commitment shall expire and the Bank shall not be required to make the Loan if the Loan does not close by December 5th, 2007. To acknowledge your acceptance, please return a signed copy of this letter to my attention at the following address on or before the Expiration Date:

Branch Banking and Trust Company
309 Columbia Avenue
Lexington, SC 29072

Very truly yours,

BRANCH BANKING AND TRUST COMPANY

By: _____

Allan Risinger

Title: Sr. Vice President

Phone: 803-359-1618

September 6, 2007

Page 5 of 5

The foregoing terms and conditions are hereby accepted and agreed to this 14th day of September 2007.

Hook Point LLC

By: _____

Title: member

GUARANTORS:

Albert Dooley

Thomas Wingard

Ronald Vaughn

Clifford Wingard

BB&T
LOAN AGREEMENT

EXHIBIT B

9521674730
Account Number

This Loan Agreement (the "Agreement") is made this 16th day of November, 2007 by and between BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation ("Bank"), and:

Hook Point, LLC, a South Carolina limited liability company ("Borrower") having its chief executive office at 111 East Main Street, Suite B, Lexington, South Carolina 29072 and whose member(s) is/are Albert J. Dooley, Jr., Thomas H. Wingard, Clifford C. Wingard, and Ronald J. Vaughn.

Albert J. Dooley, Jr., Thomas H. Wingard, Clifford C. Wingard, and Ronald J. Vaughn (individually "Guarantor" and collectively the "Guarantors").

The Borrower has applied to Bank for and the Bank has agreed to make, subject to the terms of this Agreement, the following loan(s) (hereinafter referred to, singularly or collectively, if more than one, as "Loan"):

Term Loan ("Term Loan") in the principal amount of \$5,100,000.00 for the purpose of development of Panama Point Subdivision which shall be evidenced by the Borrower's Promissory Note dated of even date herewith payable in consecutive monthly interest payments with a principal curtailment and shall bear interest at a rate as described more particularly in such note, the terms of which are incorporated herein by reference. The Term Loan shall mature on November 15, 2010, when the entire unpaid principal balance then outstanding plus accrued interest thereon shall be paid in full.

Line of Credit ("Line of Credit") in the maximum principal amount not to exceed \$2,000,000.00 at any one time outstanding for the purpose of construction of residential spec houses which shall be evidenced by the Borrower's Promissory Note(s) dated on or after the date hereof. The Line of Credit shall bear interest at the rate set forth in any such Note(s) evidencing all or any portion of the Line of Credit, the terms of which are incorporated herein by reference. Spec house construction is limited to five (5) homes at one time.

Additional terms, conditions and covenants of this Agreement are described in Schedule CC, or other schedule attached hereto, the terms of which are incorporated herein by reference. The promissory notes evidencing the Term Loan, the Line of Credit and Loan(s) tied to the Line of Credit are referred to herein as the "Note(s)" and shall include all extensions, renewals, modifications and substitutions thereof. The Term Loan, the Line of Credit, Loan(s) tied to the Line of Credit shall be secured by the collateral described in the security documents described below.

Section 1 Conditions Precedent

The Bank shall not be obligated to make any disbursement of Loan proceeds until all of the following conditions have been satisfied by proper evidence, execution, and/or delivery to the Bank of the following items in addition to this Agreement, all in form and substance satisfactory to the Bank and the Bank's counsel in their sole discretion:

USA Patriot Act Verification Information: Information or documentation, including but not limited to the legal name, address, tax identification number, driver's license, and date of birth (if the Borrower is an individual) of the Borrower sufficient for the Bank to verify the identity of the Borrower in accordance with the USA Patriot Act.

Note(s): The Note(s) evidencing the Loans(s) duly executed by the Borrower.

Mortgage(s): The Mortgage(s) of Real Estate in which Borrower, or other owner thereof, shall grant to Bank a mortgage lien on the specified real property and improvements thereon ("Mortgaged Property").

Title Insurance: A Standard ALTA mortgage policy from a company or companies approved by the Bank, providing coverage for the aggregate principal amount of the Note(s) which are secured by the Mortgage(s) and containing no title exceptions not approved by the Bank and Bank's counsel.

Survey: A certified copy of a recent survey of the Mortgaged Property prepared by a registered land surveyor or a civil engineer.

Flood Hazard Certification: Evidence satisfactory to Bank and Bank's counsel as to whether the Mortgaged Property is located within an area identified as having "special flood hazards" as such term is used in the Federal Flood Disaster Protection Act of 1973 (for each spec house under the line of credit).

Property Damage Insurance -- A builders risk policy acceptable to the Bank shall be issued with BB&T as loss mortgagee for each spec house under construction.

Environmental Audit Report: A favorable "Phase I" unedited environmental audit covering the Mortgaged Property from an independent environmental engineering firm satisfactory to Bank which reflects that no hazardous waste, toxic substances, or other hazardous materials have contaminated the Mortgaged Property or, if the Mortgaged Property has been so contaminated, that it has been satisfactorily cleaned up in accordance with all Environmental Laws. The Bank shall be fully authorized to discuss all aspects of the audit with the engineering firm.

Security Agreement(s): Security Agreement(s) in which Borrower and any other owner (a "Debtor") of personal property collateral shall grant to Bank a first priority security interest in the personal property specified therein. (If Bank has or will have a security interest in any collateral which is inferior to the security interest of another creditor, Borrower must fully disclose to Bank any and all prior security interests, and Bank must specifically approve any such security interest which will continue during the Loan.)

Assignment of Pre Sales -- BB&T will have an assignment of all pre sales deposits for Panama Point Subdivision.

UCC Financing Statements: Acknowledged copies of UCC Financing Statements duly filed in Borrower's or other owner's state of incorporation, organization or residence, and in all jurisdictions necessary, or in the opinion of the Bank desirable, to perfect the security interests granted in the Security Agreement(s), and certified copies of Information Requests identifying all previous financing statements on record for the Borrower or other owner, as appropriate from all jurisdictions indicating that no security interest has previously been granted in any of the collateral described in the Security Agreement(s), unless prior approval has been given by the Bank.

Authorization and Certificate: An Authorization and Certificate executed by each Debtor under which such Debtor authorizes Bank to file a UCC Financing Statement describing collateral owned by such Debtor.

Commitment/Origination Fee: A commitment/origination fee (or balance thereof) of \$25,500.00 payable to the Bank on the date of execution of the Term Loan Documents. A commitment/origination fee of \$300.00 will be payable to the Bank on the date of execution of each spec house loan.

Opinion of Counsel: An opinion of counsel for the Borrower satisfactory to the Bank and the Bank's counsel.

Guaranty: Guaranty Agreement(s) duly executed by the Guarantor(s).

Limited Liability Company Operating Agreement: A copy of the Borrower's Operating Agreement, certified by Borrower's manager(s) and/or members as to its completeness and accuracy.

Declaration of Limited Liability Company: A declaration or resolution from the Borrower's manager(s) authorizing the execution, delivery, and performance of the Loan Documents on or in a form provided by or acceptable to Bank.

Limited Liability Company Articles of Organization: A copy of the Articles of Organization and all other organizational documents of the Borrower, all filed with and certified by the Secretary of State of the Borrower's organization.

Appraisal(s): Two (2) copies of an appraisal ordered by the Bank of the estimated market value of the real and/or personal property offered as collateral for the Loan(s) referenced herein. The appraisal(s) must be addressed to the Bank and must conform to the Uniform Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation. Any deviation from the

BB&T

LOAN AGREEMENT

Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation. Any deviation from the USPAP must be explained in the appraisal(s). The appraiser(s) must be licensed and/or certified if required by applicable Federal Deposit Insurance Corporation regulations or state laws. Appraisal for the spec houses must be at 80% loan to value.



Additional Documents: Receipt by the Bank of other approvals, opinions, or documents as the Bank may reasonably request.

Letter of Credit - A Letter of Credit is to be issued in the amount of \$1,500,000.00 with BB&T (Branch Banking and Trust Company) as beneficiary. This Letter of Credit is to have unconditional draws and must be acceptable to BB&T and the issuing Bank. Maturity date of Letter of Credit must extend ninety (90) days past the maturity date of the loan. Verbiage to be approved by Bank's attorney.

Section 2 Representations and Warranties

The Borrower and Guarantor(s) represent and warrant to Bank that:

2.01. Financial Statements. The balance sheet of the Borrower and its subsidiaries, if any, and the related Statements of Income and Retained Earnings of the Borrower and its subsidiaries, the accompanying footnotes together with the accountant's opinion thereon, and all other financial information previously furnished to the Bank, are true and correct and fairly reflect the financial condition of the Borrower and its subsidiaries as of the dates thereof, including all contingent liabilities of every type, and the financial condition of the Borrower and its subsidiaries as stated therein has not changed materially and adversely since the date thereof. Each Guarantor further represents and warrants that all financial statements provided by such Guarantor to Bank concerning such Guarantor's financial condition are true and correct and fairly represent such Guarantor's financial condition as of the dates thereof.

2.02. Name, Capacity and Standing. The Borrower's exact legal name is correctly stated in the initial paragraph of the Agreement. If the Borrower and/or any Guarantor is a corporation, general partnership, limited partnership, limited liability partnership, or limited liability company, each warrants and represents that it is duly organized and validly existing under the laws of its respective state of incorporation or organization; that it and/or its subsidiaries, if any, are duly qualified and in good standing in every other state in which the nature of their business shall require such qualification, and are each duly authorized by their board of directors, general partners or member/manager(s), respectively, to enter into and perform the obligations under the Loan Documents.

2.03. No Violation of Other Agreements. The execution of the Loan Documents, and the performance by the Borrower, by any and all pledgors (whether the Borrower or other owners of collateral property securing payment of the Loan (hereinafter sometimes referred to as the "Pledgor")) or by the Guarantor(s) thereunder will not violate any provision, as applicable, of its articles of incorporation, by-laws, articles of organization, operating agreement, agreement of partnership, limited partnership or limited liability partnership, or, of any law, other agreement, indenture, note, or other instrument binding upon the Borrower, Pledgor or Guarantor(s), or give cause for the acceleration of any of the respective obligations of the Borrower or Guarantor(s).

2.04. Authority. All authority from and approval by any federal, state, or local governmental body, commission or agency necessary to the making, validity, or enforceability of this Agreement and the other Loan Documents has been obtained.

2.05. Asset Ownership. The Borrower and each Guarantor have good and marketable title to all of the properties and assets reflected on the balance sheets and financial statements furnished to the Bank, and all such properties and assets are free and clear of mortgages, deeds of trust, pledges, liens, and all other encumbrances except as otherwise disclosed by such financial statements. In addition, each other owner of collateral has good and marketable title to such collateral, free and clear of any liens, security interests and encumbrances, except as otherwise disclosed to Bank.

2.06. Discharge of Liens and Taxes. The Borrower and its subsidiaries, if any, and each Guarantor have filed, paid, and/or discharged all taxes or other claims which may become a lien on any of their respective properties or assets, excepting to the extent that such items are being appropriately contested in good faith and for which an adequate reserve (in an amount acceptable to Bank) for the payment thereof is being maintained.

2.07. Regulation U. None of the Loan proceeds shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock in violation of the provisions of Regulation U of the Board of Governors of the Federal Reserve System.

2.08. ERISA. Each employee benefit plan, as defined by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), maintained by the Borrower or by any subsidiary of the Borrower or Guarantor(s) meets, as of the date hereof, the minimum funding standards of Section 302 of ERISA, all applicable requirements of ERISA and of the Internal Revenue Code of 1986, as amended, and no "Reportable Event" nor "Prohibited Transaction" (as defined by ERISA) has occurred with respect to any such plan.

2.09. Litigation. There is no claim, action, suit or proceeding pending, threatened or reasonably anticipated before any court, commission, administrative agency, whether State or Federal, or arbitration which will materially adversely affect the financial condition, operations, properties, or business of the Borrower or its subsidiaries, if any, or the Guarantor(s), or the ability of the Borrower or the Guarantor(s) to perform their obligations under the Loan Documents.

2.10. Other Agreements. The representations and warranties made by Borrower to Bank in the other Loan Documents are true and correct in all respects on the date hereof.

2.11. Binding and Enforceable. The Loan Documents, when executed, shall constitute valid and binding obligations of the Borrower and Guarantors respectively; the execution of such Loan Documents has been duly authorized by the parties thereto, and are enforceable in accordance with their terms, except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally.

2.12. Commercial Purpose. The Loan(s) are not "consumer transactions", as defined in the South Carolina Uniform Commercial Code, and none of the collateral was or will be purchased or held primarily for personal, family or household purposes.

Section 3 Affirmative Covenants

The Borrower covenants and agrees that from the date hereof and until payment in full of all indebtedness and performance of all obligations owed under the Loan Documents, Borrower shall:

3.01. Maintain Existence and Current Legal Form of Business. (a) Maintain its existence and good standing in the state of its incorporation or organization, (b) maintain its current legal form of business indicated above, and, (c) as applicable, qualify and remain qualified as a foreign corporation, general partnership, limited partnership, limited liability partnership or limited liability company in each jurisdiction in which such qualification is required.

3.02. Maintain Records. Keep adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied, reflecting all financial transactions of the Borrower.

3.03. Maintain Properties. Maintain, keep, and preserve all of its properties (tangible and intangible) including the collateral necessary or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

3.04. Conduct of Business. Continue to engage in an efficient, prudent, and economical manner in a business of the same general type as now conducted.

3.05. Maintain Insurance. Maintain insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in the same or a similar business, and business interruption insurance if required by Bank, which insurance may provide for reasonable deductible(s). The Bank shall be named as loss payee (Long Form) on all policies which apply to the Bank's collateral, and the Borrower shall deliver certificates of insurance at closing evidencing same. All such insurance policies shall provide, and the certificates shall state, that no policy will be terminated without 20 days prior written notice to Bank.

3.06. Comply With Laws. Comply in all respects with all applicable laws, rules, regulations, and orders including, without limitation, paying before the delinquency of all taxes, assessments, and governmental charges imposed upon it or upon its property, and all Environmental Laws.

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3.07. Right of Inspection. Permit the officers and authorized agents of the Bank, at any reasonable time or times in the Bank's sole discretion, to examine and make copies of the records and books of account of, to visit the properties of the Borrower, and to discuss such matters with any officers, directors, managers, members or partners, limited or general of the Borrower, and the Borrower's independent accountant as the Bank deems necessary and proper.

3.08. Reporting Requirements. Furnish to the Bank:

Annual Financial Statements: As soon as available and not more than one hundred twenty (120) days after the end of each fiscal year, balance sheets, statements of income, and retained earnings for the period ended and a statement of changes in the financial position, all in reasonable detail, and all prepared in accordance with GAAP consistently applied. The financial statements must be of the following quality or better: Compiled.

Notice of Litigation: Promptly after the receipt by the Borrower, or by any Guarantor of which Borrower has knowledge, of notice or complaint of any action, suit, and proceeding before any court or administrative agency of any type which, if determined adversely, could have a material adverse effect on the financial condition, properties, or operations of the Borrower or Guarantor, as appropriate.

Tax Returns: As soon as available each year, complete copies (including all schedules) of all state and federal tax returns filed by Borrower.

Notice of Default: Promptly upon discovery or knowledge thereof, notice of the existence of any event of default under this Agreement or any other Loan Documents:

USA Patriot Act Verification Information: Information or documentation, including but not limited to the legal name, address, tax identification number, driver's license, and date of birth (if the Borrower is an individual) of the Borrower sufficient for the Bank to verify the identity of the Borrower in accordance with the USA Patriot Act. Borrower shall notify Bank promptly of any change in such information.

Other Information: Such other information as the Bank may from time to time reasonably request.

3.09. Deposit Accounts. Maintain substantially all of its demand deposit/operating accounts with the Bank.

3.10. Affirmative Covenants from other Loan Documents. All affirmative covenants contained in any Mortgage, Security Agreement, Assignment of Leases and Rents, or other security document executed by the Borrower which are described in Section 1 hereof are hereby incorporated by reference herein.

Section 4 Guarantor(s) Covenants

Each Guarantor covenants and agrees that from the date hereof and until payment in full of all indebtedness and performance of all obligations owed under the Loan Documents, Guarantor shall:

4.01. Maintain Existence and Current Legal Form of Business. If Guarantor is a corporation, partnership, limited partnership, limited liability partnership or limited liability company, (a) maintain its existence and good standing in the state of its incorporation or organization, (b) maintain its current legal form of business as shown on the guaranty agreement provided by Guarantor to Bank in connection with the Loan, and (c) without the Bank's prior written consent, change Guarantor's name, or enter into any merger, consolidation, reorganization or exchange of stock, ownership interests or assets, and (d) as applicable, qualify and remain qualified as a foreign corporation, general partnership, limited partnership, limited liability partnership or limited liability company in each jurisdiction in which such qualification is required.

4.02. Maintain Properties. Not, without the prior written consent of Bank, sell, transfer or otherwise dispose of all or substantially all of Guarantor's properties (tangible and intangible), except in the ordinary course of business.

4.03. Comply With Laws. Comply in all respects with all applicable laws, rules, regulations, and orders including, without limitation, paying before the delinquency of all taxes, assessments, and governmental charges imposed or assessed upon Guarantor or upon Guarantor's property, and all Environmental Laws.

4.04. Reporting Requirements. Furnish to the Bank:

Annual Financial Statement(s): If Guarantor is an individual, a personal financial statement promptly after the anniversary date of the Loan, on form provided by the Bank and in such reasonable detail as the Bank may require; or, if Guarantor is a corporation, general partnership, limited partnership, limited liability partnership or limited liability company, as soon as available and not more than one hundred twenty (120) days after the end of each fiscal year of Guarantor, balance sheets, statements of income, and retained earnings for the period ended and a statement of changes in financial position, on form(s) to be provided by the Bank, all in reasonable detail, and all prepared in accordance with GAAP consistently applied; and, such financial statements must be of the following quality or better: Copy of year end tax returns with all schedules attached.

Notice of Litigation: Promptly after the receipt by Guarantor, or by Borrower of which Guarantor has knowledge, of notice of any action, suit, and proceeding before any court or governmental agency of any type which, if determined adversely, could have a material adverse effect on the financial condition, properties, or operations of the Guarantor or Borrower, as appropriate.

4.05. Transfer of Ownership. Not, without the prior written consent of the Bank: If Guarantor is a corporation, (a) issue, transfer or sell any new class of stock, or (b) issue, transfer or sell, in the aggregate, from its treasury stock and/or currently authorized but unissued shares of any class of stock, more than 10% of the total number of all such issued and outstanding shares as of the date of this Agreement; or, if Guarantor is a general partnership, limited partnership, limited liability partnership or limited liability company, issue, transfer or sell any interest in Guarantor.

4.06. Tax Returns: As soon as available each year, furnish complete copies (including all schedules) of all state and federal tax returns filed by Guarantor.

4.07. Other Information: Furnish such other information as the Bank may from time to time reasonably request.

Section 5 Financial Covenants

The Borrower covenants and agrees that from the date hereof until payment in full of all indebtedness and the performance of all obligations under the Loan Documents, the Borrower shall at all times maintain the following financial covenants and ratios all in accordance with GAAP unless otherwise specified:

Other Financial Covenants or Delete.

Section 6 Negative Covenants

The Borrower covenants and agrees that from the date hereof and until payment in full of all indebtedness and performance of all obligations under the Loan Documents, the Borrower shall not, without the prior written consent of the Bank:

6.01. Liens. Create, incur, assume, or suffer to exist any lien upon or with respect to any of Borrower's properties, or the properties of any Pledgor securing payment of the Loan, now owned or hereafter acquired, except:

(a) Liens and security interests in favor of the Bank;

(b) Liens for taxes not yet due and payable or otherwise being contested in good faith and for which appropriate reserves are maintained;

(c) Other liens imposed by law not yet due and payable, or otherwise being contested in good faith and for which appropriate reserves are maintained;

(d) purchase money security interests on any property hereafter acquired, provided that such lien shall attach only to the property acquired.

6.02. Debt. Create, incur, assume, or suffer to exist any debt, except:

(a) Debt to the Bank;

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- (b) Debt outstanding on the date hereof and shown on the most recent financial statements submitted to the Bank;
- (c) Accounts payable to trade creditors incurred in the ordinary course of business;
- (d) Debt secured by purchase money security interests as outlined above in Section 6.01 (e);
- 6.03. Change of Legal Form of Business; Purchase of Assets. Change Borrower's name or the legal form of Borrower's business as shown above, whether by merger, consolidation, conversion or otherwise, and Borrower shall not purchase all or substantially all of the assets or business of any Person.
- 6.04. Leases. Create, incur, assume, or suffer to exist any leases, except:
 - (a) Leases outstanding on the date hereof and showing on the most recent financial statement submitted to the Bank;
- 6.05. Guaranties. Assume, guarantee, endorse, or otherwise be or become directly or contingently liable for obligations of any Person, except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.
- 6.06. Disposition of Assets. Sell, lease, or otherwise dispose of any of its assets or properties except in the ordinary and usual course of its business.
- 6.07. Transfer of Ownership. If Borrower is a corporation, (a) issue, transfer or sell any new class of stock, or (b) issue, transfer or sell, in the aggregate, from its treasury stock and/or currently authorized but unissued shares of any class of stock, more than 10% of the total number of all such issued and outstanding shares as of the date of this Agreement. If Borrower is a general partnership, limited partnership, limited liability partnership or limited liability company, issue, transfer or sell any interest in Borrower.
- 6.08. Negative Covenants from other Loan Documents. All negative covenants contained in any Deed of Trust, Security Agreement, Assignment of Leases or Rents, or other security document executed by the Borrower which are described in Section 1 hereof are hereby incorporated by reference herein.

Section 7 Hazardous Materials and Compliance with Environmental Laws

- 7.01. Investigation. Borrower hereby certifies that it has exercised due diligence to ascertain whether its real property, including without limitation the Mortgaged Property, is or has been affected by the presence of asbestos, oil, petroleum or other hydrocarbons, urea formaldehyde, PCBs, hazardous or nuclear waste, toxic chemicals and substances, or other hazardous materials (collectively, "Hazardous Materials"), as defined in applicable Environmental Laws. Borrower represents and warrants that there are no such Hazardous Materials contaminating its real property, nor have any such materials been released on or stored on or improperly disposed of on its real property during its ownership, occupancy or operation thereof. Borrower hereby agrees that, except in strict compliance with applicable Environmental Laws, it shall not knowingly permit any release, storage or contamination as long as any indebtedness or obligations to Bank under the Loan Documents remains unpaid or unfulfilled. In addition, Borrower does not have or use any underground storage tanks on any of its real property, including the Mortgaged Property which are not registered with the appropriate Federal and/or State agencies and which are not properly equipped and maintained in accordance with all Environmental Laws. If requested by Bank, Borrower shall provide Bank with all necessary and reasonable assistance required for purposes of determining the existence of Hazardous Materials on the Mortgaged Property, including allowing Bank access to the Mortgaged Property, and access to Borrower's employees having knowledge of, and to files and records within Borrower's control relating to the existence, storage, or release of Hazardous Materials on the Mortgaged Property.
- 7.02. Compliance. Borrower agrees to comply with all applicable Environmental Laws, including, without limitation, all those relating to Hazardous Materials. Borrower further agrees to provide Bank, and all appropriate Federal and State authorities, with immediate notice in writing of any release of Hazardous Materials on the Mortgaged Property and to pursue diligently to completion all appropriate and/or required remedial action in the event of such release.
- 7.03. Remedial Action. Bank shall have the right, but not the obligation, to undertake all or any part of such remedial action in the event of a release of Hazardous Materials on the Mortgaged Property and to add any expenditures so made to the principal indebtedness secured by the Mortgage. Borrower agrees to indemnify and hold Bank harmless from any and all loss or liability arising out of any violation of the representations, covenants, and obligations contained in this Section 7, or resulting from the recording of the Mortgage.

Section 8 Events of Default

The following shall be "Events of Default" by Borrower or any Guarantor:

- 8.01. The failure to make prompt payment of any installment of principal or interest on any of the Note(s) when due or payable.
- 8.02. Should any representation or warranty made in the Loan Documents prove to be false or misleading in any material respect.
- 8.03. Should any report, certificate, financial statement, or other document furnished prior to the execution of or pursuant to the terms of this Agreement prove to be false or misleading in any material respect.
- 8.04. Should the Borrower, any Guarantor default on the performance of any other obligation of indebtedness when due or in the performance of any obligation incurred in connection with money borrowed.
- 8.05. Should the Borrower, any Guarantor or any Pledgor breach any covenant, condition, or agreement made under any of the Loan Documents.
- 8.06. Should a custodian be appointed for or take possession of any or all of the assets of the Borrower or any Guarantor, or should the Borrower or any Guarantor either voluntarily or involuntarily become subject to any insolvency proceeding, including becoming a debtor under the United States Bankruptcy Code, any proceeding to dissolve the Borrower or any Guarantor, any proceeding to have a receiver appointed, or should the Borrower or any Guarantor make an assignment for the benefit of creditors, or should there be an attachment, execution, or other judicial seizure of all or any portion of the Borrower's or any Guarantor's assets, including an action or proceeding to seize any funds on deposit with the Bank, and such seizure is not discharged within 30 days.
- 8.07. Should final judgment for the payment of money be rendered against the Borrower or any Guarantor which is not covered by insurance and shall remain undischarged for a period of 30 days unless such judgment or execution thereon be effectively stayed.
- 8.08. Upon the death of, or termination of existence of, or dissolution of, any Borrower, Pledgor or Guarantor.
- 8.09. Should the Bank in good faith deem itself, its liens and security interests, if any, or any debt thereunder unsafe or insecure, or should the Bank believe in good faith that the prospect of payment of any debt or other performance by the Borrower or any Guarantor is impaired.
- 8.10. Should any lien or security interest granted to Bank to secure payment of the Note(s) terminate, fail for any reason to have the priority agreed to by Bank on the date granted, or become unperfected or invalid for any reason.

Section 9 Remedies Upon Default

Upon the occurrence of any of the above listed Events of Default, the Bank may at any time thereafter, at its option, take any or all of the following actions, at the same or at different times:

- 9.01. Declare the balance(s) of the Note(s) to be immediately due and payable, both as to principal and interest, without presentment, demand, protest, or notice of any kind, all of which are hereby expressly waived by Borrower and, each Guarantor, and such balance(s) shall accrue interest at the Default Rate as provided herein until paid in full;
- 9.02. Require the Borrower or Guarantor(s) to pledge additional collateral to the Bank from the Borrower's or any Guarantor's assets and properties, the acceptability and sufficiency of such collateral to be determined in the Bank's sole discretion;
- 9.03. Take immediate possession of and foreclose upon any or all collateral which may be granted to the Bank as security for the indebtedness and obligations of Borrower or any Guarantor under the Loan Documents;

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- 9.04. Exercise any and all other rights and remedies available to the Bank under the terms of the Loan Documents and applicable law, including the South Carolina Uniform Commercial Code;
- 9.05. Any obligation of the Bank to advance funds to the Borrower or any other Person under the terms of under the Note(s) and all other obligations, if any, of the Bank under the Loan Documents shall immediately cease and terminate unless and until Bank shall reinstate such obligation in writing.

Section 10 Miscellaneous Provisions

10.01. Definitions.

"Default Rate" shall mean a rate of interest equal to Bank's Prime Rate plus five percent (5%) per annum (not to exceed the legal maximum rate) from and after the date of an Event of Default hereunder which shall apply, in the Bank's sole discretion, to all sums owing, including principal and interest, on such date.

"Environmental Laws" shall mean all federal and state laws and regulations which affect or may affect the Mortgaged Property, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. Sections 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), the Pollution Control Act (1976 S.C. Code 48-1-10 et seq.), the Erosion and Sediment Reduction Act of 1983 (1976 S.C. Code 48-18-10 et seq.), the South Carolina Mining Act (1976 S.C. Code 48-19-10 et seq.), as such laws or regulations have been amended or may be amended.

"Loan Documents" shall mean this Agreement including any schedule attached hereto, the Note(s), the Deed(s) of Trust, the Mortgage(s), the Security Agreement(s), the Assignment(s) of Leases and Rents, all UCC Financing Statements, the Guaranty Agreement(s), and all other documents, certificates, and instruments executed in connection therewith, and all renewals, extensions, modifications, substitutions, and replacements thereto and therefore.

"Person" shall mean an individual, partnership, corporation, trust, unincorporated organization, limited liability company, limited liability partnership, association, joint venture, or a government agency or political subdivision thereof.

"GAAP" shall mean generally accepted accounting principles as established by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants, as amended and supplemented from time to time.

"Prime Rate" shall mean the rate of interest per annum announced by the Bank from time to time and adopted as its Prime Rate, which is one of several rate indexes employed by the Bank when extending credit, and may not necessarily be the Bank's lowest lending rate.

10.02. Non-Impairment. If any one or more provisions contained in the Loan Documents shall be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained therein shall not in any way be affected or impaired thereby and shall otherwise remain in full force and effect.

10.03. Applicable Law. The Loan Documents shall be construed in accordance with and governed by the laws of the State of South Carolina.

10.04. Waiver. Neither the failure or any delay on the part of the Bank in exercising any right, power or privilege granted in the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any other right, power, or privilege which may be provided by law.

10.05. Modification. No modification, amendment, or waiver of any provision of any of the Loan Documents shall be effective unless in writing and signed by the Borrower and Bank.

10.06. Payment Amount Adjustment. In the event that any Loan(s) referenced herein has a variable (floating) interest rate and the interest rate increases, Bank, at its sole discretion, may at any time adjust the Borrower's payment amount(s) to prevent the amount of interest accrued in a given period to exceed the periodic payment amount or to cause the Loan(s) to be repaid within the same period of time as originally agreed upon.

10.07. Stamps and Fees. The Borrower shall pay all federal or state stamps, taxes, or other fees or charges, if any are payable or are determined to be payable by reason of the execution, delivery, or issuance of the Loan Documents or any security granted to the Bank; and the Borrower and Guarantor agree to indemnify and hold harmless the Bank against any and all liability in respect thereof.

10.08. Attorneys' Fees. In the event the Borrower or any Pledgor or Guarantor shall default in any of its obligations hereunder and the Bank believes it necessary to employ an attorney to assist in the enforcement or collection of the indebtedness of the Borrower to the Bank, to enforce the terms and provisions of the Loan Documents, to modify the Loan Documents, or in the event the Bank voluntarily or otherwise should become a party to any suit or legal proceeding (including a proceeding conducted under the Bankruptcy Code), the Borrower and Guarantors agree to pay the reasonable attorneys' fees of the Bank and all related costs of collection or enforcement that may be incurred by the Bank. The Borrower and Guarantor shall be liable for such attorneys' fees and costs whether or not any suit or proceeding is actually commenced.

10.09. Bank Mailing Required Payments. In the event Borrower shall fail to maintain insurance, pay taxes or assessments, costs and expenses which Borrower is, under any of the terms hereof or of any Loan Documents, required to pay, or fail to keep any of the properties and assets constituting collateral free from new security interests, liens, or encumbrances, except as permitted herein, Bank may at its election make expenditures for any or all such purposes and the amounts expended together with interest thereon at the Default Rate, shall become immediately due and payable to Bank, and shall have benefit of and be secured by the collateral; provided, however, the Bank shall be under no duty or obligation to make any such payments or expenditures.

10.10. Right of Offset. Any indebtedness owing from Bank to Borrower may be set off and applied by Bank on any indebtedness or liability of Borrower to Bank, at any time and from time to time after maturity, whether by acceleration or otherwise, and without demand or notice to Borrower. Bank may sell participations in or make assignments of any Loan made under this Agreement, and Borrower agrees that any such participant or assignee shall have the same right of setoff as is granted to the Bank herein.

10.11. UCC Authorization. Borrower authorizes Bank to file such UCC Financing Statements describing the collateral in any location deemed necessary and appropriate by Bank.

10.12. Modification and Renewal Fees. Bank may, at its option, charge any fees for modification, renewal, extension, or amendment of any terms of the Note(s) permitted by law.

10.13. Conflicting Provisions. If provisions of this Agreement shall conflict with any terms or provisions of any of the Note(s) or Security Agreement(s), the provisions of such Note(s) or Security Agreement(s), as appropriate, shall take priority over any provisions in this Agreement.

10.14. Notices. Any notice permitted or required by the provisions of this Agreement shall be deemed to have been given when delivered in writing to the City Executive or any Vice President of the Bank at its offices in Lexington, South Carolina, and to the Member/Manager of the Borrower at its offices in Lexington, South Carolina when sent by certified mail and return receipt requested.

10.15. Consent to Jurisdiction. Borrower hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement may be instituted in the Superior Court in Greenville County, South Carolina, or the United States District Court for South Carolina Greenville Division, or in such other appropriate court and venue as Bank may choose in its sole discretion. Borrower consents to the jurisdiction of such courts and waives any objection relating to the basis for personal or in rem jurisdiction or to venue which Borrower may now or hereafter have in any such legal action or proceedings.

10.16. WAIVER OF JURY TRIAL. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO MAKE THE LOAN AND ENTER INTO THIS AGREEMENT. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION. NO

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REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

10.17. **Counterparts.** This Agreement may be executed by one or more parties on any number of separate counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

10.18. **Entire Agreement.** The Loan Documents embody the entire agreement between Borrower and Bank with respect to the Loans, and there are no oral or parol agreements existing between Bank and Borrower with respect to the Loans which are not expressly set forth in the Loan Documents.

10.19.

[SIGNATURES ON FOLLOWING PAGE]

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SIGNATURE PAGE

IN WITNESS WHEREOF, the Bank, Borrower and Guarantor(s) have caused this Agreement to be duly executed under seal all as of the date first above written.

Borrower is a General Partnership, Limited Partnership, Limited Liability Partnership, or Limited Liability Company:

WITNESS:

Hook Point, LLC (SEAL)
Name of Partnership, LLC or LLP

By: _____ (SEAL)

By: _____ (SEAL)

By: _____ (SEAL)

By: _____ (SEAL)

Albert J. Dooly, Jr.
Member
Clifford C. Wingard
Member
Ronald J. Vaughn
Member
Thomas H. Wingard
Member

WITNESS:

Additional Co-Borrowers or Guarantors:

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

Albert J. Dooly, Jr.
Member
Clifford C. Wingard
Member
Ronald J. Vaughn
Member
Thomas H. Wingard
Member

WITNESS:

BRANCH BANKING AND TRUST COMPANY

By: _____

Title: _____
J. Allan Risinger
Senior Vice President/BSO

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SCHEDULE "CC" TO BB&T LOAN AGREEMENT (Commercial/Residential Construction and/or Development Loan)

This Schedule "CC" is an attachment to and a part of the Loan Agreement (the "Loan Agreement") dated November 16, 2007, between Branch Banking and Trust Company ("Bank") and Hook Point, LLC ("Borrower").

CC.01. Definitions. In addition to the words and terms defined elsewhere in this Loan Agreement, the following terms shall have the following specified meanings:

- (a) "Borrower's Equity" shall mean the cost of the Mortgaged Property plus the estimated cost of the Improvements, minus the amount of the Loan.
- (b) "Closing Date" shall mean the date as of which the Note is executed by the Borrower and the Bank.
- (c) "Completion Date" shall mean the date upon which the Bank has received evidence satisfactory to it that the Improvements have been completed in accordance with the Construction Documents, which shall occur not later than August 15, 2008.
- (d) "Construction Documents" shall mean the final plans, specifications, blueprints, and shop drawings for the construction of the Improvements prepared by or used by the General Contractor and approved by the Bank, including such amendments thereto as may from time to time be made by Borrower and approved by the Bank and described on Exhibit Exhibit Title hereto.
- (e) "Mortgage" shall mean the Mortgage of Real Estate granted and conveyed by the Borrower, or other owner, to the Bank encumbering the Mortgaged Property.
- (f) "Event of Default" shall mean any of the events of default listed in the Note or Mortgage, in Section 8 of the Loan Agreement, or in Section CC.07 of this Schedule "CC."
- (g) "General Contractor" shall mean the contractor(s), if any, who contracts with the Borrower to build or install the Improvements, and who shall be approved by Bank prior to Borrower's execution of any contract(s) therewith.
- (h) "Governmental Authorities" shall mean any governmental office, officer, or official (including health and environmental) whose consent or approval is required as a prerequisite to the commencement or continuation of the construction of the Improvements or to the operation and occupancy of the Project or to the performance of any act or obligation or the observance of any agreement, provision, or condition of whatsoever nature contained in the Loan Agreement.
- (i) "Improvements" shall mean all improvements now existing and to be constructed on the Mortgaged Property, including without limitation roads, utility lines, buildings, fixtures and structures of any type.
- (j) "Loan" shall mean construction loan and related credit commitments to Borrower evidenced by the Note.
- (k) "Mortgaged Property" shall mean the real property and fixtures described in the Mortgage.
- (l) "Note" shall mean the promissory note(s) of the Borrower dated as of the Closing Date payable to the order of the Bank in the principal amount of \$5,100,000.00, and all substitutions, replacements, extensions, modifications, or renewals thereof.
- (m) "Project" shall mean the Improvements and the Mortgaged Property collectively.

CC.02. Disbursements. Bank agrees that it will from time to time, so long as Borrower has not committed an Event of Default, make advances to Borrower up to the maximum amount of the Loan commitment in accordance with the conditions of this Loan Agreement.

- (a) Disbursement Requests. Borrower will submit all disbursement requests at least ten (10) business days prior to the requested advance date. Borrower will submit no more than one (1) disbursement request per calendar month unless otherwise approved by Bank.
- (b) Disbursement Amounts. Following the receipt of a request from Borrower for an advance, Bank shall determine the maximum amount of the advance. If the construction contract under which an advance is requested provides for a retainage, Bank shall advance no more than the amount actually due to the General Contractor. The value of each completed portion of the Improvements at any time shall be determined by Bank in its sole discretion and shall be binding on Borrower. The maximum amount which will be advanced shall be determined as follows:
 - ☒ Advances shall be made on the basis of 100% of the value of the Mortgaged Property plus the Improvements which have been completed, based on the Construction Budget, minus the Borrower's Equity and any contingency reserve provided for in the Construction Budget, in the Bank's discretion, upon satisfactory site inspection of the Project by an officer or representative of Bank and/or receipt by Bank of notarized copies of the General Contractor's Application and Certificate for Payment (American Institute of Architects forms G702 and G703), invoices representing costs incurred, and such other certificates as may be required by Bank.
 - ☐ Advances shall be made on the basis of Percentage% of the value of the Improvements which have been completed, based on the Construction Budget minus any contingency reserve provided for in the Construction Budget, in the Bank's discretion, ☐ plus the Mortgaged Property, upon satisfactory site inspection of the Project by an officer or representative of Bank and/or receipt by Bank of notarized copies of the General Contractor's Application and Certificate for Payment (American Institute of Architects forms G702 and G703), invoices representing costs incurred, and such other certificates as may be required by Bank.
 - ☐ Exhibit "Exhibit Title" which is attached hereto lists the amount which Bank will advance for each portion of the Improvements which is completed. Bank, in its sole discretion, will determine when a portion of the Improvements is completed. If the amount allocated to any individual portion of the Improvements is not fully expended on that portion, Bank may limit its advance to the amount actually expended on that portion, and the unadvanced amount may not be reallocated to another portion unless approved by Bank.
- (c) Deposit of Disbursements. Bank shall make all advances by deposit to Borrower's demand deposit account with Bank, unless Bank deems it appropriate to make advances by some other method.
- (d) Option to Pay Contractors. At its option, Bank may make advances directly to the General Contractor or any unpaid subcontractor, laborer, or material supplier which has provided labor, services, or materials in connection with the construction of the Improvements, and the execution of this Loan Agreement shall hereby constitute an irrevocable direction and authorization of Bank by Borrower to so disburse Loan funds. No further authorization from Borrower shall be necessary to warrant such direct advances, all of which shall be secured by the Mortgage as though fully made to Borrower, regardless of the disposition thereof by the General Contractor or any subcontractor, laborer, or material supplier so paid.

CC.03. Conditions Precedent to Initial Disbursement. The Bank shall not be obligated to make the initial advance to Borrower until all of the conditions in Section 1 of the Loan Agreement have been satisfied and all of the following conditions have been satisfied by proper evidence, execution, and/or delivery to Bank of the following items, all in form and substance satisfactory to Bank and Bank's counsel, unless waived in writing by Bank:

- (a) Evidence of Zoning and Permits. Satisfactory evidence of the zoning designation for the Project, the permitted uses of the Project under such zoning designation, and compliance by the Project and its intended uses with such zoning designation and with all other applicable regulations or rules of Governmental Authorities including without limitation a copy of any building permits and any other documents related to compliance with requirements for density, land use, waste disposal, or continuation of construction.
- (b) Construction Documents. One set of the Construction Documents must be submitted to Bank not less than ten (10) days prior to the Closing Date.
- (c) Construction Contracts. Copies of the construction contracts and architects contracts executed by the General Contractor and the architect, and copies of all other executed contracts as may be required by Bank.
- (d) Construction Budget. A detailed breakdown of the cost of constructing the Improvements, including an itemization of nonconstruction and land costs, and a funding schedule for all items ("Construction Budget").
- (e) Construction Time Schedule. A detailed schedule of the dates by which construction of portions of the Improvements shall be completed.

BB&T

SCHEDULE "CC" TO BB&T LOAN AGREEMENT (Commercial/Residential Construction and/or Development Loan)

- (f) Flood Insurance Policy. If Bank determines that the Mortgaged Property is located in an area having special flood hazards, a flood insurance policy for the insurable improvements naming Bank as mortgagee (loss payee) must be submitted to Bank.
- (g) Hazard/Liability/Builder's Risk Insurance. An insurance policy covering hazards (not less than Loan), liabilities, and builder's risks for an amount and from an insurance company satisfactory to Bank, which shall name Bank as loss payee (Mortgagee's long form).
- (h) Payment/Performance Bonds. Dual obligee payment and/or performance bonds, from an insurance company acceptable to Bank, provided by the General Contractor and/or the subcontractor(s).
- (i) Other Documents. Borrower will provide such other documents, certificates, or opinions as may be required by Bank.
- (j) No Event of Default. In addition to the conditions listed above, Borrower must not have committed nor suffered an Event of Default.
- (k) Evidence satisfactory to Bank of payment of Borrower's Equity.
- (l) Consents from General Contractor and architect to assignment to Bank of the construction contract and the architect's contract.

CC.04. Conditions Precedent to Advances After Initial Disbursement. Bank shall not be obligated to make any advances after the initial advance until all of the following conditions have been satisfied:

- (a) Each and every one of the conditions stated in Section CC.03 of this Schedule "CC."
- (b) No lien, security interest, or other encumbrance shall have been permitted to attach to the Mortgaged Property except taxes for the current year and others specifically approved by Bank, and Bank shall have received all released and waivers of liens from General Contractor or subcontractors as may be required by Bank.
- (c) Construction of the Improvements shall have been in accordance with the Construction Documents in a good and workmanlike manner, and the Improvements shall not have been materially damaged, in Bank's opinion, by fire, storm or otherwise.
- (d) There has been no change in the status of the title to the Mortgaged Property, and there are no survey exceptions not previously approved by Bank in writing. Bank may require title insurance policy endorsement prior to any advance.
- (e) There has been no material adverse change in the financial condition of the Borrower.
- (f) A foundation survey, unless waived in writing by Bank, shall have been furnished within ten (10) days after the laying of the foundation of the Improvements, showing no encroachment on any boundary line, easement, building setback line, or other restricted area.
- (g) All change orders or other material changes in the construction of the Improvements which differ from the Construction Documents and which increase the cost of any portion of the Improvements by one percent (1%) or more over the cost estimated for that portion in the Construction Budget have been approved by Bank.
- (h) Bank is satisfied with the progress of construction, and in the opinion of Bank, the estimated remaining cost of the construction of the Improvements does not exceed the remaining unadvanced principal balance of the Loan.
- (i) No Event of Default has occurred and remains unremedied.

CC.05. Conditions Precedent to Final Advance. Bank shall not be obligated to make the final Loan advance until all of the following conditions have been satisfied:

- (a) Each and every one of the conditions stated in Section CC.04 of this Schedule "CC."
- (b) The Improvements have been fully completed in a good and workmanlike manner and in accordance with the Construction Documents, the Project has passed inspection by the architect and the Construction Officer or another agent of Bank, and certificates of completion and occupancy have been issued by all appropriate Governmental Authorities.
- (c) If required by Bank, an "as built" survey of the Project.
- (d) The final Loan advance shall be made by Bank no more than twenty-one (21) days after the Completion Date.

CC.06. Additional Covenants and Agreements. In addition to the representations, warranties, covenants, and agreements contained in Sections 2, 3, 4, and 5 of the Loan Agreement, the following covenants and agreements apply to the Loan:

- (a) No Commencement. Prior to the recordation of the Mortgage, without prior written approval of the Bank, no work of any kind (including the destruction or removal of any existing improvements, site work, clearing, grubbing, draining, or fencing of the Mortgaged Property) shall have commenced or shall have been performed on the Mortgaged Property, no equipment or material shall have been delivered to or upon the Mortgaged Property for any purpose whatsoever, and no contract (or memorandum or affidavit thereof) for the supplying of labor, materials, or services for the construction of the Improvements shall have been recorded in the mechanic's liens or other appropriate records in the county where the Mortgaged Property is located.
- (b) Commencement of Construction. Borrower shall begin construction of the Improvements as soon as possible after recordation of the Mortgage, and in any event, within thirty (30) days after the Closing Date; shall continue conscientiously the construction of the Improvements; shall not discontinue or permit the discontinuance of work on the Improvements for as long as ten (10) consecutive days, unless weather or other factors beyond the control (force majeure) of Borrower intervene; and, in any event, shall complete the Improvements in strict compliance with the Construction Documents, free and clear of liens or claims of liens for material supplied or for labor services performed in connection with the construction of the Improvements on or prior to the Completion Date.
- (c) Payment of Contractors. Borrower shall promptly advise Bank in writing if Borrower receives any notice, written or oral, from the General Contractor, any laborer, subcontractor, or material furnisher to the effect the General Contractor or such laborer, subcontractor, or material furnisher has not been paid for any labor or materials furnished to or contained in the Project.
- (d) Compliance with Construction Documents. Borrower shall, upon demand of Bank, correct any defects in the Improvements or any departure from the Construction Documents not approved by Bank. Except for changes which increase the cost of any portion of the Improvements by one percent (1%) or less over the cost estimated for that portion in the Construction Budget, Borrower shall not change, alter, or amend either the Construction Documents or installation of the Improvements without the prior written consent of Bank, and will not permit any deviations by any contractor(s) from the Construction Documents.
- (e) Subcontractors. Borrower shall deliver to Bank, upon request, the names of persons or companies with whom the General Contractor has contracted or intends to contract for the construction of the Improvements or for the furnishing of labor or materials therefor.
- (f) Inspection. Borrower shall permit Bank and its authorized agents to enter upon the Project during normal working hours as often as the Bank desires, for the purpose of inspecting the construction of the improvements, and its books and records with respect to the Project. When requested, Borrower shall furnish to Bank detailed plans, shop drawings, and specifications which relate to the Improvements. Any failure by Bank or its authorized agents to discover or to reject unsatisfactory or defective materials or workmanship shall not make Bank liable to Borrower or to any other person, nor shall any prior failure constitute a waiver of the Bank's right to subsequently reject any such workmanship or materials.
- (g) Fees and Expenses. Regardless of whether the initial advance is made or all funds are advanced hereunder, Borrower agrees to pay all expenses incurred by Bank or by Borrower in order to meet the Bank's requirements in connection with the Loan, including without limitation commitment fees and renewal fees or deposits to Bank, appraisal fees, survey fees, recording fees, title insurance premiums, builder's risk and other insurance premiums, property taxes, intangible taxes, engineer's or inspector's fees (including agents of the Bank), and such reasonable legal fees incurred by Bank in connection with the making of the Loan and the enforcement of the Bank's rights hereunder. Bank may pay any such amounts and, if Borrower shall not reimburse Bank therefor, Bank may add same to the unpaid principal balance of the Loan.
- (h) Use of Loan Funds. Borrower shall use all Loan proceeds solely in payment of costs incurred in connection with acquiring, constructing the Improvements on, and developing the Mortgaged Property, in accordance with the Construction Documents and the Construction Budget furnished by the Borrower. Borrower shall furnish, whenever requested, statements showing an itemization of all expenditures and unpaid invoices.

BB&T

SCHEDULE "CC" TO BB&T LOAN AGREEMENT (Commercial/Residential Construction and/or Development Loan)

- (l) Bonds. Bank shall have no obligation or liability in connection with any bonds, including performance or completion bonds, that may be obtained in order to develop the Mortgaged Property.
- (j) Additional Documentation. At the request of Bank, Borrower shall perform any act or execute any additional documents required by Bank to secure the Loan, to confirm the first priority lien of the Mortgage, to comply with this Loan Agreement, or to correct any error or defect in any one of the Loan Documents.
- (k) Deposits to Cover Deficiencies. If and whenever Bank shall determine and notify Borrower that the amount of unadvanced Loan proceeds is less than the amount required to fully complete and pay for the Improvements and Bank shall demand that Borrower deposit with Bank an amount equal to such deficiency, as determined by Bank, Borrower shall comply with such demand within ten (10) days from the date thereof. The judgment and determination of Bank in this regard shall be final and conclusive.
- (l) Termination of Contract with General Contractor. Borrower shall not, without the prior written approval of Bank, terminate or cancel any contract with the General Contractor in connection with the construction of the Improvements. Borrower shall immediately notify Bank in writing of any additional or substitute contractor(s) with whom Borrower deals, and Bank has the right to require the submission of any additional documentation regarding such contractor(s).
- (m) Construction Officer. If checked here ☒, Bank will designate a construction officer (which may include an independent architect in the Bank's sole discretion, "Construction Officer") whose duties will include but are not limited to the following: review of the Construction Documents and all proposed changes thereto; inspection of the Improvements for basic conformity with the Construction Documents; determination of the accuracy of Borrower's disbursement requests with regard to the percentage of the construction work completed; and determination that the funds not yet disbursed under the Note are sufficient to complete the Improvements in accordance with the Construction Documents. Inspections by the Construction Officer shall not be building code compliance or quality inspections. In return for services rendered by the Construction Officer, Borrower will pay Bank \$350.00 per inspection and/or all reasonable fees of any independent architect.
- (n) Collateral Releases. If checked here ☒, Bank hereby agrees to release one or more lots, parcels or units of the Mortgaged Property or such other collateral which Borrower has pledged to secure advances under the Note ("Lot") under the following terms and conditions:
 - (i) The Lot is the subject of a binding contract for sale at a price satisfactory to Bank;
 - (ii) 75% of the gross proceeds of the sale of the Lot shall be paid to Bank at closing. If checked here ☒, reasonable closing expenses paid to third parties may be deducted from the amount paid to Bank for each release;
 - (iii)
- (o) Modification of Repayment Schedule. If checked here ☐, Subsequent to the Completion Date the existing repayment schedule will be modified such that the principal balance outstanding on the Note will be payable by Borrower to Bank as follows:
 - ☐ Number of Payments consecutive monthly/quarterly installments of ☐ principal plus accrued interest ☐ Principal and accrued interest (fixed total payments) in the amount of \$Amount, with the final installment to be a balloon in the amount necessary to include all remaining unpaid principal plus accrued interest.
 - ☐ Description of Any Other Modification of Repayment Schedule RequirementsAll other applicable terms and conditions will remain unchanged.

CC.07. Additional Events of Default. In addition to the Events of Default listed in Section 8 of the Loan Agreement and in the Note, each of the following shall also constitute an Event of Default under the Loan Agreement:

- (a) Any material deviation from the Construction Documents without the prior written approval of the Bank.
- (b) The appearance of defective workmanship or unsatisfactory or unsuitable materials in the Improvements.
- (c) The appearance on any survey required hereunder of easements or encroachments which have occurred without the prior written approval of the Bank and which are not removed or corrected within ten (10) business days after written notice thereof to Borrower.
- (d) Cessation of the work of construction prior to the Completion Date for a continuous period of ten (10) business days or more for causes other than those beyond the control of Borrower (force majeure) and consented to in writing by Bank; or the failure of Borrower to complete all Improvements as required herein.
- (e) Borrower neglects, fails, or refuses to keep in full force and effect any permit or approval with respect to the construction, occupation, or use of the Project.
- (f) Borrower neglects, fails, or refuses to keep in full force and effect the hazard, liability, or builder's risk insurance required under this Loan Agreement.
- (g) Any suit is filed against Borrower or Guarantor which, if adversely determined, could substantially impair the ability of Borrower or Guarantor to perform any of their obligations under the Loan Documents and such suit is not dismissed within twenty (20) business days after the filing thereof.
- (h) Borrower fails to keep the Mortgaged Property free and clear of all encumbrances, liens, deeds of trust, security interests, and any and all secondary financing, except as may be approved in writing by the Bank in advance.
- (i) The removal of any materials from the Mortgaged Property or the Improvements if said materials were funded by the Borrower's Equity or by a Loan advance.
- (j) Any sale, transfer, or conveyance of the Mortgaged Property or any portion thereof.

CC.08. Additional Rights and Remedies. In addition to the rights and remedies specified in the Loan Agreement, Bank shall have the following rights and remedies:

- (a) Assignment/Completion of Construction. As additional security for the payment of the Loan, Borrower hereby assigns to Bank all of Borrower's right, title, and interest in contracts related to the construction of the Improvements, including without limitation the construction contract with the General Contractor, the architect's contract, the Construction Documents, the permanent loan commitment, if any, and any permits obtained, but this assignment shall not, in the absence of affirmative ratification of such contracts by Bank, be deemed to impose upon Bank any of the Borrower's obligations under any such contract. Borrower hereby empowers and appoints Bank its true and lawful attorney-in-fact, with full power of substitution in the premises to complete the Improvements in the name of Borrower. Borrower hereby empowers said attorney as follows: (1) to use any funds of Borrower, including any funds which may remain unadvanced under the Loan, for the purpose of completing the Improvements in accordance with the Construction Documents; (2) to make such additions, changes, and corrections in the Construction Documents as shall be necessary or desirable to complete the Improvements; (3) to employ such contractors, subcontractors, agents, architects, engineers, and inspectors as shall be required for said purposes; (4) to pay, settle, or compromise all existing bills and claims which may be liens against Improvements, or as may be necessary or desirable in the sole discretion of the Bank for the completion of the Improvements or for clearance of title; (5) to take over and use all or any part of the labor, materials, supplies, and equipment contracted for, or owned by, or under the control of Borrower; (6) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (7) to prosecute and defend all actions or proceedings in connection with the Mortgaged Property or the construction of the Improvements and take such action and require such performance as Bank shall deem necessary under any performance or payment bond; and (8) to do any and every act with respect to construction or completion of the Improvements or the closing of any permanent financing which Borrower might do in its own behalf including, without limitation, execution, acknowledgment, and delivery of all instruments, documents, and papers in the name of Borrower as may be necessary or desirable in the sole discretion of Bank. It is further agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, is irrevocable. All sums so expended by Bank shall be deemed to have been advanced to Borrower pursuant to this Loan Agreement and secured by the Mortgage and the other Loan Documents. Borrower hereby assigns to Bank all sums unadvanced under the Loan, such assignment to be effective only in case of acceleration of the Loan by Bank.

BB&T

SCHEDULE "CC" TO BB&T LOAN AGREEMENT (Commercial/Residential Construction and/or Development Loan)

- (b) **Disputes.** Where disputes have arisen which, in the opinion of Bank, may endanger timely completion of the Improvements or fulfillment of any condition precedent or covenant herein, Bank may agree to advance Loan funds for the account of Borrower without prejudice to Borrower's rights, if any, to recover said funds from the party to whom paid. Such agreement or agreements may take the form which Bank in its discretion deems proper, including without limitation agreements to indemnify (on behalf of Borrower and/or for Bank's own account) any title insurer against possible assertion of lien claims. All sums paid or agreed to be paid pursuant to such undertaking shall be for the account of Borrower, and Borrower agrees to reimburse Bank for any such payments made upon demand therefor, with interest at the rate applicable under the Note from the day of payment until the date of reimbursement. Such payments are secured by the Mortgage and by the other applicable Loan Documents.
- (c) **Remedies Cumulative/Nonwaiver.** All remedies of Bank provided for herein or in the other Loan Documents are cumulative and shall be in addition to any and all other rights and remedies provided for or available under the other Loan Documents, at law or in equity. The exercise of any right or remedy by Bank hereunder shall not in any way constitute a cure or waiver of default hereunder or under any of the applicable Loan Documents, or invalidate any act done pursuant to any notice of default, or prejudice the Bank in the exercise of any of its rights hereunder or under the Loan Documents unless, in the exercise of said rights, Bank realized all amounts owed to it under the Loan Documents.
- (d) **No Liability of the Bank.** Whether or not Bank elects to employ any or all remedies available to it upon an Event of Default, Bank shall not be liable for the construction of or failure to construct, to complete, or to protect the Improvements, for payment of any expense incurred in connection with the exercise of any remedy available to Bank, or for the performance or nonperformance of any other obligation of Borrower.
- (e) **Security Interest.** It is understood and agreed that Bank shall have and is hereby granted a lien on and a security interest in any and all now or later arising reserves, deferred payments, advanced Loan proceeds, insurance refunds, insurance claims, deposit accounts held by Bank in Borrower's name, impound accounts, refunds for overpayment of any kind, and any surplus of withheld funds resulting from the invalidity of "stop notice" claims or the failure of claimants to prosecute their claims to judgment, to the extent the same arise out of or occur in connection with the construction of the Improvements, and such lien and security interest shall constitute additional security for the Loan, and upon the occurrence of any Event or Default hereunder, Bank shall have and possess any and all remedies of a secured party provided by law with respect to enforcement of and recovery on its security interest on such items and amounts.
- (f) **Assignment.** It is expressly recognized and agreed that Bank may assign this Loan Agreement, the Note, the Mortgage, and any other Loan Documents to any other person, firm, or legal entity, that all of the provisions thereof shall continue in full force and effect, and, in the event of such assignment, that Bank shall thereafter be relieved of all liability hereunder and any Loan advances made by any assignee shall be deemed made in pursuance and not in modification hereof and shall be evidenced by the Note and secured by the Mortgage and any other Loan Documents.
- (g) **Publicity.** Bank shall have the right to place upon the Mortgaged Property a sign or signs advertising the fact that financing is being provided by Bank.
- (h) **No Third Party Beneficiaries.** This Loan Agreement is made and entered into for the sole protection and benefit of Bank and Borrower, their successors and assigns, and no third person or persons shall have any right to action hereon or rights to the Loan funds at any time, nor shall Bank owe any duty whatsoever to any claimant for labor performed or material furnished in connection with the construction of the Improvements, or to apply any undisbursed portion of the Loan to the Improvements, or to apply any undisbursed portion of the Loan to the payment of any such claim, or to exercise any right or power of Bank hereunder or arising from any default by Borrower.

(SIGNATURES ON FOLLOWING PAGE)

BB&T

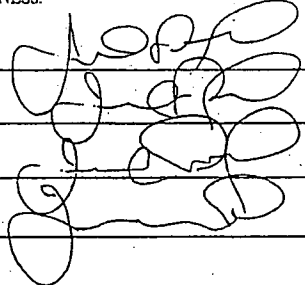
SCHEDULE "CC" TO BB&T LOAN AGREEMENT (Commercial/Residential Construction and/or Development Loan)

SIGNATURE PAGE

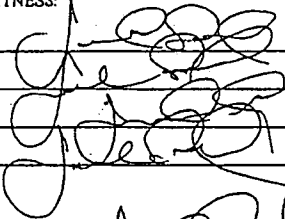
IN WITNESS WHEREOF, Borrower and Bank have executed this Schedule "CC" as of this date and have adopted as their respective seals the "seal" appearing beside or near their signatures below.

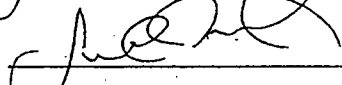
Borrower is a Partnership, Limited Liability Company, or Limited Liability Partnership:

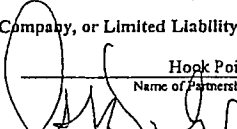
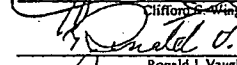
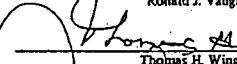
WITNESS:



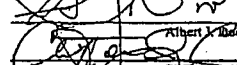
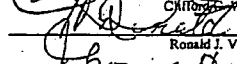
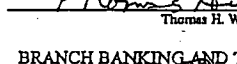
WITNESS:



Attest: 
(Corporate Seal)

By:  (SEAL)
Name of Partnership, LLC or LLP
By:  (SEAL)
Albert J. Dooley, Jr., Member
By:  (SEAL)
Clifford H. Wingard, Member
By:  (SEAL)
Ronald J. Vaughn, Member
By:  (SEAL)
Thomas H. Wingard, Member

Additional Co-makers or Guarantors:

By:  (SEAL)
Albert J. Dooley, Jr.
By:  (SEAL)
Clifford H. Wingard
By:  (SEAL)
Ronald J. Vaughn
By:  (SEAL)
Thomas H. Wingard

BRANCH BANKING AND TRUST COMPANY

By: 
J. Allan Risner
Title: Senior Vice President/BSO



Branch Banking and Trust Company

309 Columbia Avenue
Lexington, SC 29072
(803) 359-5111
Fax (803) 359-6683

December 21, 2010

BY HAND DELIVERY

Mr. Richard McIntyre
Market President- Lexington
First Reliance Bank
801 North Lake Drive
Lexington, SC 29072

EXHIBIT C

Re: First Reliance Irrevocable Letter of Credit No. 970001231

Dear Richard:

Enclosed please find the following documents to substantiate the sight draw and immediate demand by Branch Banking and Trust Company ("BB&T") on First Reliance Bank for \$1,500,000.00 evidenced by your Irrevocable Letter of Credit No. 970001231 ("Letter of Credit"):

1. The Sight Draw as required by the Letter of Credit;
2. The original Letter of Credit; and
3. A notarized statement from a BB&T officer that (a) Hook Point, LLC ("Borrower") has failed to perform its obligations under the Loan Agreement and Promissory Note dated November 16, 2007, (b) the draw amount does not exceed the obligations of Borrower to BB&T and (c) as signor, I have authority to act for BB&T as it relates to the Letter of Credit.

As these documents meet the specific requirements of the Letter of Credit, BB&T expects immediate payment by First Reliance in accordance with the Letter of Credit. We appreciate your prompt and immediate attention to this matter.

Sincerely,

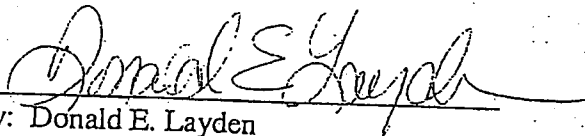
Donald E. Layden
Senior Vice President
Area Executive

cc: Mr. Ronald J. Vaughn
R. William Metzger, Jr., Esquire

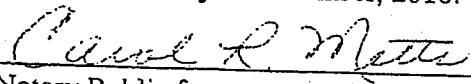
STATEMENT OF AUTHORIZED OFFICER OF
BRANCH BANKING & TRUST COMPANY,
A North Carolina Bank Corporation

PERSONALLY appeared before me, Donald E. Layden, who, being duly sworn, says:

1. That Donald E. Layden is an officer of Branch Banking & Trust Company, a North Carolina Bank Corporation (the "Beneficiary") having authority to act for the Beneficiary with regard to the First Reliance Bank Irrevocable Letter of Credit No. 970001231 dated 11-16-2007 (the "Letter of Credit").
2. That Hook Point, LLC has failed to perform its obligations to the Beneficiary under the Loan Agreement and Promissory Note dated November 16, 2007 executed by and between Hook Point, LLC as Borrower and Branch Banking and Trust Company as Lender (the "Obligations").
3. That the amount of the draft on the Letter of Credit does not exceed the amount due the Beneficiary under the Obligations.


By: Donald E. Layden
Title: Senior Vice President
of Branch Banking & Trust Company

SWORN TO and subscribed before me
this 21st day of December, 2010.


Notary Public for
My Commission Expires: 6/11/19



Branch Banking and Trust Company

309 Columbia Avenue
Lexington, SC 29072
(803) 359-5111
Fax (803) 359-6683

DRAWN UNDER First Reliance Bank
IRREVOCABLE LETTER OF CREDIT No. 970001231
DATED 11-16-2007

Date: December 21, 2010

At sight

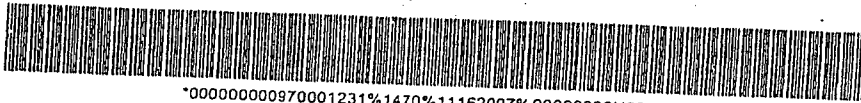
Attention: Mr. Richard McIntyre
Market President- Lexington
First Reliance Bank
801 North Lake Drive
Lexington, SC 29072

YOU, FIRST RELIANCE BANK, are directed to pay to the order of BRANCH BANKING AND TRUST COMPANY, a North Carolina Bank Corporation, 309 Columbia Avenue, Lexington, SC 29072 the sum of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100ths DOLLARS (\$1,500,000.00) FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF IRREVOCABLE LETTER OF CREDIT NO. 970001231.

WIRE DRAFT DIRECTLY TO BRANCH BANKING AND TRUST COMPANY ACCOUNT #0005221067241 ABA #05320 1607 ON OR BEFORE DECEMBER 21, 2010

BRANCH BANKING AND TRUST
COMPANY, a North Carolina
Bank Corporation

By Donald E. Layton
[Authorized Officer]



00000000970001231%1470%11162007%00000000H000529

FIRST RELIANCE
BANK

IRREVOCABLE LETTER OF CREDIT

Borrower: Hook Point LLC
111 East Main St B
Lexington, SC 29072

Lender: First Reliance Bank
Lexington
801 N Lake Drive
Lexington, SC 29072

Beneficiary: Branch Banking & Trust Company, a North Carolina Bank Corporation
309 Columbia Avenue
Lexington, SC 29072

NO.: 970001231

EXPIRATION DATE. This letter of credit shall expire upon the earlier of the close of business on 02-13-2011 and all drafts and accompanying statements or documents must be presented to Lender on or before that time, or the day that Lender honors a draw under which the full amount of this Letter of Credit has been drawn (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of One Million Five Hundred Thousand & 00/100 Dollars (\$1,500,000.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions: DRAFT MUST BE ACCOMPANIED BY: 1) The original letter of credit. 2) A notarized, sworn statement by the Beneficiary, or an officer thereof, that: a) The Borrower has failed to perform its obligations to the Beneficiary under the Loan Agreement and Promissory Note dated November 16, 2007, executed by and between Hook Point, LLC as Borrower and Branch Banking & Trust Company as Lender b) The amount of the draft does not exceed the amount due to the Beneficiary under the obligations; and; c) The signer has the authority to act for the Beneficiary with regard to the Letter of Credit. All drafts must be wired directly into the Beneficiary's account at BB&T into account #0005221067241 ABA #053201607.

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER First Reliance Bank IRREVOCABLE LETTER OF CREDIT NO. 970001231 DATED 11-16-2007," and the amount of each draft shall be marked on the draft. Only Beneficiary or Beneficiary's transferee may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

PERMITTED TRANSFEREES. This Letter of Credit may be transferred by Beneficiary upon prior written notice to Lender of the transfer. The transferee shall be deemed the new Beneficiary of this Letter of Credit and the documents of the transferee, including drafts required under this Letter of Credit, will be processed by Lender (or any intermediary) without the original Beneficiary's intervention and without any further obligation of Lender to the original Beneficiary.

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee under the "Permitted Transferees" paragraph above (the "Permitted Transferee"), the documents required for a draw shall include all documents required elsewhere in this Letter of Credit, except that such documents may be in the name of and executed by either the original Beneficiary or the presenter permitted by the "Permitted Transferees" paragraph above.

COMPLIANCE BURDEN. Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2006 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of South Carolina.

EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

Dated: November 16, 2007

LENDER:

FIRST RELIANCE BANK

(Note: In order to be valid, this Letter of Credit requires dual officer signatures, one of which at the SVP level or higher)

By: _____

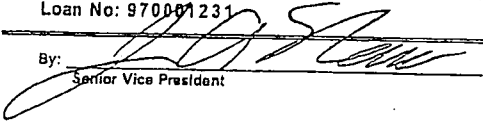
Lending Officer

[Handwritten signature]

Loan No: 970001231

IRREVOCABLE LETTER OF CREDIT
(Continued)

Page 2

By: 
Senior Vice President

ENDORSEMENT OF DRAFTS DRAWN:

Date	Negotiated By	Amount In Words	Amount In Figures
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LASER PRO Lending, Ver. 2.21, 10/97. Code: Standard Form 1001, 1997. All Rights Reserved. - SC L/C/R/LP/LC/LC/LC 10-0111 PMA

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

FILED

Hook Point, LLC,

2010 DEC 23 12:34

Civil Action No.:

Plaintiff,)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

vs.

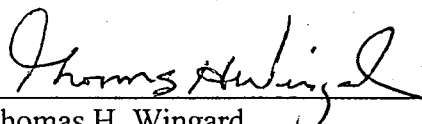
VERIFICATION

Branch Banking and Trust Company, First
Reliance Bank, and Allan Risinger,

Defendants.)

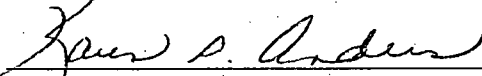
2010CP3205481

PERSONALLY APPEARED BEFORE ME the undersigned who, who being first
duly sworn, deposes and says that he is a member of Plaintiff Hook Point, LLC; that he
has read the foregoing complaint and the matters and things therein stated are true to his
knowledge, except those matters and things therein stated upon information and belief.


Thomas H. Wingard

SWORN TO AND SUBSCRIBED

Before me this 23rd day of December, 2010.


Notary Public for South Carolina
My Commission expires 2/24/2014

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2010 DEC 23 12:35

Hook Point, LLC,

Civil Action No.:

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

vs.

Branch Banking and Trust Company, First
Reliance Bank, and Allan Risinger,

Defendants.

MOTION FOR EX PARTE
TEMPORARY RESTRAINING
ORDER and PRELIMINARY
INJUNCTION

2010CP3205481

Plaintiff moves the Court pursuant to rule 65 SCRPC for an *ex parte* Temporary Restraining Order and Preliminary Injunction enjoining:

A. The Defendant, First Reliance Bank ("First Reliance"), its agents, servants, employees and attorneys and all persons in active concert and participation with it, pending the final hearing and determination of this action from paying, honoring, setting over, crediting or otherwise settling any sums alleged to be due under that certain instrument denominated as Letter of Credit No. 970001231, dated December 16, 2007, issued by First Reliance securing certain specifically limited performance of Hook Point, LLC to Branch Banking and Trust Company ("BB&T") (the "Letter of Credit"), for the payment of interest under that certain Loan Agreement, dated November 16, 2007, and related documents providing for a Term Loan in the amount of \$5,100,000 and a Line of Credit not to exceed \$2,000,000 on the grounds set forth in the Complaint, including, but not limited to, that BB&T has wrongly presented the Letter of Credit for payment knowing that the Plaintiff, Hook Point, LLC is not in default of the limited purpose for which the Letter of Credit was issued, i.e. "a last resort for the payment of interest."

B. The Defendant, BB&T, its agents, servants, employees and attorneys and all persons in active concert and participation with it, pending the final hearing and determination of this action from presenting for payment or otherwise seeking to collect any sums alleged to be due under the Letter of Credit on the grounds set forth in the Complaint, including, but not limited to, that BB&T fraudulently induced the Plaintiff, Hook Point, LLC to enter into the Loan Transaction by misrepresenting the purpose of the Letter of Credit and in presenting the Letter of Credit to the defendant First Reliance for payment knowing that Plaintiff was not substantially in default of the limited purpose for which the Letter of Credit was issued, as it only owes approximately \$70,000 in interest.

This motion is made on the following grounds: (1) Unless restrained by this Court Defendants will perform the acts referred to hereinabove; (2) Such actions by the Defendants will result in irreparable injury, loss and damage to the Plaintiff, as more particularly appears in the Complaint and the Affidavit of Hook Point, LLC, attached hereto; (3) The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to the Defendants, but will prevent irreparable injury to Plaintiff; and (4) No bond or other security is required since the Letter of Credit will remain in place pending a determination by the Court as to whether payment is proper.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Thornwell F. Sowell
David Dick
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211

(803) 929-1400

FILED

and

2010 DEC 23 12:35
Frederick A. Gertz
Gertz & Moore
Post Office Box 456
1416 Laurel Street (29204)
Columbia, SC 29202
(803) 252-1524

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Attorneys for Plaintiff

Columbia, South Carolina
December 23, 2010

COPY

STATE OF SOUTH CAROLINA

FILED

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

2010 DEC 23 P 12:36

Hook Point, LLC,

Civil Action No.:

DETHA A. GARRIGG
CLERK OF COURT
LEXINGTON SC

Plaintiff

vs.

AFFIDAVIT

OF

HOOK POINT, LLC.

Branch Banking and Trust Company, First
Reliance Bank, and Allan Risinger,

Defendants.

2010CP3205481

PERSONALLY APPEARED BEFORE ME, the undersigned who being duly sworn, deposes and states as follows:

1. He is the managing member of plaintiff Hook Point, LLC, is knowledgeable of the matters stated herein, and is competent to make this affidavit for Hook Point, LLC.

2. Hook Point, LLC ("Hook Point") is a South Carolina Limited Liability Company. Its members are Albert J. Dooley, Jr., Ronald J. Vaughn, Thomas H. Wingard, and Clifford C. Wingard.

3. On or about September 6, 2007, defendant Branch Banking & Trust Company ("BB&T") and defendant Allan Risinger issued a Commitment Letter to Hook Point and Dooley, Vaughn, Wingard, and Wingard, a true copy of which is attached hereto as **Exhibit A**. Among other things, the Commitment Letter requires a \$1,500,000 letter of credit approved by BB&T as collateral for the \$5,100,000 loan and states: "Letter of credit to be used as last resort for interest carry."

4. On information and belief, Hook Point currently owes BB&T approximately \$70,000 in interest with respect to the Loan.

5. The proceeds of the Loan were to be used by Hook Point to complete development and residential lots for Panama Pointe Subdivision.

6. Furthermore, BB&T extended a Line of Credit in the amount of \$2,000,000. The Commitment Letter states: "The proceeds of the Line shall be used by the Borrower to complete residential construction for Panama Pointe Subdivision."

7. Between August 2008 and January 2010, and unbeknownst to Hook Point, Dooley, Vaughn, Wingard, and Wingard, BB&T unilaterally modified the Line of Credit to effectively terminate the Line of Credit. The effect of this unilateral action was to disable the plaintiff in its efforts to develop Panama Point and sell lots and houses in the development. The further resulting effect was to frustrate the Purpose of the Loan and the Line, as set forth in paragraph 2 of the Commitment Letter. On information and belief, this action by BB&T was unfair, deceptive, and taken in bad faith. As a result, Hook Point has not been able to develop the Project and has been harmed by its inability to develop the Project.

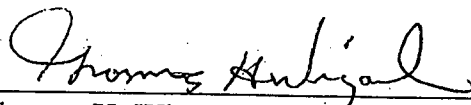
8. Dooley, Vaughn, Wingard, and Wingard, as members of Hook Point, have also been harmed by the wrongful conduct of BB&T and Allan Risinger.

9. On December 21, 2010, BB&T delivered to First Reliance Bank a letter attached hereto as **Exhibit B**. This letter is a demand for payment of \$1,500,000 "evidenced by your Irrevocable Letter of Credit No. 970001231." This is the same letter of credit referenced in paragraph 3 above "to be used as last resort for interest carry."

10. As stated above, there is currently due to BB&T approximately \$70,000 in interest. Therefore, there is no justification whatsoever for BB&T to seek a \$1,500,000 draw on the letter of credit. Any payment by First Reliance Bank in excess of \$70,000 will cause Hook Point and Dooley, Vaughn, Wingard, and Wingard irreparable harm, for which it has no adequate remedy at law.

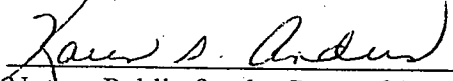
11. Therefore, on information and belief, the Court should issue a temporary restraining order and preliminary injunction, directing First Reliance Bank not to honor the request by BB&T in its letter of December 21, 2010, until this matter can be heard on the merits.

FURTHER AFFIANT SAYETH NOT.


Thomas H. Wingard

SWORN TO and subscribed before me

this 23rd day of December, 2010.

 (L.S.)
Notary Public for the State of South Carolina

My Commission Expires: 2/24/2014

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2010 DEC 23 P 12:36

FILED

EXHIBIT A



September 6, 2007

Hook Point, LLC
111 E Main St., STE B
Lexington, SC 29072

COMMITMENT LETTER

Dear Bert, Tom, Ronald and Cliff:

Branch Banking and Trust Company ("Bank") is pleased to offer you the following commitment (the "Commitment") for a loan (the "Loan"). The terms and conditions of this Commitment are as follows:

1. Borrower: Hook Point, LLC (the "Borrower").
2. Purpose: The proceeds of the Loan shall be used by the Borrower to complete development and residential lots for Panama Pointe Subdivision. The proceeds of the Line shall be used by the Borrower to complete residential construction for Panama Pointe Subdivision. (the "Project").
3. Collateral: The Loan will be secured by a first lien mortgage (the "Mortgage") on Panama Pointe with all lots and improvements near Lexington, South Carolina and an assignment of all architectural/engineering documents and construction contracts. (the "Collateral").

(FOR SC COMMERCIAL REAL ESTATE LOANS ONLY) – Waiver of Appraisal Rights. Pursuant to Section 29-3-680 of the South Carolina Code of Laws, as amended, the Borrower and all Guarantors shall be required to waive and relinquish all statutory appraisal rights in connection with the Loan.

4. Amount: The maximum principal amount of the Loan shall be \$5,100,000.00 or 75% of the discounted retail value of the collateral, whichever is less. The maximum principal amount of the Line shall be \$2,000,000 or 80% of the discounted retail value of the collateral, whichever is less. There will be a limit of up to five spec homes at one time.

5. Advances: The proceeds of the Loan shall be advanced when requested by the Borrower. Advances to be made after inspection and approval by Bank. Each inspection is \$350.00.
6. Interest Rate: The interest rate on the Loan shall be the variable rate per annum of Prime plus .25% .
7. Repayment Terms: Accrued interest only shall be repayable monthly beginning 30 days from loan closing. One final payment of all remaining principal and accrued interest shall be due in full 36 months from loan closing. There will be a \$1,700,000 curtailment 21 months after loan closing. Then the \$1,700,000 curtail will be on an annual basis. (Every 12 months).
8. Guarantors: Bert Dooley, Thomas Wingard, Ronald Vaughn, and Clifford Wingard shall be required to guarantee and execute appropriate documents at Loan closing to evidence the obligation.
9. Commitment/Origination Fee: An origination fee of \$25,500.00 or ½% shall be payable by Borrower to Bank at Loan closing. Each residential construction note will have a \$300 fee.
10. Prepayment: Bank shall charge no prepayment premium should Borrower choose at any time to prepay part or all of the remaining principal balance due on the Loan.
11. Documentation: At Loan closing, the Borrower shall execute a promissory note, Mortgage, Loan Agreement, and other related documents and instruments satisfactory to the Bank to evidence and secure the Loan.
12. Survey and Flood Hazard Certification: Prior to the Loan closing, the Bank shall require the receipt of a satisfactory survey of the Collateral. The surveyor must provide certification that the improvements are not located in a special flood hazard area.
13. Title Insurance: Prior to the Loan closing, the Bank shall receive a standard ALTA mortgagee title insurance binder, and promptly after the Loan closing, the Bank shall receive a standard ALTA mortgagee title insurance policy covering the Mortgage satisfactory to the Bank as to coverage and amount. The binder and policy shall show no exceptions to coverage not acceptable to the Bank.
14. Hazard Insurance: At the Loan closing, the Borrower shall furnish Bank a hazard insurance policy for the replacement cost of the Collateral naming Bank as mortgagee/loss payee. The insurance company issuing the policy must be acceptable to the Bank.

15. Lot Releases: Lot release curtailments will be 75% of the gross sales price.
16. Appraisal: Prior to the Loan closing, the Bank, in its sole discretion, shall select and engage an appraiser from its approved appraiser registry to prepare, at the Borrower's expense, three (3) copies of an appraisal on the Collateral. The appraisal shall conform to all applicable Appraisal laws, rules and regulations and shall be satisfactory to the Bank in all respects. Upon review and approval, the appraisal must reflect a Collateral Value of not less than \$6,800,000.
17. Environmental Site Assessment: Prior to the Loan closing, the Borrower shall provide the Bank with a satisfactory environmental assessment at least Phase I level on the Collateral from an environmental engineering company acceptable to the Bank.
18. Credit Qualifications: This Commitment is issued in reliance upon the accuracy and completeness of all information furnished by or for the Borrower and any co-signers or guarantors and is subject to the continued accuracy and completeness of all such information. The extension of credit by the Bank pursuant to this Commitment is subject to the condition precedent that the Borrower and any co-signers or guarantors shall after the date hereof maintain a financial condition acceptable to the Bank in its sole discretion. In addition, the Loan is conditioned upon there being no material adverse change which threatens the Borrower's ability to repay the Loan or pledge the Collateral to secure repayment.
19. Financial Information: While the Loan is outstanding, the Borrower shall provide the Bank with annual financial statements within 120 days of the Borrower's fiscal year end. Also, all co-signers and guarantors shall furnish annual financial statements and tax returns. In addition, Borrower shall supply Bank with such other financial information as the Bank may reasonably request from time to time. All financial information shall be prepared in accordance with GAAP and must be certified true and correct by the Borrower.
20. Expenses: All expenses associated with the Loan are to be paid by the Borrower. These expenses shall include, but are not limited to, the attorneys' fees, appraisal fee, surveyor's fee, environmental engineer's fee, and all necessary recording fees.
21. Attorney's Opinion: The Bank shall require a legal opinion letter from Borrower's attorney, which must be acceptable to the Bank and Bank's counsel.

22. Banking Relationship: The Borrower agrees to maintain its primary depository account(s) with the Bank.
23. Covenants: The Borrower shall adhere to the following covenants, which shall be included, along with other covenants, in a loan agreement to be executed by the Bank and the Borrower at or prior to the Loan closing:
- (A) Other: Collateral/Interest Reserve Options:
- Presales of 50% \$750,000 L/C, Presales of 40% \$900,000 L/C, Presales of 30% \$1,050,000 L/C, Presales of 20% \$1,200,000 L/C. \$1,500,000 L/C with less than 20% presales. 10% deposit required on all pre sales
- Letter of Credit approved by BB&T and issuing bank with unconditional draws. Maturity of letter to extend 90 days after loan maturity. Letter of credit to be used as last resort for interest carry.
24. Conflicting Provisions: If any of the provisions of this commitment letter shall be construed to conflict with any terms or provisions contained in the Loan Documents, then the Loan Documents shall take priority.

This Commitment is open for your acceptance until the close of business on September 24th, 2007 (the "Expiration Date"), at which time this Commitment expires if not accepted and returned to the Bank. In addition, this Commitment shall expire and the Bank shall not be required to make the Loan if the Loan does not close by December 5th, 2007. To acknowledge your acceptance, please return a signed copy of this letter to my attention at the following address on or before the Expiration Date:

Branch Banking and Trust Company
309 Columbia Avenue
Lexington, SC 29072

Very truly yours,

BRANCH BANKING AND TRUST COMPANY

By:

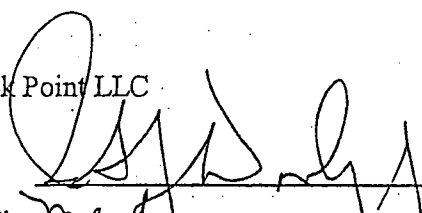

Allan Risinger

Title: Sr. Vice President

Phone: 803-359-1618

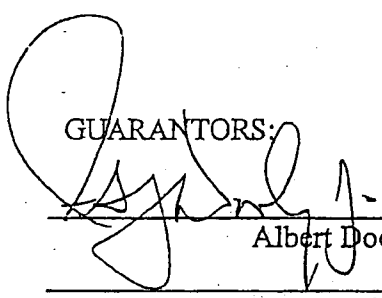
The foregoing terms and conditions are hereby accepted and agreed to this 14th day of September 2007.

Hook Point LLC

By: 

Title: member

GUARANTORS:


Albert Dooley

Thomas Wingard

Ronald Vaughn

Clifford Wingard

EXHIBIT B



Branch Banking and Trust Company

309 Columbia Avenue
Lexington, SC 29072
(803) 359-5111
Fax (803) 359-6683

December 21, 2010

BY HAND DELIVERY

Mr. Richard McIntyre
Market President- Lexington
First Reliance Bank
801 North Lake Drive
Lexington, SC 29072

Re: First Reliance Irrevocable Letter of Credit No. 970001231

Dear Richard:

Enclosed please find the following documents to substantiate the sight draw and immediate demand by Branch Banking and Trust Company ("BB&T") on First Reliance Bank for \$1,500,000.00 evidenced by your Irrevocable Letter of Credit No. 970001231 ("Letter of Credit"):

1. The Sight Draw as required by the Letter of Credit;
2. The original Letter of Credit; and
3. A notarized statement from a BB&T officer that (a) Hook Point, LLC ("Borrower") has failed to perform its obligations under the Loan Agreement and Promissory Note dated November 16, 2007, (b) the draw amount does not exceed the obligations of Borrower to BB&T and (c) as signor, I have authority to act for BB&T as it relates to the Letter of Credit.

As these documents meet the specific requirements of the Letter of Credit, BB&T expects immediate payment by First Reliance in accordance with the Letter of Credit. We appreciate your prompt and immediate attention to this matter.

Sincerely,

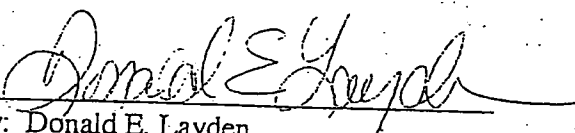
Donald E. Layden
Senior Vice President
Area Executive

cc: Mr. Ronald J. Vaughn
R. William Metzger, Jr., Esquire

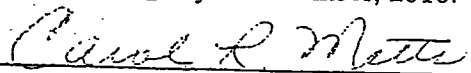
STATEMENT OF AUTHORIZED OFFICER OF
BRANCH BANKING & TRUST COMPANY,
A North Carolina Bank Corporation

PERSONALLY appeared before me, Donald E. Layden, who, being duly sworn, says:

1. That Donald E. Layden is an officer of Branch Banking & Trust Company, a North Carolina Bank Corporation (the "Beneficiary") having authority to act for the Beneficiary with regard to the First Reliance Bank Irrevocable Letter of Credit No. 970001231 dated 11-16-2007 (the "Letter of Credit").
2. That Hook Point, LLC has failed to perform its obligations to the Beneficiary under the Loan Agreement and Promissory Note dated November 16, 2007 executed by and between Hook Point, LLC as Borrower and Branch Banking and Trust Company as Lender (the "Obligations").
3. That the amount of the draft on the Letter of Credit does not exceed the amount due the Beneficiary under the Obligations.


By: Donald E. Layden
Title: Senior Vice President
of Branch Banking & Trust Company

SWORN TO and subscribed before me
this 21st day of December, 2010.


Notary Public for
My Commission Expires: 6/11/17



Branch Banking and Trust Company

309 Columbia Avenue
Lexington, SC 29072
(803) 359-5111
Fax (803) 359-6683

DRAWN UNDER First Reliance Bank
IRREVOCABLE LETTER OF CREDIT No. 970001231
DATED 11-16-2007

Date: December 21, 2010

At sight

Attention: Mr. Richard McIntyre
Market President- Lexington
First Reliance Bank
801 North Lake Drive
Lexington, SC 29072

YOU, FIRST RELIANCE BANK, are directed to pay to the order of BRANCH BANKING AND TRUST COMPANY, a North Carolina Bank Corporation, 309 Columbia Avenue, Lexington, SC 29072 the sum of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100ths DOLLARS (\$1,500,000.00) FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF IRREVOCABLE LETTER OF CREDIT NO. 970001231.

WIRE DRAFT DIRECTLY TO BRANCH BANKING AND TRUST COMPANY ACCOUNT #0005221067241 ABA #05320 1607 ON OR BEFORE DECEMBER 21, 2010

BRANCH BANKING AND TRUST
COMPANY, a North Carolina
Bank Corporation

By Donald E. Layton
[Authorized Officer]



000000000970001231%1470%11162007%00000000H000529



IRREVOCABLE LETTER OF CREDIT

Borrower: Hook Point LLC
111 East Main St B
Lexington, SC 29072

Lender: First Reliance Bank
Lexington
801 N Lake Drive
Lexington, SC 29072

Beneficiary: Branch Banking & Trust Company, a North Carolina Bank Corporation
309 Columbia Avenue
Lexington, SC 29072

NO.: 970001231

EXPIRATION DATE. This letter of credit shall expire upon the earlier of the close of business on 02-13-2011 and all drafts and accompanying statements or documents must be presented to Lender on or before that time, or the day that Lender honors a draw under which the full amount of this Letter of Credit has been drawn (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of One Million Five Hundred Thousand & 00/100 Dollars (\$1,500,000.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing), during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions: **DRAFT MUST BE ACCOMPANIED BY:** 1) The original letter of credit; 2) A notarized, sworn statement by the Beneficiary, or an officer thereof, that: a) The Borrower has failed to perform its obligations to the Beneficiary under the Loan Agreement and Promissory Note dated November 16, 2007, executed by and between Hook Point, LLC as Borrower and Branch Banking & Trust Company as Lender; b) The amount of the draft does not exceed the amount due to the Beneficiary under the obligations; and; c) The signer has the authority to act for the Beneficiary with regard to the Letter of Credit. All drafts must be wired directly into the Beneficiary's account at BB&T into account #0005221067241 ABA #053201607. Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER First Reliance Bank IRREVOCABLE LETTER OF CREDIT NO. 970001231 DATED 11-16-2007," and the amount of each draft shall be marked on the draft. Only Beneficiary or Beneficiary's transferee may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

PERMITTED TRANSFEREES. This Letter of Credit may be transferred by Beneficiary upon prior written notice to Lender of the transfer. The transferee shall be deemed the new Beneficiary of this Letter of Credit and the documents of the transferee, including drafts required under this Letter of Credit, will be processed by Lender (or any intermediary) without the original Beneficiary's intervention and without any further obligation of Lender to the original Beneficiary.

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee under the "Permitted Transferees" paragraph above (the "Permitted Transferee"), the documents required for a draw shall include all documents required elsewhere in this Letter of Credit, except that such documents may be in the name of and executed by either the original Beneficiary or the presenter permitted by the "Permitted Transferees" paragraph above.

COMPLIANCE BURDEN. Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2006 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of South Carolina.

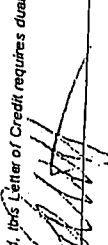
EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

Dated: November 16, 2007

LENDER:

FIRST RELIANCE BANK

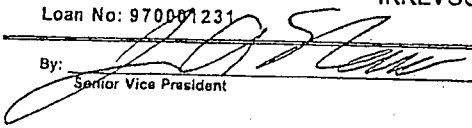
(Note: In order to be valid, this Letter of Credit requires dual officer signatures, one of which at the SVP level or higher)

By: 
Leading Officer

Loan No: 970001231

IRREVOCABLE LETTER OF CREDIT
(Continued)

Page 2

By: 
Senior Vice President

ENDORSEMENT OF DRAFTS DRAWN:

Date	Negotiated By	Amount In Words	Amount In Figures

LASER PRO Lending, Inc. 5.21.10.001 Corp. Revised Financial Statements, Inc. 1/01/2007. All Rights Reserved. - SC LSC/PL/UC/LOC/FC 1A-0111 P01

FILED

2010 DEC 23 12:36

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Hook Point, LLC

Plaintiff,

v.

Branch Banking and Trust Company,
First Reliance Bank, and Allan Risinger,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-32-05481

**MEMORANDUM IN OPPOSITION
TO MOTION FOR TEMPORARY
INJUNCTION**

FILED
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JITH A. CARRIGS
CLERK OF COURT
LEXINGTON SC

Introduction.

Plaintiff Hook Point, LLC ("Hook Point") has moved, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, for a temporary injunction preventing defendant Branch Banking and Trust ("BB&T") from receiving payment on an irrevocable letter of credit in the amount of \$1,500,000 issued by defendant First Reliance Bank ("First Reliance").¹ Under Rule 65 and applicable case law Hook Point must show: (1) that without the temporary injunction it will suffer irreparable harm; (2) that there is a likelihood that it will succeed on the merits of its claims; (3) and that it has no adequate remedy at law. MailSource, LLC v. M. A. Bailey & Associates, 356 SC 363, 588 S.E.2d 635 (Ct. App. 2003). Hook Point has failed to meet its burden on any of these elements and the motion must be denied:

- in its affidavit and motion Hook Point has not even alleged any basis for a finding of irreparable harm;
- the complaint fails to state any claim that would support interference with immediate payment by First Reliance of the \$1,500,000 letter of credit;

¹ Hook Point obtained an ex parte Temporary Restraining Order on December 23, 2010. BB&T notes that the TRO was issued in violation of Rule 65(c) which prohibits the issuance of any TRO or temporary injunction (with certain exceptions inapplicable here) without the posting of a bond. In this case Hook Point should have been required to post a bond in the amount of \$1.5 million to prevent BB&T from receiving the proceeds of the letter of credit.

- if Hook Point has any claim against BB&T the claim would be for money damages, the definitive "adequate remedy at law" precluding injunctive relief.

In addition to these deficiencies in the showing by Hook Point, BB&T also relies on the affidavit and exhibits of Don Layden which BB&T has submitted in opposition to the motion. The affidavit and exhibits provide additional information on the relationship among the parties and further demonstrate why the injunction should be denied.

Background.

This action arises out of a loan agreement between BB&T and Hook Point that was originated in November 2007 and was intended for the development of a residential subdivision on certain property on Lake Murray ("the Property"). Layden affidavit ¶s 3 and 6. Hook Point is in default on two loans made by BB&T as part of that agreement. The amount owed by Hook Point on the two defaulted loans is over \$5,000,000. Layden affidavit ¶ 3. Hook Point has committed numerous acts of default including failing to pay real property taxes on the property and failing to make interest and principal payments as required by its agreement with BB&T. Layden affidavit ¶ 4. BB&T has given Hook Point notice of these defaults but Hook Point has not made any substantial effort to cure them. Layden affidavit ¶ 4. In fact, in October 2010 BB&T was required to pay the 2009 property and rollback taxes to prevent the Property from being sold at a tax sale. Layden affidavit ¶ 4.

Based on two recent appraisals BB&T currently estimates the value of the Property, on which it has a first mortgage, at approximately \$1,800,000. Layden affidavit ¶ 6. Hook Point is a limited liability corporation with four individual members. All of those individuals have personally guaranteed the loans made by BB&T to Hook Point. Layden affidavit ¶ 8. BB&T

will assert claims to foreclose its first mortgage and to recover on the guarantees as counter-claims and third-party claims in this action. Layden affidavit ¶ 8.

Hook Point has not managed to sell any homes or lots in its planned subdivision. Layden affidavit ¶ 6. Hook Point has not made any principal payments on either of the outstanding loans. In addition, the interest payments that have been made on Note 1 (the primary loan - currently \$4.9 million of the \$5.1 million owed) have been made entirely from a reserve made available from the proceeds of Note 1 itself. Layden ¶ 7.

As consideration for the original loan agreement Hook Point obtained an irrevocable letter of credit in the amount of \$1,500,000 from First Reliance. By the terms of that letter of credit BB&T was entitled to full payment of the \$1,500,000 on presentation of certain documents to First Reliance. Layden affidavit ¶ 5, Exhibit D. BB&T submitted those documents on December 21, 2010 and it is entitled to immediate payment.

Irreparable Harm to Hook Point.

In support of its motion for temporary injunction preventing payment of the letter of credit, Hook Point submitted the affidavit of managing member Thomas Wingard. That affidavit states the following about irreparable harm: "Any payment by First Reliance in excess of \$70,000 will cause Hook Point, and Dooley, Vaughn, Wingard and Wingard irreparable harm, for which it has no adequate remedy at law." Wingard affidavit ¶10. The South Carolina Supreme Court has held that an injunction is a "drastic remedy" that should only be issued when plaintiff has met its burden of showing irreparable harm. See Scratch Golf Company v. Dunes West Residential Golf Properties, 361 S.C. 117, 603 S.E.2d 905 (2004); Poynter Investments, Inc. v. Century Builders of Piedmont, Inc. 387 S.C. 583, 694

S.E.2d 15 (2010). In this case Hook Point has not even attempted to meet its burden. The conclusory assertion that Hook Point and its members will suffer irreparable harm provides no factual basis for issuance of an injunction.

It is no accident that Hook Point has not met its burden. The facts set out in the Layden affidavit and exhibits make it clear that Hook Point and its members will not be irreparably harmed and in fact will be directly benefited by payment of the \$1.5 million letter of credit. Over \$5 million is owed on a failed development that is currently worth about \$1.8 million. The individual members have personally and unconditionally guaranteed all amounts owed to BB&T. Payment of the letter of credit will reduce the amount owed and thereby benefit Hook Point and its members.

Likelihood of Success on the Merits – Letter of Credit.

It is significant that the relief sought by Hook Point is to prevent payment by First Reliance of an irrevocable letter of credit issued to BB&T. Under the law governing letters of credit the grounds for refusing to honor a letter of credit are exceedingly narrow and Hook Point has not even alleged any ground that would provide a basis for First Reliance to dishonor the letter of credit.

The statutory law governing letters of credit in South Carolina is Chapter 5 of the Uniform Commercial Code as codified in Chapter 5 of Title 36 of the South Carolina Code of Laws. The application of those provisions was considered by the Fourth Circuit Court of Appeals in Amwest Surety Insurance Company v. Republic National Bank, 977 F.2d 122 (4th Circ. 1992).

Letters of credit have long been used to facilitate the financing of commercial transactions between buyers and sellers by providing a

certain and reliable means to ensure payment for goods delivered or services rendered. As elsewhere, in South Carolina, whose law governs this diversity case, a letter of credit is a tripartite arrangement under which one party establishes a credit, usually at a bank, on which it authorizes a third party to draw, provided certain conditions are met. The bank, as a mere stakeholder of the credit, issues a letter to the third party (known as the beneficiary) confirming the credit and stating the conditions for any draw to be made against it. In essence, the bank's promise to pay the beneficiary upon the beneficiary's timely presentation to the bank of documents conforming to the conditions delimited in the letter replaces the promise of the party which established the credit.

The virtues of letters of credit are their simplicity, reliability, and predictability, all of which depend upon the limitation of the issuer's duties to the ministerial application of a letter's terms. Thus under the Uniform Commercial Code, which South Carolina has adopted, in addition to the ordinary duties of a bank, an issuer is only obliged (1) to examine carefully documents presented by the beneficiary for compliance with the terms of the letter of credit and, absent a facial defect, (2) to honor the draft if the documents do comply- regardless of whether the underlying contract between beneficiary and customer has, in fact, been performed, and without assuming any liability if the documents wrongly assert that it has.

Amwest Surety Company v. Republic National Bank, 977 F.2d at 125-126 (internal citations omitted)(emphasis supplied).²

This discussion makes it clear that the law of South Carolina on letters of credit, like that of other jurisdictions, makes payment dependent only on the presentation of specified documents and not on the facts and circumstances of the underlying transaction. First Reliance must pay according to the written terms of the letter of credit alone and without reference to any dispute between Hook Point and BB&T. None of the causes of action alleged in the Hook Point complaint raise any issue with regard to BB&T's compliance with the written terms of the letter

² The White and Summers treatise on the U.C.C. puts it this way: "Bankers sometimes make the same point by describing the transaction between the bank and the beneficiary as a "paper transaction." By that they mean the issuer's agent should be able to sit in a business suit at a desk in a bank, and by looking at papers that are presented, determine whether the bank is obliged to make payment or not. She is not obligated and, indeed, is foreclosed from putting on overalls and going into the field to determine whether the underlying contract has been performed. 3 White & Summers, Uniform Commercial Code § 26-2 (5th ed.), 3WS-UCC §26-5.

of credit. Layden's affidavit and Exhibits E and F to the affidavit make it clear that BB&T has met its obligations under the letter of credit. Layden affidavit ¶ 5. Accordingly, Hook Point has no chance of success on the merits with respect to preventing payment on the letter of credit.

Likelihood of Success on the Merits – Lender Statute of Frauds.

In addition to failing to state any claim to prevent payment of the letter of credit it is apparent that there is little likelihood of success on the merits of any of Hook Point's seven causes of action. All of those causes of action attempt to imply or impute to BB&T obligations that are not found in the loan agreements between Hook Point and BB&T. As such, all of the Hook Point claims are precluded by S.C. Code §37-10-107, commonly known as the "lender statute of frauds."

(1) No person may maintain an action for legal or equitable relief or a defense based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment, or agreement:

(a) to lend or borrow money;

(b) to defer or forbear in the repayment of money; or

(c) to renew, modify, amend, or cancel a loan of money or any provision with respect to a loan of money, involving in any such case a principal amount in excess of fifty thousand dollars, unless the party seeking to maintain the action or defense has received a writing from the party to be charged containing the material terms and conditions of the promise, undertaking, accepted offer, commitment, or agreement and the party to be charged, or its duly authorized agent, has signed the writing.

The lender statute of frauds was recently upheld by the South Carolina Supreme Court in Sea Cove Development, LLC v. Harbourside Community Bank, 387 S.C. 95, 691 S.E.2d 158 (2010). In that case a developer sued a bank claiming that the bank had made a commitment to make a loan and that the developer was damaged when the bank failed to make the loan. The

Supreme Court affirmed summary judgment for the lender on the ground that the developer was precluded from pursuing its claims by the lender statute of frauds. In the present case Hook Point asserts similar claims against BB&T. Like the developer in Sea Cove, Hook Point's claims will be barred by the statute. Accordingly, there is little likelihood of success on the merits of those claims.

Adequate Remedy at Law.

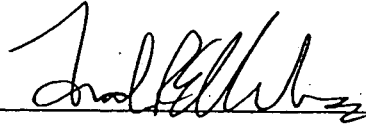
In order to obtain a temporary injunction Hook Point must prove that it has a claim that entitles it to injunctive relief. Hook Point can make no such showing because, even if it is successful on its claims, it has an adequate remedy at law in the form of money damages. See Milliken & Co. v. Morin, 386 S.C. 1, 685 S.E.2d 828 (Ct. App. 2009)(jury award of damages adequate remedy precluding grant of injunctive relief).

In the present case it appears that Hook Point's causes of action attempt to state claims for lost profits that it would have received if its development was successful. Putting aside the factual difficulties facing such claims with respect to a failed development, it is clear that a claim for lost profits is a claim for money damages. Because Hook Point's claims are the type that result in money damages, Hook Point has not stated a claim for injunctive relief and is not entitled to entry of a temporary injunction.

Conclusion.

Hook Point has failed to carry its burden with respect to any of the three elements necessary to obtain a temporary injunction. It has not shown that it will be irreparably harmed without the injunction. It has not shown any likelihood of success on the merits of its claims and

it is clear that, if it can prove any of its claims, Hook Point has an adequate remedy at law in the form of money damages. For these reasons its motion for temporary injunction must be denied.



Frank R. Ellerbe, III
Wilson W. McDonald
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900
ATTORNEYS FOR DEFENDANTS BRANCH
BANKING AND TRUST COMPANY AND
ALLAN RISINGER

January 3, 2011

COPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

)
) IN THE COURT OF COMMON PLEAS
)

Hook Point, LLC

Case No.: 2010-CP-32-05481

Plaintiff,

v.

) **AFFIDAVIT OF DONALD E. LAYDEN**
)

Branch Banking and Trust Company,
First Reliance Bank, and Allan
Risinger,

Defendants.

BETH A. CARRIGS
CLERK OF COURT
LEXINGTON SC

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PERSONALLY APPEARED BEFORE ME, the undersigned, who, being duly sworn, states the following:

1. I am employed by defendant Branch Banking and Trust Company ("BB&T") as a Senior Vice President and am the Area Executive for Lexington, South Carolina. I have been employed by BB&T since May 1, 1986.

2. I am familiar with the transactions between the plaintiff Hook Point, LLC ("Hook Point") and BB&T that are the subject of this action. Defendant Allan Risinger is employed by BB&T as a Senior Vice President and Business Services Officer and he currently reports to me. I have had direct involvement with this matter and, in preparation for submitting this affidavit, I have reviewed BB&T's records relating to its relationship with Hook Point.

3. On November 16, 2007 BB&T entered into a Loan Agreement with Hook Point and its members. Exhibit A. Pursuant to the Loan Agreement BB&T has advanced funds to Hook Point and received in return two notes that are outstanding. The first note ("Note 1") was executed in November 2007. Note 1 is currently in default and, as of December 29, 2010, Hook Point owes BB&T the total sum of \$4,933,637.73 on Note 1. In August 2008 BB&T advanced funds to Hook Point under another note ("Note 2"). Hook Point is also in default on Note 2 and, as of December 29, 2010, Hook Point owes BB&T the amount of \$202,065.63 on Note 2.

4. Hook Point has defaulted on its obligations under the Loan Agreement, Note 1, Note 2 and the related loan documents in several ways, including but not limited to: failing to pay 2009 real property taxes; failing to pay roll back taxes; failing to make interest payments on Note 1 such that it has been in default since October 15, 2010; failing to pay Note 2 when it matured as of September 5, 2010. BB&T gave notice of default on September 29, 2010 and December 21, 2010. Exhibits B and C. Since that time Hook Point has made no payments to cure the defaults. BB&T was required to advance an additional \$66,483.27 as of October 25, 2010 to pay the delinquent 2009 real property and all delinquent roll back taxes plus penalties to Lexington County in order to avoid the subject property being sold at tax sale

5. As required by the Loan Agreement, Hook Point obtained an irrevocable Letter of Credit in the amount of \$1,500,000 issued by defendant First Reliance Bank dated November 16, 2007 naming BB&T as beneficiary. Exhibit D. On December 21, 2010 BB&T presented a draft to First Reliance demanding payment under the Letter of Credit. Exhibit E. BB&T's draft met all terms and conditions for payment under the

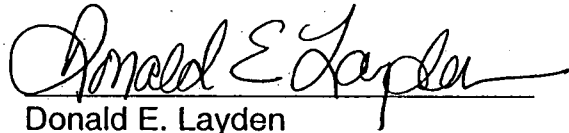
Letter of Credit. First Reliance is required to honor the draft in the full amount of \$1,500,000.

6. The purpose of the Loan Agreement was to finance a residential housing project developed by Hook Point. BB&T has a first mortgage on the development. Shortly before the Loan Agreement was executed in 2007 the project was appraised at approximately \$6,800,000 assuming completion as planned by Hook Point. BB&T has had the project appraised twice recently and its reconciliation of those appraisals puts the present value of the project at approximately \$1,800,000. No homes or lots have been sold in the development.

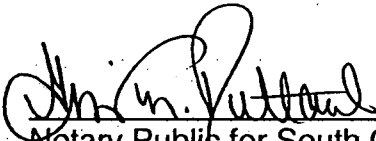
7. As part of the management of the arrangement between BB&T and Hook Point, a portion of the loan proceeds from Note 1 was made available to draw for the payment of interest. This arrangement is referred to as the "interest reserve" or "interest carry." All of the interest that has been "paid" on Note 1 from BB&T to Hook Point has been paid with draws from this interest reserve. Hook Point has not made any direct payments of interest on Note 1. When the interest carry was depleted with the September 2010 payment, Hook Point failed to make any further interest payments on Note 1. Hook Point has also not made any payments of principal during the life of Note 1.

8. The loans from BB&T to Hook Point were fully and unconditionally guaranteed by the individual members of Hook Point: Albert J. Dooley, Jr., Clifford C. Wingard, Ronald J. Vaughn, and Thomas H. Wingard. Exhibits F, G, H, and I. BB&T has asked counsel to prepare an action to foreclose on its first mortgage on the project

and an action against the guarantors. It is my understanding that those claims will be asserted as counter-claims and third party claims in this action. The individual guarantors will be responsible for any deficiencies on the amounts owed to BB&T. Given the greatly reduced value of the project the deficiency is likely to be substantial. Application of the \$1,500,000 Letter of Credit to the amounts owed by Hook Point will directly benefit the individual guarantors.


Donald E. Layden

SWORN to before me this
3 day of January, 2011.


Notary Public for South Carolina
My Commission Expires: 2/4/2012

BB&T
LOAN AGREEMENT

9521674730

Account Number

This Loan Agreement (the "Agreement") is made this 16th day of November, 2007 by and between BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation ("Bank"), and:

Hook Point, LLC, a South Carolina limited liability company ("Borrower") having its chief executive office at 111 East Main Street, Suite B, Lexington, South Carolina 29072 and whose member(s) is/are Albert J. Dooley, Jr., Thomas H. Wingard, Clifford C. Wingard, and Ronald J. Vaughn.

Albert J. Dooley, Jr., Thomas H. Wingard, Clifford C. Wingard, and Ronald J. Vaughn (individually "Guarantor" and collectively the "Guarantors").

The Borrower has applied to Bank for and the Bank has agreed to make, subject to the terms of this Agreement, the following loan(s) (hereinafter referred to, singularly or collectively, if more than one, as "Loan"):

Term Loan ("Term Loan") in the principal amount of \$5,100,000.00 for the purpose of development of Panama Point Subdivision which shall be evidenced by the Borrower's Promissory Note dated of even date herewith payable in consecutive monthly interest payments with a principal curtailment and shall bear interest at a rate as described more particularly in such note, the terms of which are incorporated herein by reference. The Term Loan shall mature on November 15, 2010, when the entire unpaid principal balance then outstanding plus accrued interest thereon shall be paid in full.

Line of Credit ("Line of Credit") in the maximum principal amount not to exceed \$2,000,000.00 at any one time outstanding for the purpose of construction of residential spec houses which shall be evidenced by the Borrower's Promissory Note(s) dated on or after the date hereof. The Line of Credit shall bear interest at the rate set forth in any such Note(s) evidencing all or any portion of the Line of Credit, the terms of which are incorporated herein by reference. Spec house construction is limited to five (5) homes at one time.

Additional terms, conditions and covenants of this Agreement are described in Schedule CC, or other schedule attached hereto, the terms of which are incorporated herein by reference. The promissory notes evidencing the Term Loan, the Line of Credit and Loan(s) tied to the Line of Credit are referred to herein as the "Note(s)" and shall include all extensions, renewals, modifications and substitutions thereof. The Term Loan, the Line of Credit, Loan(s) tied to the Line of Credit shall be secured by the collateral described in the security documents described below.

Section I Conditions Precedent

The Bank shall not be obligated to make any disbursement of Loan proceeds until all of the following conditions have been satisfied by proper evidence, execution, and/or delivery to the Bank of the following items in addition to this Agreement, all in form and substance satisfactory to the Bank and the Bank's counsel in their sole discretion:

USA Patriot Act Verification Information: Information or documentation, including but not limited to the legal name, address, tax identification number, driver's license, and date of birth (if the Borrower is an individual) of the Borrower sufficient for the Bank to verify the identity of the Borrower in accordance with the USA Patriot Act.

Note(s): The Note(s) evidencing the Loan(s) duly executed by the Borrower.

Mortgage(s): The Mortgage(s) of Real Estate in which Borrower, or other owner thereof, shall grant to Bank a mortgage lien on the specified real property and improvements thereon ("Mortgaged Property").

Title Insurance: A Standard ALTA mortgage policy from a company or companies approved by the Bank, providing coverage for the aggregate principal amount of the Note(s) which are secured by the Mortgage(s) and containing no title exceptions not approved by the Bank and Bank's counsel.

Survey: A certified copy of a recent survey of the Mortgaged Property prepared by a registered land surveyor or a civil engineer.

Flood Hazard Certification: Evidence satisfactory to Bank and Bank's counsel as to whether the Mortgaged Property is located within an area identified as having "special flood hazards" as such term is used in the Federal Flood Disaster Protection Act of 1973 (for each spec house under the line of credit).

Property Damage Insurance - A builders risk policy acceptable to the Bank shall be issued with BB&T as loss mortgagee for each spec house under construction.

Environmental Audit Report: A favorable "Phase I" unedited environmental audit covering the Mortgaged Property from an independent environmental engineering firm satisfactory to Bank which reflects that no hazardous waste, toxic substances, or other hazardous materials have contaminated the Mortgaged Property or, if the Mortgaged Property has been so contaminated, that it has been satisfactorily cleaned up in accordance with all Environmental Laws. The Bank shall be fully authorized to discuss all aspects of the audit with the engineering firm.

Security Agreement(s): Security Agreement(s) in which Borrower and any other owner (a "Debtor") of personal property collateral shall grant to Bank a first priority security interest in the personal property specified therein. (If Bank has or will have a security interest in any collateral which is inferior to the security interest of another creditor, Borrower must fully disclose to Bank any and all prior security interests, and Bank must specifically approve any such security interest which will continue during the Loan.)

Assignment of Pre Sales - BB&T will have an assignment of all pre sales deposits for Panama Point Subdivision.

UCC Financing Statements: Acknowledged copies of UCC Financing Statements duly filed in Borrower's or other owner's state of incorporation, organization or residence, and in all jurisdictions necessary, or in the opinion of the Bank desirable, to perfect the security interests granted in the Security Agreement(s), and certified copies of Information Requests identifying all previous financing statements on record for the Borrower or other owner, as appropriate from all jurisdictions indicating that no security interest has previously been granted in any of the collateral described in the Security Agreement(s), unless prior approval has been given by the Bank.

Authorization and Certificate: An Authorization and Certificate executed by each Debtor under which such Debtor authorizes Bank to file a UCC Financing Statement describing collateral owned by such Debtor.

Commitment/Origination Fee: A commitment/origination fee (or balance thereof) of \$25,500.00 payable to the Bank on the date of execution of the Term Loan Documents. A commitment/origination fee of \$300.00 will be payable to the Bank on the date of execution of each spec house loan.

Opinion of Counsel: An opinion of counsel for the Borrower satisfactory to the Bank and the Bank's counsel.

Guaranty: Guaranty Agreement(s) duly executed by the Guarantor(s).

Limited Liability Company Operating Agreement: A copy of the Borrower's Operating Agreement, certified by Borrower's manager(s) and/or members as to its completeness and accuracy.

Declaration of Limited Liability Company: A declaration or resolution from the Borrower's manager(s) authorizing the execution, delivery, and performance of the Loan Documents on or in a form provided by or acceptable to Bank.

Limited Liability Company Articles of Organization: A copy of the Articles of Organization and all other organizational documents of the Borrower, all filed with and certified by the Secretary of State of the Borrower's organization.

Appraisal(s): Two (2) copies of an appraisal ordered by the Bank of the estimated market value of the real and/or personal property offered as collateral for the Loan(s) referenced herein. The appraisal(s) must be addressed to the Bank and must conform to the Uniform Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation. Any deviation from the

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Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation. Any deviation from the USPAP must be explained in the appraisal(s). The appraiser(s) must be licensed and/or certified if required by applicable Federal Deposit Insurance Corporation regulations or state laws. Appraisal for the spec houses must be at 80% loan to value.

★ Additional Documents: Receipt by the Bank of other approvals, opinions, or documents as the Bank may reasonably request.

Letter of Credit - A Letter of Credit is to be issued in the amount of \$1,500,000.00 with BB&T (Branch Banking and Trust Company) as beneficiary. This Letter of Credit is to have unconditional draws and must be acceptable to BB&T and the Issuing Bank. Maturity date of Letter of Credit must extend ninety (90) days past the maturity date of the loan. Verbiage to be approved by Bank's attorney.

Section 2 Representations and Warranties

The Borrower and Guarantor(s) represent and warrant to Bank that:

- 2.01. Financial Statements. The balance sheet of the Borrower and its subsidiaries, if any, and the related Statements of Income and Retained Earnings of the Borrower and its subsidiaries, the accompanying footnotes together with the accountant's opinion thereon, and all other financial information previously furnished to the Bank, are true and correct and fairly reflect the financial condition of the Borrower and its subsidiaries as of the dates thereof, including all contingent liabilities of every type, and the financial condition of the Borrower and its subsidiaries as stated therein has not changed materially and adversely since the date thereof. Each Guarantor further represents and warrants that all financial statements provided by such Guarantor to Bank concerning such Guarantor's financial condition are true and correct and fairly represent such Guarantor's financial condition as of the dates thereof.
- 2.02. Name, Capacity and Standing. The Borrower's exact legal name is correctly stated in the initial paragraph of the Agreement. If the Borrower and/or any Guarantor is a corporation, general partnership, limited partnership, limited liability partnership, or limited liability company, each warrants and represents that it is duly organized and validly existing under the laws of its respective state of incorporation or organization; that it and/or its subsidiaries, if any, are duly qualified and in good standing in every other state in which the nature of their business shall require such qualification, and are each duly authorized by their board of directors, general partners or member/manager(s), respectively, to enter into and perform the obligations under the Loan Documents.
- 2.03. No Violation of Other Agreements. The execution of the Loan Documents, and the performance by the Borrower, by any and all pledgors (whether the Borrower or other owners of collateral property securing payment of the Loan (hereinafter sometimes referred to as the "Pledgor")) or by the Guarantor(s) thereunder will not violate any provision, as applicable, of its articles of incorporation, by-laws, articles of organization, operating agreement, agreement of partnership, limited partnership or limited liability partnership, or, of any law, other agreement, indenture, note, or other instrument binding upon the Borrower, Pledgor or Guarantor(s), or give cause for the acceleration of any of the respective obligations of the Borrower or Guarantor(s).
- 2.04. Authority. All authority from and approval by any federal, state, or local governmental body, commission or agency necessary to the making, validity, or enforceability of this Agreement and the other Loan Documents has been obtained.
- 2.05. Asset Ownership. The Borrower and each Guarantor have good and marketable title to all of the properties and assets reflected on the balance sheets and financial statements furnished to the Bank, and all such properties and assets are free and clear of mortgages, deeds of trust, pledges, liens, and all other encumbrances except as otherwise disclosed by such financial statements. In addition, each other owner of collateral has good and marketable title to such collateral, free and clear of any liens, security interests and encumbrances, except as otherwise disclosed to Bank.
- 2.06. Discharge of Liens and Taxes. The Borrower and its subsidiaries, if any, and each Guarantor have filed, paid, and/or discharged all taxes or other claims which may become a lien on any of their respective properties or assets, excepting to the extent that such items are being appropriately contested in good faith and for which an adequate reserve (in an amount acceptable to Bank) for the payment thereof is being maintained.
- 2.07. Regulation U. None of the Loan proceeds shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock in violation of the provisions of Regulation U of the Board of Governors of the Federal Reserve System.
- 2.08. ERISA. Each employee benefit plan, as defined by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), maintained by the Borrower or by any subsidiary of the Borrower or Guarantor(s) meets, as of the date hereof, the minimum funding standards of Section 302 of ERISA, all applicable requirements of ERISA and of the Internal Revenue Code of 1986, as amended, and no "Reportable Event" nor "Prohibited Transaction" (as defined by ERISA) has occurred with respect to any such plan.
- 2.09. Litigation. There is no claim, action, suit, or proceeding pending, threatened or reasonably anticipated before any court, commission, administrative agency, whether State or Federal, or arbitration which will materially adversely affect the financial condition, operations, properties, or business of the Borrower or its subsidiaries, if any, or the Guarantor(s), or the ability of the Borrower or the Guarantor(s) to perform their obligations under the Loan Documents.
- 2.10. Other Agreements. The representations and warranties made by Borrower to Bank in the other Loan Documents are true and correct in all respects on the date hereof.
- 2.11. Binding and Enforceable. The Loan Documents, when executed, shall constitute valid and binding obligations of the Borrower and Guarantors respectively, the execution of such Loan Documents has been duly authorized by the parties thereto, and are enforceable in accordance with their terms, except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally.
- 2.12. Commercial Purpose. The Loan(s) are not "consumer transactions", as defined in the South Carolina Uniform Commercial Code, and none of the collateral was or will be purchased or held primarily for personal, family or household purposes.

Section 3 Affirmative Covenants

The Borrower covenants and agrees that from the date hereof and until payment in full of all indebtedness and performance of all obligations owed under the Loan Documents, Borrower shall:

- 3.01. Maintain Existence and Current Legal Form of Business. (a) Maintain its existence and good standing in the state of its incorporation or organization, (b) maintain its current legal form of business indicated above, and, (c) as applicable, qualify and remain qualified as a foreign corporation, general partnership, limited partnership, limited liability partnership or limited liability company in each jurisdiction in which such qualification is required.
- 3.02. Maintain Records. Keep adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied, reflecting all financial transactions of the Borrower.
- 3.03. Maintain Properties. Maintain, keep, and preserve all of its properties (tangible and intangible) including the collateral necessary or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.
- 3.04. Conduct of Business. Continue to engage in an efficient, prudent, and economical manner in a business of the same general type as now conducted.
- 3.05. Maintain Insurance. Maintain insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in the same or a similar business, and business interruption insurance if required by Bank, which insurance may provide for reasonable deductible(s). The Bank shall be named as loss payee (Long Form) on all policies which apply to the Bank's collateral, and the Borrower shall deliver certificates of insurance at closing evidencing same. All such insurance policies shall provide, and the certificates shall state, that no policy will be terminated without 20 days prior written notice to Bank.
- 3.06. Comply With Laws. Comply in all respects with all applicable laws, rules, regulations, and orders including, without limitation, paying before the delinquency of all taxes, assessments, and governmental charges imposed upon it or upon its property, and all Environmental Laws.

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3.07. Right of Inspection. Permit the officers and authorized agents of the Bank, at any reasonable time or times in the Bank's sole discretion, to examine and make copies of the records and books of account of, to visit the properties of the Borrower, and to discuss such matters with any officers, directors, managers, members or partners, limited or general of the Borrower, and the Borrower's independent accountant as the Bank deems necessary and proper.

3.08. Reporting Requirements. Furnish to the Bank:

Annual Financial Statements: As soon as available and not more than one hundred twenty (120) days after the end of each fiscal year, balance sheets, statements of income, and retained earnings for the period ended and a statement of changes in the financial position, all in reasonable detail, and all prepared in accordance with GAAP consistently applied. The financial statements must be of the following quality or better: Compiled.

Notice of Litigation: Promptly after the receipt by the Borrower, or by any Guarantor of which Borrower has knowledge, of notice or complaint of any action, suit, and proceeding before any court or administrative agency of any type which, if determined adversely, could have a material adverse effect on the financial condition, properties, or operations of the Borrower or Guarantor, as appropriate.

Tax Returns: As soon as available each year, complete copies (including all schedules) of all state and federal tax returns filed by Borrower.

Notice of Defaults: Promptly upon discovery or knowledge thereof, notice of the existence of any event of default under this Agreement or any other Loan Documents.

USA Patriot Act Verification Information: Information or documentation, including but not limited to the legal name, address, tax identification number, driver's license, and date of birth (if the Borrower is an individual) of the Borrower sufficient for the Bank to verify the identity of the Borrower in accordance with the USA Patriot Act. Borrower shall notify Bank promptly of any change in such information.

Other Information: Such other information as the Bank may from time to time reasonably request.

3.09. Deposit Accounts. Maintain substantially all of its demand deposit/operating accounts with the Bank.

3.10. Affirmative Covenants from other Loan Documents. All affirmative covenants contained in any Mortgage, Security Agreement, Assignment of Leases and Rents, or other security document executed by the Borrower which are described in Section 1 hereof are hereby incorporated by reference herein.

Section 4 Guarantor(s) Covenants

Each Guarantor covenants and agrees that from the date hereof and until payment in full of all indebtedness and performance of all obligations owed under the Loan Documents, Guarantor shall:

4.01. Maintain Existence and Current Legal Form of Business. If Guarantor is a corporation, partnership, limited partnership, limited liability partnership or limited liability company, (a) maintain its existence and good standing in the state of its incorporation or organization, (b) maintain its current legal form of business as shown on the guaranty agreement provided by Guarantor to Bank in connection with the Loan, and (c) without the Bank's prior written consent, change Guarantor's name, or enter into any merger, consolidation, reorganization or exchange of stock, ownership interests or assets, and (d) as applicable, qualify and remain qualified as a foreign corporation, general partnership, limited partnership, limited liability partnership or limited liability company in each jurisdiction in which such qualification is required.

4.02. Maintain Properties. Not, without the prior written consent of Bank, sell, transfer or otherwise dispose of all or substantially all of Guarantor's properties (tangible and intangible), except in the ordinary course of business.

4.03. Comply with Laws. Comply in all respects with all applicable laws, rules, regulations, and orders including, without limitation, paying before the delinquency of all taxes, assessments, and governmental charges imposed or assessed upon Guarantor or upon Guarantor's property, and all Environmental Laws.

4.04. Reporting Requirements. Furnish to the Bank:

Annual Financial Statement(s): If Guarantor is an individual, a personal financial statement promptly after the anniversary date of the Loan, on form provided by the Bank and in such reasonable detail as the Bank may require; or, if Guarantor is a corporation, general partnership, limited partnership, limited liability partnership or limited liability company, as soon as available and not more than one hundred twenty (120) days after the end of each fiscal year of Guarantor, balance sheets, statements of income, and retained earnings for the period ended and a statement of changes in financial position, on form(s) to be provided by the Bank, all in reasonable detail, and all prepared in accordance with GAAP consistently applied; and, such financial statements must be of the following quality or better: Copy of year end tax returns with all schedules attached.

Notice of Litigation: Promptly after the receipt by Guarantor, or by Borrower of which Guarantor has knowledge, of notice of any action, suit, and proceeding before any court or governmental agency of any type which, if determined adversely, could have a material adverse effect on the financial condition, properties, or operations of the Guarantor or Borrower, as appropriate.

4.05. Transfer of Ownership. Not, without the prior written consent of the Bank: If Guarantor is a corporation, (a) issue, transfer or sell any new class of stock, or (b) issue, transfer or sell, in the aggregate, from its treasury stock and/or currently authorized but unissued shares of any class of stock, more than 10% of the total number of all such issued and outstanding shares as of the date of this Agreement; or, if Guarantor is a general partnership, limited partnership, limited liability partnership or limited liability company, issue, transfer or sell any interest in Guarantor.

4.06. Tax Returns: As soon as available each year, furnish complete copies (including all schedules) of all state and federal tax returns filed by Guarantor.

4.07. Other Information: Furnish such other information as the Bank may from time to time reasonably request.

Section 5 Financial Covenants

The Borrower covenants and agrees that from the date hereof until payment in full of all indebtedness and the performance of all obligations under the Loan Documents, the Borrower shall at all times maintain the following financial covenants and ratios all in accordance with GAAP unless otherwise specified:

Other Financial Covenants or Delete.

Section 6 Negative Covenants

The Borrower covenants and agrees that from the date hereof and until payment in full of all indebtedness and performance of all obligations under the Loan Documents, the Borrower shall not, without the prior written consent of the Bank:

6.01. Liens. Create, incur, assume, or suffer to exist any lien upon or with respect to any of Borrower's properties, or the properties of any Pledgor securing payment of the Loan, now owned or hereafter acquired, except:

(a) Liens and security interests in favor of the Bank;

(b) Liens for taxes not yet due and payable or otherwise being contested in good faith and for which appropriate reserves are maintained;

(c) Other liens imposed by law not yet due and payable, or otherwise being contested in good faith and for which appropriate reserves are maintained;

(d) purchase money security interests on any property hereafter acquired, provided that such lien shall attach only to the property acquired.

6.02. Debt. Create, incur, assume, or suffer to exist any debt, except:

(a) Debt to the Bank;

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- (b) Debt outstanding on the date hereof and shown on the most recent financial statements submitted to the Bank;
 - (c) Accounts payable to trade creditors incurred in the ordinary course of business;
 - (d) Debt secured by purchase money security interests as outlined above in Section 6.01 (c);
- 6.03. Change of Legal Form of Business: Purchase of Assets: Change Borrower's name or the legal form of Borrower's business as shown above, whether by merger, consolidation, conversion or otherwise, and Borrower shall not purchase all or substantially all of the assets or business of any Person.
- 6.04. Leases. Create, incur, assume, or suffer to exist any leases, except:
- 6.05. Guaranties. Assume, guarantee, endorse, or otherwise be or become directly or contingently liable for obligations of any Person, except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.
- 6.06. Disposition of Assets. Sell, lease, or otherwise dispose of any of its assets or properties except in the ordinary and usual course of its business.
- 6.07. Transfer of Ownership. If Borrower is a corporation, (a) issue, transfer or sell any new class of stock, or (b) issue, transfer or sell, in the aggregate, from its treasury stock and/or currently authorized but unissued shares of any class of stock, more than 10% of the total number of all such issued and outstanding shares as of the date of this Agreement. If Borrower is a general partnership, limited partnership, limited liability partnership or limited liability company, issue, transfer or sell any interest in Borrower.
- 6.08. Negative Covenants from other Loan Documents. All negative covenants contained in any Deed of Trust, Security Agreement, Assignment of Leases or Rents, or other security document executed by the Borrower which are described in Section 1 hereof are hereby incorporated by reference herein.

Section 7 Hazardous Materials and Compliance with Environmental Laws

- 7.01. Investigation. Borrower hereby certifies that it has exercised due diligence to ascertain whether its real property, including without limitation the Mortgaged Property, is or has been affected by the presence of asbestos, oil, petroleum or other hydrocarbons, urea formaldehyde, PCBs, hazardous or nuclear waste, toxic chemicals and substances, or other hazardous materials (collectively, "Hazardous Materials"), as defined in applicable Environmental Laws. Borrower represents and warrants that there are no such Hazardous Materials contaminating its real property, nor have any such materials been released on or stored on or improperly disposed of on its real property during its ownership, occupancy or operation thereof. Borrower hereby agrees that, except in strict compliance with applicable Environmental Laws, it shall not knowingly permit any release, storage or contamination as long as any indebtedness or obligations to Bank under the Loan Documents remains unpaid or unfulfilled. In addition, Borrower does not have or use any underground storage tanks on any of its real property, including the Mortgaged Property which are not registered with the appropriate Federal and/or State agencies and which are not properly equipped and maintained in accordance with all Environmental Laws. If requested by Bank, Borrower shall provide Bank with all necessary and reasonable assistance required for purposes of determining the existence of Hazardous Materials on the Mortgaged Property, including allowing Bank access to the Mortgaged Property, and access to Borrower's employees having knowledge of, and to files and records within Borrower's control relating to the existence, storage, or release of Hazardous Materials on the Mortgaged Property.
- 7.02. Compliance. Borrower agrees to comply with all applicable Environmental Laws, including, without limitation, all those relating to Hazardous Materials. Borrower further agrees to provide Bank, and all appropriate Federal and State authorities, with immediate notice in writing of any release of Hazardous Materials on the Mortgaged Property and to pursue diligently to completion all appropriate and/or required remedial action in the event of such release.
- 7.03. Remedial Action. Bank shall have the right, but not the obligation, to undertake all or any part of such remedial action in the event of a release of Hazardous Materials on the Mortgaged Property and to add any expenditures so made to the principal indebtedness secured by the Mortgage. Borrower agrees to indemnify and hold Bank harmless from any and all loss or liability arising out of any violation of the representations, covenants, and obligations contained in this Section 7, or resulting from the recording of the Mortgage.

Section 8 Events of Default

The following shall be "Events of Default" by Borrower or any Guarantor:

- 8.01. The failure to make prompt payment of any installment of principal or interest on any of the Note(s) when due or payable.
- 8.02. Should any representation or warranty made in the Loan Documents prove to be false or misleading in any material respect.
- 8.03. Should any report, certificate, financial statement, or other document furnished prior to the execution of or pursuant to the terms of this Agreement prove to be false or misleading in any material respect.
- 8.04. Should the Borrower, any Guarantor default on the performance of any other obligation of indebtedness when due or in the performance of any obligation incurred in connection with money borrowed.
- 8.05. Should the Borrower, any Guarantor or any Pledgor breach any covenant, condition, or agreement made under any of the Loan Documents.
- 8.06. Should a custodian be appointed for or take possession of any or all of the assets of the Borrower or any Guarantor, or should the Borrower or any Guarantor either voluntarily or involuntarily become subject to any insolvency proceeding, including becoming a debtor under the United States Bankruptcy Code, any proceeding to dissolve the Borrower or any Guarantor, any proceeding to have a receiver appointed, or should the Borrower or any Guarantor make an assignment for the benefit of creditors, or should there be an attachment, execution, or other judicial seizure of all or any portion of the Borrower's or any Guarantor's assets, including an action or proceeding to seize any funds on deposit with the Bank, and such seizure is not discharged within 30 days.
- 8.07. Should final judgment for the payment of money be rendered against the Borrower or any Guarantor which is not covered by insurance and shall remain undischarged for a period of 30 days unless such judgment or execution thereon be effectively stayed.
- 8.08. Upon the death of, or termination of existence of, or dissolution of, any Borrower, Pledgor or Guarantor.
- 8.09. Should the Bank in good faith deem itself, its liens and security interests, if any, or any debt thereunder unsafe or insecure, or should the Bank believe in good faith that the prospect of payment of any debt or other performance by the Borrower or any Guarantor is impaired.
- 8.10. Should any lien or security interest granted to Bank to secure payment of the Note(s) terminate, fail for any reason to have the priority agreed to by Bank on the date granted, or become unperfected or invalid for any reason.

Section 9 Remedies Upon Default

Upon the occurrence of any of the above listed Events of Default, the Bank may at any time thereafter, at its option, take any or all of the following actions, at the same or at different times:

- 9.01. Declare the balance(s) of the Note(s) to be immediately due and payable, both as to principal and interest, without presentment, demand, protest, or notice of any kind, all of which are hereby expressly waived by Borrower and, each Guarantor, and such balance(s) shall accrue interest at the Default Rate as provided herein until paid in full;
- 9.02. Require the Borrower or Guarantor(s) to pledge additional collateral to the Bank from the Borrower's or any Guarantor's assets and properties, the acceptability and sufficiency of such collateral to be determined in the Bank's sole discretion;
- 9.03. Take immediate possession of and foreclose upon any or all collateral which may be granted to the Bank as security for the indebtedness and obligations of Borrower or any Guarantor under the Loan Documents;

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9.04. Exercise any and all other rights and remedies available to the Bank under the terms of the Loan Documents and applicable law, including the South Carolina Uniform Commercial Code;

9.05. Any obligation of the Bank to advance funds to the Borrower or any other Person under the terms of under the Note(s) and all other obligations, if any, of the Bank under the Loan Documents shall immediately cease and terminate unless and until Bank shall reinstate such obligation in writing.

Section 10 Miscellaneous Provisions

10.01. Definitions.

"Default Rate" shall mean a rate of interest equal to Bank's Prime Rate plus five percent (5%) per annum (not to exceed the legal maximum rate) from and after the date of an Event of Default hereunder which shall apply, in the Bank's sole discretion, to all sums owing, including principal and interest, on such date.

"Environmental Laws" shall mean all federal and state laws and regulations which affect or may affect the Mortgaged Property, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. Sections 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), the Pollution Control Act (1976 S.C. Code 48-1-10 et seq.), the Erosion and Sediment Reduction Act of 1983 (1976 S.C. Code 48-18-10 et seq.), the South Carolina Mining Act (1976 S.C. Code 48-19-10 et seq.), as such laws or regulations have been amended or may be amended.

"Loan Documents" shall mean this Agreement including any schedule attached hereto, the Note(s), the Deed(s) of Trust, the Mortgage(s), the Security Agreement(s), the Assignment(s) of Leases and Rents, all UCC Financing Statements, the Guaranty Agreement(s), and all other documents, certificates, and instruments executed in connection therewith, and all renewals, extensions, modifications, substitutions, and replacements thereto and therefore.

"Person" shall mean an individual, partnership, corporation, trust, unincorporated organization, limited liability company, limited liability partnership, association, joint venture, or a government agency or political subdivision thereof.

"GAAP" shall mean generally accepted accounting principles as established by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants, as amended and supplemented from time to time.

"Prime Rate" shall mean the rate of interest per annum announced by the Bank from time to time and adopted as its Prime Rate, which is one of several rate indexes employed by the Bank when extending credit, and may not necessarily be the Bank's lowest lending rate.

10.02. Non-impairment. If any one or more provisions contained in the Loan Documents shall be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained therein shall not in any way be affected or impaired thereby and shall otherwise remain in full force and effect.

10.03. Applicable Law. The Loan Documents shall be construed in accordance with and governed by the laws of the State of South Carolina.

10.04. Waiver. Neither the failure or any delay on the part of the Bank in exercising any right, power or privilege granted in the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any other right, power, or privilege which may be provided by law.

10.05. Modification. No modification, amendment, or waiver of any provision of any of the Loan Documents shall be effective unless in writing and signed by the Borrower and Bank.

10.06. Payment Amount Adjustment. In the event that any Loan(s) referenced herein has a variable (floating) interest rate and the interest rate increases, Bank, at its sole discretion, may at any time adjust the Borrower's payment amount(s) to prevent the amount of interest accrued in a given period to exceed the periodic payment amount or to cause the Loan(s) to be repaid within the same period of time as originally agreed upon.

10.07. Stamps and Fees. The Borrower shall pay all federal or state stamps, taxes, or other fees or charges, if any are payable or are determined to be payable by reason of the execution, delivery, or issuance of the Loan Documents or any security granted to the Bank; and the Borrower and Guarantor agree to indemnify and hold harmless the Bank against any and all liability in respect thereof.

10.08. Attorneys' Fees. In the event the Borrower or any Pledgor or Guarantor shall default in any of its obligations hereunder and the Bank believes it necessary to employ an attorney to assist in the enforcement or collection of the indebtedness of the Borrower to the Bank, to enforce the terms and provisions of the Loan Documents, to modify the Loan Documents, or in the event the Bank voluntarily or otherwise should become a party to any suit or legal proceeding (including a proceeding conducted under the Bankruptcy Code), the Borrower and Guarantors agree to pay the reasonable attorneys' fees of the Bank and all related costs of collection or enforcement that may be incurred by the Bank. The Borrower and Guarantor shall be liable for such attorneys' fees and costs whether or not any suit or proceeding is actually commenced.

10.09. Bank Making Required Payments. In the event Borrower shall fail to maintain insurance, pay taxes or assessments, costs and expenses which Borrower is, under any of the terms hereof or of any Loan Documents, required to pay, or fail to keep any of the properties and assets constituting collateral free from new security interests, liens, or encumbrances, except as permitted herein, Bank may at its election make expenditures for any or all such purposes and the amounts expended together with interest thereon at the Default Rate, shall become immediately due and payable to Bank, and shall have benefit of and be secured by the collateral; provided, however, the Bank shall be under no duty or obligation to make any such payments or expenditures.

10.10. Right of Offset. Any indebtedness owing from Bank to Borrower may be set off and applied by Bank on any indebtedness or liability of Borrower to Bank, at any time and from time to time after maturity, whether by acceleration or otherwise, and without demand or notice to Borrower. Bank may sell participations in or make assignments of any Loan made under this Agreement, and Borrower agrees that any such participant or assignee shall have the same right of setoff as is granted to the Bank herein.

10.11. UCC Authorization. Borrower authorizes Bank to file such UCC Financing Statements describing the collateral in any location deemed necessary and appropriate by Bank.

10.12. Modification and Renewal Fees. Bank may, at its option, charge any fees for modification, renewal, extension, or amendment of any terms of the Note(s) permitted by law.

10.13. Conflicting Provisions. If provisions of this Agreement shall conflict with any terms or provisions of any of the Note(s) or Security Agreement(s), the provisions of such Note(s) or Security Agreement(s), as appropriate, shall take priority over any provisions in this Agreement.

10.14. Notices. Any notice permitted or required by the provisions of this Agreement shall be deemed to have been given when delivered in writing to the City Executive or any Vice President of the Bank at its offices in Lexington, South Carolina, and to the Member/Manager of the Borrower at its offices in Lexington, South Carolina when sent by certified mail and return receipt requested.

10.15. Consent to Jurisdiction. Borrower hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement may be instituted in the Superior Court in Greenville County, South Carolina, or the United States District Court for South Carolina Greenville Division, or in such other appropriate court and venue as Bank may choose in its sole discretion. Borrower consents to the jurisdiction of such courts and waives any objection relating to the basis for personal or in rem jurisdiction or to venue which Borrower may now or hereafter have in any such legal action or proceedings.

10.16. WAIVER OF JURY TRIAL. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO MAKE THE LOAN AND ENTER INTO THIS AGREEMENT. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION. NO

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REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

10.17. Counterparts. This Agreement may be executed by one or more parties on any number of separate counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

10.18. Entire Agreement. The Loan Documents embody the entire agreement between Borrower and Bank with respect to the Loans, and there are no oral or parol agreements existing between Bank and Borrower with respect to the Loans which are not expressly set forth in the Loan Documents.

10.19.

[SIGNATURES ON FOLLOWING PAGE]

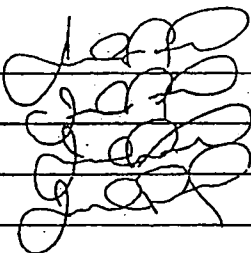
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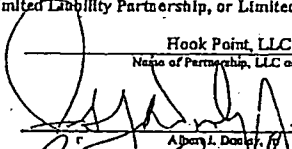
IN WITNESS WHEREOF, the Bank, Borrower and Guarantor(s) have caused this Agreement to be duly executed under seal all as of the date first above written.

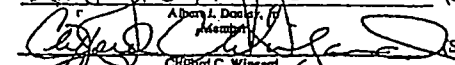
Borrower is a General Partnership, Limited Partnership, Limited Liability Partnership, or Limited Liability Company:

WITNESS:

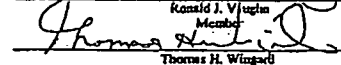


Hook Point, LLC (SEAL)
Name of Partnership, LLC or LLP

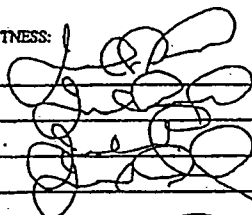
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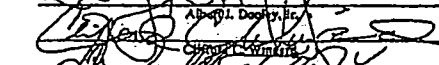
By:  (SEAL)
Thomas H. Wingard
Member

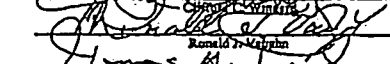
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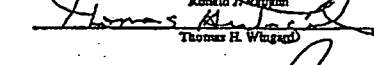


Additional Co-Borrowers or Guarantors:

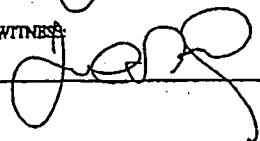
 (SEAL)

 (SEAL)

 (SEAL)

 (SEAL)
Thomas H. Wingard

WITNESS:



BRANCH BANKING AND TRUST COMPANY

By: 

Title: J. Allen Risinger
Senior Vice President/BSO

SCHEDULE "CC" TO BB&T LOAN AGREEMENT (Commercial/Residential Construction and/or Development Loan)

This Schedule "CC" is an attachment to and a part of the Loan Agreement (the "Loan Agreement") dated November 16, 2007, between Branch Banking and Trust Company ("Bank") and Hook Point, LLC ("Borrower").

CC.01. Definitions. In addition to the words and terms defined elsewhere in this Loan Agreement, the following terms shall have the following specified meanings:

- (a) "Borrower's Equity" shall mean the cost of the Mortgaged Property plus the estimated cost of the Improvements, minus the amount of the Loan.
- (b) "Closing Date" shall mean the date as of which the Note is executed by the Borrower and the Bank.
- (c) "Completion Date" shall mean the date upon which the Bank has received evidence satisfactory to it that the Improvements have been completed in accordance with the Construction Documents, which shall occur not later than August 15, 2008.
- (d) "Construction Documents" shall mean the final plans, specifications, blueprints, and shop drawings for the construction of the Improvements prepared by or used by the General Contractor and approved by the Bank, including such amendments thereto as may from time to time be made by Borrower and approved by the Bank and described on Exhibit Title hereto.
- (e) "Mortgage" shall mean the Mortgage of Real Estate granted and conveyed by the Borrower, or other owner, to the Bank encumbering the Mortgaged Property.
- (f) "Event of Default" shall mean any of the events of default listed in the Note or Mortgage, in Section 8 of the Loan Agreement, or in Section CC.07 of this Schedule "CC."
- (g) "General Contractor" shall mean the contractor(s), if any, who contracts with the Borrower to build or install the Improvements, and who shall be approved by Bank prior to Borrower's execution of any contract(s) therewith.
- (h) "Governmental Authorities" shall mean any governmental office, officer, or official (including health and environmental) whose consent or approval is required as a prerequisite to the commencement or continuation of the construction of the Improvements or to the operation and occupancy of the Project or to the performance of any act or obligation or the observance of any agreement, provision, or condition of whatsoever nature contained in the Loan Agreement.
- (i) "Improvements" shall mean all improvements now existing and to be constructed on the Mortgaged Property, including without limitation roads, utility lines, buildings, fixtures and structures of any type.
- (j) "Loan" shall mean construction loan and related credit commitments to Borrower evidenced by the Note.
- (k) "Mortgaged Property" shall mean the real property and fixtures described in the Mortgage.
- (l) "Note" shall mean the promissory note(s) of the Borrower dated as of the Closing Date payable to the order of the Bank in the principal amount of \$5,100,000.00, and all substitutions, replacements, extensions, modifications, or renewals thereof.
- (m) "Project" shall mean the Improvements and the Mortgaged Property collectively.

CC.02. Disbursements. Bank agrees that it will from time to time, so long as Borrower has not committed an Event of Default, make advances to Borrower up to the maximum amount of the Loan commitment in accordance with the conditions of this Loan Agreement.

- (a) **Disbursement Requests.** Borrower will submit all disbursement requests at least ten (10) business days prior to the requested advance date. Borrower will submit no more than one (1) disbursement request per calendar month unless otherwise approved by Bank.
- (b) **Disbursement Amounts.** Following the receipt of a request from Borrower for an advance, Bank shall determine the maximum amount of the advance. If the construction contract under which an advance is requested provides for a retainage, Bank shall advance no more than the amount actually due to the General Contractor. The value of each completed portion of the Improvements at any time shall be determined by Bank in its sole discretion and shall be binding on Borrower. The maximum amount which will be advanced shall be determined as follows:

- ☒ Advances shall be made on the basis of 100% of the value of the Mortgaged Property plus the Improvements which have been completed, based on the Construction Budget, minus the Borrower's Equity and any contingency reserve provided for in the Construction Budget, in the Bank's discretion, upon satisfactory site inspection of the Project by an officer or representative of Bank and/or receipt by Bank of notarized copies of the General Contractor's Application and Certificate for Payment (American Institute of Architects forms G702 and G703), invoices representing costs incurred, and such other certificates as may be required by Bank.
- ☐ Advances shall be made on the basis of Percentage% of the value of the Improvements which have been completed, based on the Construction Budget minus any contingency reserve provided for in the Construction Budget, in the Bank's discretion, ☐ plus the Mortgaged Property, upon satisfactory site inspection of the Project by an officer or representative of Bank and/or receipt by Bank of notarized copies of the General Contractor's Application and Certificate for Payment (American Institute of Architects forms G702 and G703), invoices representing costs incurred, and such other certificates as may be required by Bank.
- ☐ Exhibit "Exhibit Title" which is attached hereto lists the amount which Bank will advance for each portion of the Improvements which is completed. Bank, in its sole discretion, will determine when a portion of the Improvements is completed. If the amount allocated to any individual portion of the Improvements is not fully expended on that portion, Bank may limit its advance to the amount actually expended on that portion, and the unadvanced amount may not be reallocated to another portion unless approved by Bank.

- (c) **Deposit of Disbursements.** Bank shall make all advances by deposit to Borrower's demand deposit account with Bank, unless Bank deems it appropriate to make advances by some other method.
- (d) **Option to Pay Contractors.** At its option, Bank may make advances directly to the General Contractor or any unpaid subcontractor, laborer, or material supplier which has provided labor, services, or materials in connection with the construction of the Improvements, and the execution of this Loan Agreement shall hereby constitute an irrevocable direction and authorization of Bank by Borrower to so disburse Loan funds. No further authorization from Borrower shall be necessary to warrant such direct advances, all of which shall be secured by the Mortgage as though fully made to Borrower, regardless of the disposition thereof by the General Contractor or any subcontractor, laborer, or material supplier so paid.

CC.03. Conditions Precedent to Initial Disbursement. The Bank shall not be obligated to make the initial advance to Borrower until all of the conditions in Section 1 of the Loan Agreement have been satisfied and all of the following conditions have been satisfied by proper evidence, execution, and/or delivery to Bank of the following items, all in form and substance satisfactory to Bank and Bank's counsel, unless waived in writing by Bank:

- (a) **Evidence of Zoning and Permits.** Satisfactory evidence of the zoning designation for the Project, the permitted uses of the Project under such zoning designation, and compliance by the Project and its intended uses with such zoning designation and with all other applicable regulations or rules of Governmental Authorities including without limitation a copy of any building permits and any other documents related to compliance with requirements for density, land use, waste disposal, or continuation of construction.
- (b) **Construction Documents.** One set of the Construction Documents must be submitted to Bank not less than ten (10) days prior to the Closing Date.
- (c) **Construction Contracts.** Copies of the construction contracts and architects contracts executed by the General Contractor and the architect, and copies of all other executed contracts as may be required by Bank.
- (d) **Construction Budget.** A detailed breakdown of the cost of constructing the Improvements, including an itemization of nonconstruction and land costs, and a funding schedule for all items ("Construction Budget").
- (e) **Construction Time Schedule.** A detailed schedule of the dates by which construction of portions of the Improvements shall be completed.

BB&T

SCHEDULE "CC" TO BB&T LOAN AGREEMENT (Commercial/Residential Construction and/or Development Loan)

- (f) Flood Insurance Policy. If Bank determines that the Mortgaged Property is located in an area having special flood hazards, a flood insurance policy for the insurable improvements naming Bank as mortgagee (loss payee) must be submitted to Bank.
- (g) Hazard/Liability/Builder's Risk Insurance. An insurance policy covering hazards (not less than Loan), liabilities, and builder's risks for an amount and from an insurance company satisfactory to Bank, which shall name Bank as loss payee (Mortgagee's long form).
- (h) Payment/Performance Bonds. Dual obligee payment and/or performance bonds, from an insurance company acceptable to Bank, provided by the General Contractor and/or the subcontractor(s).
- (i) Other Documents. Borrower will provide such other documents, certificates, or opinions as may be required by Bank.
- (j) No Event of Default. In addition to the conditions listed above, Borrower must not have committed nor suffered an Event of Default.
- (k) Evidence satisfactory to Bank of payment of Borrower's Equity.
- (l) Consents from General Contractor and architect to assignment to Bank of the construction contract and the architect's contract.

CC.04. Conditions Precedent to Advances After Initial Disbursement. Bank shall not be obligated to make any advances after the initial advance until all of the following conditions have been satisfied:

- (a) Each and every one of the conditions stated in Section CC.03 of this Schedule "CC."
- (b) No lien, security interest, or other encumbrance shall have been permitted to attach to the Mortgaged Property except taxes for the current year and others specifically approved by Bank, and Bank shall have received all releases and waivers of liens from General Contractor or subcontractors as may be required by Bank.
- (c) Construction of the Improvements shall have been in accordance with the Construction Documents in a good and workmanlike manner, and the Improvements shall not have been materially damaged, in Bank's opinion, by fire, storm or otherwise.
- (d) There has been no change in the status of the title to the Mortgaged Property, and there are no survey exceptions not previously approved by Bank in writing. Bank may require title insurance policy endorsement prior to any advance.
- (e) There has been no material adverse change in the financial condition of the Borrower.
- (f) A foundation survey, unless waived in writing by Bank, shall have been furnished within ten (10) days after the laying of the foundation of the Improvements, showing no encroachment on any boundary line, easement, building setback line, or other restricted area.
- (g) All change orders or other material changes in the construction of the Improvements which differ from the Construction Documents and which increase the cost of any portion of the Improvements by one percent (1%) or more over the cost estimated for that portion in the Construction Budget have been approved by Bank.
- (h) Bank is satisfied with the progress of construction, and in the opinion of Bank, the estimated remaining cost of the construction of the Improvements does not exceed the remaining unadvanced principal balance of the Loan.
- (i) No Event of Default has occurred and remains unremedied.

CC.05. Conditions Precedent to Final Advance. Bank shall not be obligated to make the final Loan advance until all of the following conditions have been satisfied:

- (a) Each and every one of the conditions stated in Section CC.04 of this Schedule "CC."
- (b) The Improvements have been fully completed in a good and workmanlike manner and in accordance with the Construction Documents, the Project has passed inspection by the architect and the Construction Officer or another agent of Bank, and certificates of completion and occupancy have been issued by all appropriate Governmental Authorities.
- (c) If required by Bank, an "as built" survey of the Project.
- (d) The final Loan advance shall be made by Bank no more than twenty-one (21) days after the Completion Date.

CC.06. Additional Covenants and Agreements. In addition to the representations, warranties, covenants, and agreements contained in Sections 2, 3, 4, and 5 of the Loan Agreement, the following covenants and agreements apply to the Loan:

- (a) No Commencement. Prior to the recordation of the Mortgage, without prior written approval of the Bank, no work of any kind (including the destruction or removal of any existing improvements, site work, clearing, grubbing, draining, or fencing of the Mortgaged Property) shall have commenced or shall have been performed on the Mortgaged Property, no equipment or material shall have been delivered to or upon the Mortgaged Property for any purpose whatsoever, and no contract (or memorandum or affidavit thereof) for the supplying of labor, materials, or services for the construction of the Improvements shall have been recorded in the mechanic's liens or other appropriate records in the county where the Mortgaged Property is located.
- (b) Commencement of Construction. Borrower shall begin construction of the Improvements as soon as possible after recordation of the Mortgage, and in any event, within thirty (30) days after the Closing Date; shall continue conscientiously the construction of the Improvements; shall not discontinue or permit the discontinuance of work on the Improvements for as long as ten (10) consecutive days, unless weather or other factors beyond the control (force majeure) of Borrower intervene; and, in any event, shall complete the Improvements in strict compliance with the Construction Documents, free and clear of liens or claims of liens for material supplied or for labor services performed in connection with the construction of the Improvements on or prior to the Completion Date.
- (c) Payment of Contractors. Borrower shall promptly advise Bank in writing if Borrower receives any notice, written or oral, from the General Contractor, any laborer, subcontractor, or material furnisher to the effect the General Contractor or such laborer, subcontractor, or material furnisher has not been paid for any labor or materials furnished to or contained in the Project.
- (d) Compliance with Construction Documents. Borrower shall, upon demand of Bank, correct any defects in the Improvements or any departure from the Construction Documents not approved by Bank. Except for changes which increase the cost of any portion of the Improvements by one percent (1%) or less over the cost estimated for that portion in the Construction Budget, Borrower shall not change, alter, or amend either the Construction Documents or installation of the Improvements without the prior written consent of Bank, and will not permit any deviations by any contractor(s) from the Construction Documents.
- (e) Subcontractors. Borrower shall deliver to Bank, upon request, the names of persons or companies with whom the General Contractor has contracted or intends to contract for the construction of the Improvements or for the furnishing of labor or materials therefor.
- (f) Inspection. Borrower shall permit Bank and its authorized agents to enter upon the Project during normal working hours as often as the Bank desires, for the purpose of inspecting the construction of the Improvements, and its books and records with respect to the Project. When requested, Borrower shall furnish to Bank detailed plans, shop drawings, and specifications which relate to the Improvements. Any failure by Bank or its authorized agents to discover or to reject unsatisfactory or defective materials or workmanship shall not make Bank liable to Borrower or to any other person, nor shall any prior failure constitute a waiver of the Bank's right to subsequently reject any such workmanship or materials.
- (g) Fees and Expenses. Regardless of whether the initial advance is made or all funds are advanced hereunder, Borrower agrees to pay all expenses incurred by Bank or by Borrower in order to meet the Bank's requirements in connection with the Loan, including without limitation commitment fees and renewal fees or deposits to Bank, appraisal fees, survey fees, recording fees, title insurance premiums, builder's risk and other insurance premiums, property taxes, intangible taxes, engineer's or inspector's fees (including agents of the Bank), and such reasonable legal fees incurred by Bank in connection with the making of the Loan and the enforcement of the Bank's rights hereunder. Bank may pay any such amounts and, if Borrower shall not reimburse Bank therefor, Bank may add same to the unpaid principal balance of the Loan.
- (h) Use of Loan Funds. Borrower shall use all Loan proceeds solely in payment of costs incurred in connection with acquiring, constructing the Improvements on, and developing the Mortgaged Property, in accordance with the Construction Documents and the Construction Budget furnished by the Borrower. Borrower shall furnish, whenever requested, statements showing an itemization of all expenditures and unpaid invoices.

SCHEDULE "CC" TO BB&T LOAN AGREEMENT (Commercial/Residential Construction and/or Development Loan)

- (l) Bonds. Bank shall have no obligation or liability in connection with any bonds, including performance or completion bonds, that may be obtained in order to develop the Mortgaged Property.
- (j) Additional Documentation. At the request of Bank, Borrower shall perform any act or execute any additional documents required by Bank to secure the Loan, to confirm the first priority lien of the Mortgage, to comply with this Loan Agreement, or to correct any error or defect in any one of the Loan Documents.
- (k) Deposits to Cover Deficiencies. If and whenever Bank shall determine and notify Borrower that the amount of unadvanced Loan proceeds is less than the amount required to fully complete and pay for the Improvements and Bank shall demand that Borrower deposit with Bank an amount equal to such deficiency, as determined by Bank, Borrower shall comply with such demand within ten (10) days from the date thereof. The judgment and determination of Bank in this regard shall be final and conclusive.
- (l) Termination of Contract with General Contractor. Borrower shall not, without the prior written approval of Bank, terminate or cancel any contract with the General Contractor in connection with the construction of the Improvements. Borrower shall immediately notify Bank in writing of any additional or substitute contractor(s) with whom Borrower deals, and Bank has the right to require the submission of any additional documentation regarding such contractor(s).
- (m) Construction Officer. If checked here ☒, Bank will designate a construction officer (which may include an independent architect in the Bank's sole discretion, "Construction Officer") whose duties will include but are not limited to the following: review of the Construction Documents and all proposed changes thereto; inspection of the Improvements for basic conformity with the Construction Documents; determination of the accuracy of Borrower's disbursement requests with regard to the percentage of the construction work completed; and determination that the funds not yet disbursed under the Note are sufficient to complete the Improvements in accordance with the Construction Documents. Inspections by the Construction Officer shall not be building code compliance or quality inspections. In return for services rendered by the Construction Officer, Borrower will pay Bank \$350.00 per inspection and/or all reasonable fees of any independent architect.
- (n) Collateral Releases. If checked here ☒, Bank hereby agrees to release one or more lots, parcels or units of the Mortgaged Property or such other collateral which Borrower has pledged to secure advances under the Note ("Lot") under the following terms and conditions:
 - (i) The Lot is the subject of a binding contract for sale at a price satisfactory to Bank;
 - (ii) 75% of the gross proceeds of the sale of the Lot shall be paid to Bank at closing. If checked here ☒, reasonable closing expenses paid to third parties may be deducted from the amount paid to Bank for each release;
- (o) Modification of Repayment Schedule. If checked here ☐, Subsequent to the Completion Date the existing repayment schedule will be modified such that the principal balance outstanding on the Note will be payable by Borrower to Bank as follows:
 - ☐ Number of Payments consecutive monthly/quarterly installments of ☐ principal plus accrued interest ☐ Principal and accrued interest (fixed total payments) in the amount of \$Amount, with the final installment to be a balloon in the amount necessary to include all remaining unpaid principal plus accrued interest.
 - ☐ Description of Any Other Modification of Repayment Schedule Requirements
 All other applicable terms and conditions will remain unchanged.

CC.07. Additional Events of Default. In addition to the Events of Default listed in Section 8 of the Loan Agreement and in the Note, each of the following shall also constitute an Event of Default under the Loan Agreement:

- (a) Any material deviation from the Construction Documents without the prior written approval of the Bank.
- (b) The appearance of defective workmanship or unsatisfactory or unsuitable materials in the Improvements.
- (c) The appearance on any survey required hereunder of encroachments or encroachments which have occurred without the prior written approval of the Bank and which are not removed or corrected within ten (10) business days after written notice thereof to Borrower.
- (d) Cessation of the work of construction prior to the Completion Date for a continuous period of ten (10) business days or more for causes other than those beyond the control of Borrower (force majeure) and consented to in writing by Bank; or the failure of Borrower to complete all Improvements as required herein.
- (e) Borrower neglects, fails, or refuses to keep in full force and effect any permit or approval with respect to the construction, occupation, or use of the Project.
- (f) Borrower neglects, fails, or refuses to keep in full force and effect the hazard, liability, or builder's risk insurance required under this Loan Agreement.
- (g) Any suit is filed against Borrower or Guarantor which, if adversely determined, could substantially impair the ability of Borrower or Guarantor to perform any of their obligations under the Loan Documents and such suit is not dismissed within twenty (20) business days after the filing thereof.
- (h) Borrower fails to keep the Mortgaged Property free and clear of all encumbrances, liens, deeds of trust, security interests, and any and all secondary financing, except as may be approved in writing by the Bank in advance.
- (i) The removal of any materials from the Mortgaged Property or the Improvements if said materials were funded by the Borrower's Equity or by a Loan advance.
- (j) Any sale, transfer, or conveyance of the Mortgaged Property or any portion thereof.

CC.08. Additional Rights and Remedies. In addition to the rights and remedies specified in the Loan Agreement, Bank shall have the following rights and remedies:

- (a) Assignment/Completion of Construction. As additional security for the payment of the Loan, Borrower hereby assigns to Bank all of Borrower's right, title, and interest in contracts related to the construction of the Improvements, including without limitation the construction contract with the General Contractor, the architect's contract, the Construction Documents, the permanent loan commitment, if any, and any permits obtained, but this assignment shall not, in the absence of affirmative ratification of such contracts by Bank, be deemed to impose upon Bank any of the Borrower's obligations under any such contract. Borrower hereby empowers and appoints Bank its true and lawful attorney-in-fact, with full power of substitution in the premises to complete the Improvements in the name of Borrower. Borrower hereby empowers said attorney as follows: (1) to use any funds of Borrower, including any funds which may remain unadvanced under the Loan, for the purpose of completing the Improvements in accordance with the Construction Documents; (2) to make such additions, changes, and corrections in the Construction Documents as shall be necessary or desirable to complete the Improvements; (3) to employ such contractors, subcontractors, agents, architects, engineers, and inspectors as shall be required for said purposes; (4) to pay, settle, or compromise all existing bills and claims which may be liens against Improvements, or as may be necessary or desirable in the sole discretion of the Bank for the completion of the Improvements or for clearance of title; (5) to take over and use all or any part of the labor, materials, supplies, and equipment contracted for, or owned by, or under the control of Borrower; (6) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (7) to prosecute and defend all actions or proceedings in connection with the Mortgaged Property or the construction of the Improvements and take such action and require such performance as Bank shall deem necessary under any performance or payment bond; and (8) to do any and every act with respect to construction or completion of the Improvements or the closing of any permanent financing which Borrower might do in its own behalf including, without limitation, execution, acknowledgment, and delivery of all instruments, documents, and papers in the name of Borrower as may be necessary or desirable in the sole discretion of Bank. It is further agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, is irrevocable. All sums so expended by Bank shall be deemed to have been advanced to Borrower pursuant to this Loan Agreement and secured by the Mortgage and the other Loan Documents. Borrower hereby assigns to Bank all sums unadvanced under the Loan, such assignment to be effective only in case of acceleration of the Loan by Bank.

SCHEDULE "CC" TO BB&T LOAN AGREEMENT (Commercial/Residential Construction and/or Development Loan)

- (b) Disputes. Where disputes have arisen which, in the opinion of Bank, may endanger timely completion of the Improvements or fulfillment of any condition precedent or covenant herein, Bank may agree to advance Loan funds for the account of Borrower without prejudice to Borrower's rights, if any, to recover said funds from the party to whom paid. Such agreement or agreements may take the form which Bank in its discretion deems proper, including without limitation agreements to indemnify (on behalf of Borrower and/or for Bank's own account) any title insurer against possible assertion of lien claims. All sums paid or agreed to be paid pursuant to such undertaking shall be for the account of Borrower, and Borrower agrees to reimburse Bank for any such payments made upon demand therefor, with interest at the rate applicable under the Note from the day of payment until the date of reimbursement. Such payments are secured by the Mortgage and by the other applicable Loan Documents.
- (c) Remedies Cumulative/Nonwaiver. All remedies of Bank provided for herein or in the other Loan Documents are cumulative and shall be in addition to any and all other rights and remedies provided for or available under the other Loan Documents, at law or in equity. The exercise of any right or remedy by Bank hereunder shall not in any way constitute a cure or waiver of default hereunder or under any of the applicable Loan Documents, or invalidate any act done pursuant to any notice of default, or prejudice the Bank in the exercise of any of its rights hereunder or under the Loan Documents unless, in the exercise of said rights, Bank realized all amounts owed to it under the Loan Documents.
- (d) No Liability of the Bank. Whether or not Bank elects to employ any or all remedies available to it upon an Event of Default, Bank shall not be liable for the construction of or failure to construct, to complete, or to protect the Improvements, for payment of any expense incurred in connection with the exercise of any remedy available to Bank, or for the performance or nonperformance of any other obligation of Borrower.
- (e) Security Interest. It is understood and agreed that Bank shall have and is hereby granted a lien on and a security interest in any and all now or later arising reserves, deferred payments, advanced Loan proceeds, insurance refunds, insurance claims, deposit accounts held by Bank in Borrower's name, impound accounts, refunds for overpayment of any kind, and any surplus of withheld funds (resulting from the invalidity of "stop notice" claims or the failure of claimants to prosecute their claims to judgment, to the extent the same arise out of or occur in connection with the construction of the Improvements, and such lien and security interest shall constitute additional security for the Loan, and upon the occurrence of any Event of Default hereunder, Bank shall have and possess any and all remedies of a secured party provided by law with respect to enforcement of and recovery on its security interest on such terms and amounts.
- (f) Assignment. It is expressly recognized and agreed that Bank may assign this Loan Agreement, the Note, the Mortgage, and any other Loan Documents to any other person, firm, or legal entity, that all of the provisions hereof shall continue in full force and effect, and, in the event of such assignment, that Bank shall thereafter be relieved of all liability hereunder and any Loan advances made by any assignee shall be deemed made in pursuance and not in modification hereof and shall be evidenced by the Note and secured by the Mortgage and any other Loan Documents.
- (g) Publicity. Bank shall have the right to place upon the Mortgaged Property a sign or signs advertising the fact that financing is being provided by Bank.
- (h) No Third Party Beneficiaries. This Loan Agreement is made and entered into for the sole protection and benefit of Bank and Borrower, their successors and assigns, and no third person or persons shall have any right to action hereon or rights to the Loan funds at any time, nor shall Bank owe any duty whatsoever to any claimant for labor performed or material furnished in connection with the construction of the Improvements, or to apply any undistributed portion of the Loan to the Improvements, or to apply any undistributed portion of the Loan to the payment of any such claim, or to exercise any right or power of Bank hereunder or arising from any default by Borrower.

(SIGNATURES ON FOLLOWING PAGE)

BB&T

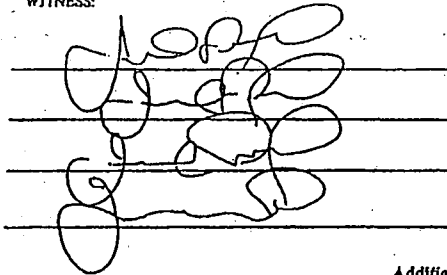
SCHEDULE "CC" TO BB&T LOAN AGREEMENT (Commercial/Residential Construction and/or Development Loan)

SIGNATURE PAGE

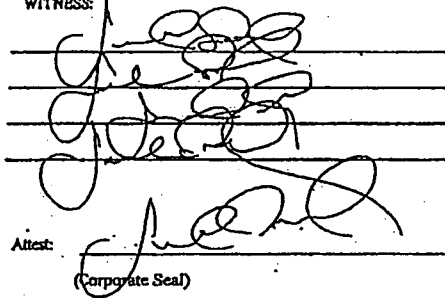
IN WITNESS WHEREOF, Borrower and Bank have executed this Schedule "CC" as of this date and have adopted as their respective seals the "seal" appearing beside or near their signatures below.

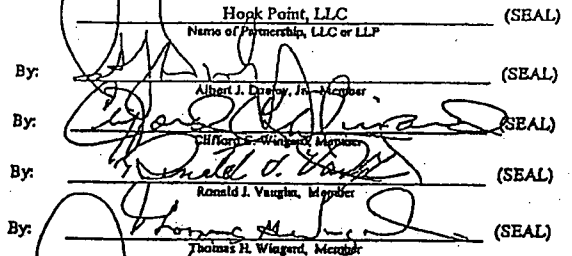
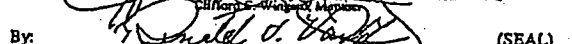
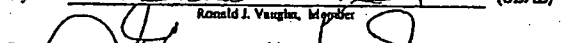
Borrower is a Partnership, Limited Liability Company, or Limited Liability Partnership:

WITNESS:

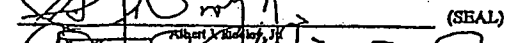
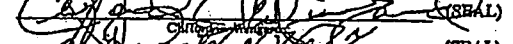
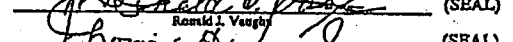


WITNESS:


(Corporate Seal)

By:  (SEAL)
Hook Point, LLC
Name of Partnership, LLC or LLP
By:  (SEAL)
Albert J. Dwyer, Jr., Member
By:  (SEAL)
William H. Wingard, Member
By:  (SEAL)
Ronald J. Vaughn, Member
By:  (SEAL)
Thomas H. Wingard, Member

Additional Co-makers or Guarantors:

By:  (SEAL)
Robert J. Dwyer, Jr.
By:  (SEAL)
William H. Wingard
By:  (SEAL)
Ronald J. Vaughn
By:  (SEAL)
Thomas H. Wingard

BRANCH BANKING AND TRUST COMPANY

By:  (SEAL)
J. Allen Risner
Title: Senior Vice President/BSO



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

September 29, 2010

VIA E-MAIL and US Mail

Mr. Albert J. Dooley, Jr.
Mr. Ronald J. Vaughn
Mr. Clifford C. Wingard
Mr. Thomas H. Wingard
Hook Point, LLC
111 East Main Street, Suite B
Lexington, SC 29072

Wilson W. McDonald
1901 MAIN STREET, SUITE 1200
POST OFFICE BOX 944
COLUMBIA, SOUTH CAROLINA 29202

PH
(803) 779-6800 | (803) 227-1140 direct
FAX
(803) 282-0724 | (803) 744-1840 direct
wmcdonald@robinsonlaw.com

Re: Response to Proposal

Promissory Note dated as of November 16, 2007 in the original amount of up to \$5,100,000, as modified ("Note #1") and Promissory Note dated as of August 28, 2008 in the original amount of up to \$308,000, as modified ("Note #2") (Note #1 and Note #2 sometimes collectively referred to herein as the "Notes")
Our File No: 02165-0938

Dear Bert, Ron, Cliff and Tom:

As you know, this firm represents Branch Banking and Trust Company ("Bank"). I have had an opportunity to review the September 22, 2010 proposal presented by Hook Point, LLC ("Borrower") to Bank (the "Proposal") with my contacts at the Bank and the Proposal is not acceptable. It simply does not provide a way for the Notes to be adequately collateralized nor does it present an acceptable way for the Notes to ultimately be paid out. As an aside, I also note that the Proposal references the \$2,000,000 line of credit as being "unilaterally terminated without notice" at some point between August 2008 and January 2010. This is not an accurate statement. The line of credit was reduced to \$750,000 around the time the proposed house size in the development was reduced but was not terminated. From inception, it was to be evidenced by individual notes relating to construction loans on each lot; and, in fact, Note #2 represents amounts that are outstanding under the line.

At this point, we are left with the following issues: (a) the 2009 real property taxes and all roll back taxes on the subject real property are past due and payable leaving the property at risk of being sold at Lexington County's upcoming tax sale; (b) Note #2 matured as of September 15, 2010, but remains unpaid; (c) the house designated as the clubhouse has not been affixed back to the real property and therefore remains unstable; and (d) the recent appraisal obtained by the Bank shows that the Notes are extremely under-collateralized which means Bank's position as to the Notes is insecure. Each of these events is an event of default under the loan documents relating to the Notes.

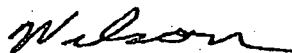
EXHIBIT B

During our meeting on September 13, 2010, the Bank agreed to advance funds under Note #1 necessary to stabilize the clubhouse and for the necessary testing of the water and sewer lines. The Bank will disburse funds for each only after proper invoices for the work are submitted to, and approved by, the Bank, and Bank has received an acceptable report from its property inspector as to the status of the work so invoiced. The amount Bank is willing to advance for the stabilization of the clubhouse will not exceed \$45,000 and the amount for the water and sewer testing will not exceed \$9,500. This work should be done as soon as possible in order to protect and preserve the clubhouse improvement to Real Property.

Note #1 matures as of February 15, 2011. While events of default remain outstanding, the Bank cannot even consider a renewal or refinancing of Note #1. In addition, any plan or proposal that you would want to present in place of the rejected Proposal, must include at a minimum (1) an acceptable way for the Borrower to address the significant collateral shortfall; and (2) the agreement of First Reliance Bank to extend the expiry date of its irrevocable letter of credit to Bank dated as of November 16, 2007 in the amount of \$1,500,000, to an expiry date at least ninety (90) days beyond the maturity date of Note #1 or provide a substitute letter of credit acceptable to the Bank.

Sincerely,

ROBINSON MCFADDEN & MOORE, PC



Wilson W. McDonald

cc: Mr. Donald M. Young (via e-mail)
Commercial Credit Administration, BB&T

Mr. Donald E. Layden (via e-mail)
Senior Vice President, BB&T

Mr. Allan Risinger (via e-mail)
Senior Vice President, BB&T



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

December 21, 2010

VIA CERTIFIED MAIL
REGULAR US MAIL
AND E-MAIL

Wilson W. McDonald
1801 MAIN STREET, SUITE 1200
POST OFFICE BOX 944
COLUMBIA, SOUTH CAROLINA 29202

PH
(803) 779-8900 | (803) 227-1140 *direct*
FAX
(803) 252-0724 | (803) 744-1540 *direct*

wmcDonald@robinsonlaw.com

Mr. Ronald J. Vaughn
Registered Agent, Member
& Guarantor
Hook Point, LLC
111 East Main Street; Suite B
Lexington, SC 29072

Re: NOTICE OF DEFAULT

Promissory Note dated as of November 16, 2007 in the original amount of up to \$5,100,000.00, as modified ("Note #1") and Promissory Note dated as of August 28, 2008 in the original amount of up to \$308,000.00, as modified ("Note #2") (Note #1 and Note #2 sometimes collectively referred to herein as the "Notes")

Our File No: 02165-0938

Dear Ron:

As you know, this firm represents Branch Banking and Trust Company ("Bank"). Hook Point, LLC ("Borrower") has defaulted on its obligations under the Notes in the following ways: a) amounts due under Note #1 are past due since October 15, 2010; b) despite Bank's demand that Borrower pay them, the delinquent 2009 real property taxes and all roll back taxes on the Real Property (defined below) had to be paid by Bank in order to avoid the Real Property being sold at Lexington County's tax sale; (c) Note #2 matured as of September 15, 2010, but remains unpaid; and (d) the recent appraisals obtained by the Bank show that the Notes are extremely under-collateralized which means Bank's position as to the Notes is insecure. Each of these events is an event of default under the loan documents relating to the Notes. By specifying these events of default in this letter, the Bank is not waiving its ability in any way to declare other, or subsequent, events of default should they arise or be determined.

Despite our several conversations and meeting and my letter to you dated as of September 28, 2010 in which I outlined what would be required, to date Borrower has not provided Bank with an acceptable proposal as to how it intends to cure the defaults despite being given ample opportunity to do so. As such, Bank hereby declares the entire outstanding balances of the Notes to be immediately due and payable. As of December 20, 2010, the amounts outstanding are as follows:

<u>Note #</u>	<u>12/21/2010 Payoff</u>	<u>Per Diem</u>
1	\$4,928,235.18	\$675.32
2	\$ 201,834.79	\$ 28.85

EXHIBIT C

The amounts set forth above do not include legal fees and costs to date.

Among other things, the Notes are secured by mortgages given by Borrower on certain real property with improvement thereon located in Lexington County, South Carolina, commonly referred to as Panama Point Subdivision, including certain rights, title and interest in and to a strip of land between the 360 degree contour and Lake Murray, and an additional 2.74 acre tract (all or portions of TMS #003200-02-001, TMS #003200-02-003, and TMS #003200-02-010), as more fully described on the mortgages relating to the Notes (the "Real Property"). The Notes were further secured by an Irrevocable letter of credit from First Reliance Bank to Bank dated as of November 16, 2007 in the amount of \$1,500,000.00 having an expiry date of February 13, 2011 (the "Letter of Credit").

Based on the Defaults set forth above, Bank will proceed immediately to protect its interest in the Real Property the Letter of Credit by commencing legal action to collect on the Notes, including, but not limited to, judicial proceedings to foreclose against the Real Property and also demand on the Letter of Credit.

Furthermore, the Notes provide that in the event of default, the Bank has the right to increase the interest rates to the default rates as defined in the Notes. Accordingly, the interest rates accruing on the Notes will be increased to the default rates as defined therein effective immediately and will remain at those interest rates until such time as all defaults are cured or the Notes are paid in full.

This letter further is to advise you that all reasonable expenses incurred by us in enforcing the provisions of the Notes and enforcing Bank's remedies as provided therein including, but not limited to, reasonable attorneys' fees will continue to accrue as obligations under the Notes.

I am sending this letter to you also in your individual capacity as a guarantor and to the other guarantors of the Notes as notice of Borrower's default and Bank's intent to pursue all available remedies for collection, including each guarantor's obligations under their guaranty agreements.

Sincerely,

ROBINSON MCFADDEN & MOORE, PC



Wilson W. McDonald

cc: Mr. Albert J. Dooley, Jr.
Member & Guarantor

Mr. Clifford C. Wingard
Member & Guarantor

Mr. Thomas H. Wingard
Member & Guarantor

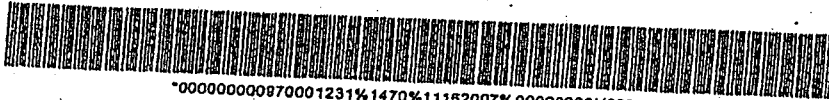
cc continued:

Mr. Donald M. Young (via e-mail)
Problem Loan Administration, BB&T

Mr. Donald E. Layden (via e-mail)
Senior Vice President, BB&T

Mr. J. Allan Risinger (via e-mail)
Senior Vice President, BB&T

Mr. R. William Metzger, Jr., Esquire (via e-mail)



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FIRST RELIANCE
BANK

IRREVOCABLE LETTER OF CREDIT

Borrower: Hook Point LLC
111 East Main St B
Lexington, SC 29072

Lender: First Reliance Bank
Lexington
801 N Lake Drive
Lexington, SC 29072

Beneficiary: Branch Banking & Trust Company, a North Carolina Bank Corporation
309 Columbia Avenue
Lexington, SC 29072

NO.: 970001231

EXPIRATION DATE. This letter of credit shall expire upon the earlier of the close of business on 02-13-2011 and all drafts and accompanying statements or documents must be presented to Lender on or before that time, or the day that Lender honors a draw under which the full amount of this Letter of Credit has been drawn (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of One Million Five Hundred Thousand & 00/100 Dollars (\$1,500,000.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions: **DRAFT MUST BE ACCOMPANIED BY:** 1) The original letter of credit. 2) A notarized, sworn statement by the Beneficiary, or an officer thereof, that: a) The Borrower has failed to perform its obligations to the Beneficiary under the Loan Agreement and Promissory Note dated November 18, 2007, executed by and between Hook Point, LLC as Borrower and Branch Banking & Trust Company as Lender b) The amount of the draft does not exceed the amount due to the Beneficiary under the obligations; and c) The signer has the authority to act for the Beneficiary with regard to the Letter of Credit. All drafts must be wired directly into the Beneficiary's account at BB&T into account #0005221067241 ABA #053201807.

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the Letter of Credit's maximum drawing amount. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER First Reliance Bank IRREVOCABLE LETTER OF CREDIT NO. 970001231 DATED 11-18-2007," and the amount of each draft shall be marked on the draft. Only Beneficiary or Beneficiary's transferee may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

PERMITTED TRANSFEREES. This Letter of Credit may be transferred by Beneficiary upon prior written notice to Lender of the transfer. The transferee shall be deemed the new Beneficiary of this Letter of Credit and the documents of the transferee, including drafts required under this Letter of Credit, will be processed by Lender (or any intermediary) without the original Beneficiary's intervention and without any further obligation of Lender to the original Beneficiary.

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee under the "Permitted Transferees" paragraph above (the "Permitted Transferee"), the documents required for a draw shall include all documents required elsewhere in this Letter of Credit, except that such documents may be in the name of and executed by either the original Beneficiary or the presenter permitted by the "Permitted Transferees" paragraph above.

COMPLIANCE BURDEN. Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2006 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of South Carolina.

EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

Dated: November 18, 2007

LENDER:

FIRST RELIANCE BANK

(Note: In order to be valid, this Letter of Credit requires dual officer signatures, one of which at the SVP level or higher)

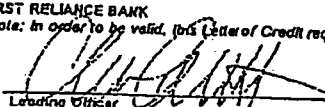
By: 
Lending Officer

EXHIBIT D



IRREVOCABLE LETTER OF CREDIT
(Continued)

ଅବସ୍ଥା

Senior Vice President

ENDORSEMENT OF DRAFTS DRAWN:

Date

Notarized By

Amount
In Words

Amount
In Figures

[illegible]

FILED

2010 DEC 23 12:36

JETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON SC



Branch Banking and Trust Company

309 Columbia Avenue
Lexington, SC 29072
(803) 359-5111
Fax (803) 359-6683

December 21, 2010

BY HAND DELIVERY

Mr. Richard McIntyre
Market President- Lexington
First Reliance Bank
801 North Lake Drive
Lexington, SC 29072

Re: First Reliance Irrevocable Letter of Credit No. 970001231

Dear Richard:

Enclosed please find the following documents to substantiate the sight draw and immediate demand by Branch Banking and Trust Company ("BB&T") on First Reliance Bank for \$1,500,000.00 evidenced by your Irrevocable Letter of Credit No. 970001231 ("Letter of Credit"):

1. The Sight Draw as required by the Letter of Credit;
2. The original Letter of Credit; and
3. A notarized statement from a BB&T officer that (a) Hook Point, LLC ("Borrower") has failed to perform its obligations under the Loan Agreement and Promissory Note dated November 16, 2007, (b) the draw amount does not exceed the obligations of Borrower to BB&T and (c) as signor, I have authority to act for BB&T as it relates to the Letter of Credit.

As these documents meet the specific requirements of the Letter of Credit, BB&T expects immediate payment by First Reliance in accordance with the Letter of Credit. We appreciate your prompt and immediate attention to this matter.

Sincerely,

Donald E. Layden
Senior Vice President
Area Executive

cc: Mr. Ronald J. Vaughn
R. William Metzger, Jr., Esquire

EXHIBIT E



Branch Banking and Trust Company

309 Columbia Avenue
Lexington, SC 29072
(803) 359-5111
Fax (803) 359-6683

DRAWN UNDER First Reliance Bank
IRREVOCABLE LETTER OF CREDIT No. 970001231
DATED 11-16-2007

Date: December 21, 2010

At sight

Attention: Mr. Richard McIntyre
Market President- Lexington
First Reliance Bank
801 North Lake Drive
Lexington, SC 29072

YOU, FIRST RELIANCE BANK, are directed to pay to the order of BRANCH BANKING AND TRUST COMPANY, a North Carolina Bank Corporation, 309 Columbia Avenue, Lexington, SC 29072 the sum of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100ths DOLLARS (\$1,500,000.00) FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF IRREVOCABLE LETTER OF CREDIT NO. 970001231.

WIRE DRAFT DIRECTLY TO BRANCH BANKING AND TRUST COMPANY ACCOUNT #0005221067241 ABA #05320 1607 ON OR BEFORE DECEMBER 21, 2010

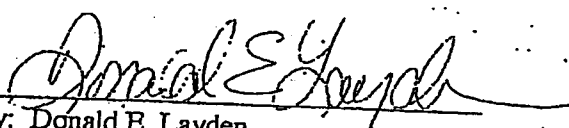
BRANCH BANKING AND TRUST
COMPANY, a North Carolina
Bank Corporation

By Donald E. Taylor
[Authorized Officer]

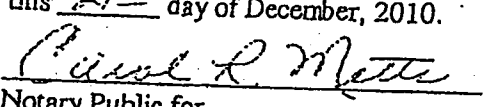
STATEMENT OF AUTHORIZED OFFICER OF
BRANCH BANKING & TRUST COMPANY,
A North Carolina Bank Corporation

PERSONALLY appeared before me, Donald E. Layden, who, being duly sworn, says:

1. That Donald E. Layden is an officer of Branch Banking & Trust Company, a North Carolina Bank Corporation (the "Beneficiary") having authority to act for the Beneficiary with regard to the First Reliance Bank Irrevocable Letter of Credit No. 970001231 dated 11-16-2007 (the "Letter of Credit").
2. That Hook Point, LLC has failed to perform its obligations to the Beneficiary under the Loan Agreement and Promissory Note dated November 16, 2007 executed by and between Hook Point, LLC as Borrower and Branch Banking and Trust Company as Lender (the "Obligations").
3. That the amount of the draft on the Letter of Credit does not exceed the amount due the Beneficiary under the Obligations.


By: Donald E. Layden
Title: Senior Vice President
of Branch Banking & Trust Company

SWORN TO and subscribed before me
this 21st day of December, 2010.


Notary Public for
My Commission Expires: 6/11/17

BB&T

GUARANTY AGREEMENT

BRANCH BANKING AND TRUST COMPANY

11/16/2007

LEXINGTON, SC

Dear Sirs:

As an inducement to Branch Banking and Trust Company ("Bank") to extend credit to and to otherwise deal with

HOOK POINT LLC

("Borrower").

and in consideration thereof, the undersigned (and each of the undersigned jointly and severally if more than one) hereby absolutely and unconditionally guarantees to Bank and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower, at any time, now or hereafter, incurred with or held by Bank, together with interest, as and when the same become due and payable, whether by acceleration or otherwise, in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof. The obligation of the undersigned is a guarantee of payment and not of collection.

The undersigned is Bank's debtor for all indebtedness, obligations and liabilities for which this Guaranty is made, and Bank shall also at all times have a lien on and security interest in all stocks, bonds and other securities of the undersigned at any time in Bank's possession and the same shall at Bank's option be held, administered and disposed of as collateral to any such indebtedness, obligation or liability of the Borrower, and Bank shall also at all times have the right of set-off against any deposit account of the undersigned with Bank in the same manner and to the same extent that the right of set-off may exist against the Borrower.

It is understood that any such notes, drafts, debts, obligations and liabilities may be accepted or created by or with Bank at any time and from time to time without notice to the undersigned, and the undersigned hereby expressly waives presentment, demand, protest, and notice of dishonor of any such notes, drafts, debts, obligations and liabilities or other evidences of any such indebtedness, obligation or liability.

Bank may receive and accept from time to time any securities or other property as a collateral to any such notes, drafts, debts, obligations and liabilities, and may surrender, compromise, exchange and release absolutely the same or any part thereof at any time without notice to the undersigned and without in any manner affecting the obligation and liability of the undersigned hereby created. The undersigned agrees that Bank shall have no obligation to protect, perfect, secure or insure any security interests, liens or encumbrances now or hereafter held for the indebtedness, obligations and liabilities for which this Guaranty is made.

This obligation and liability on the part of the undersigned shall be a primary, and not a secondary, obligation and liability, payable immediately upon demand without recourse first having been had by Bank against the Borrower or any other guarantor, person, firm or corporation, and without first resorting to any property held by Bank as collateral security; and the undersigned hereby waives the benefits of all provisions of law, for stay or delay of execution or sale of property or other satisfaction of judgment against the undersigned on account of obligation and liability hereunder until judgment be obtained therefor against the Borrower and execution thereon returned unsatisfied, or until it is shown that the Borrower has no property available for the satisfaction of the indebtedness, obligation or liability guaranteed hereby, or until any other proceedings can be had; and the undersigned further agrees that the undersigned is responsible for any obligation or debt, or portion thereof, of the Borrower to the Bank which has been paid by the Borrower to the Bank and which the Bank is subsequently required to return to the Borrower or a trustee for the Borrower in any bankruptcy or insolvency proceeding; and the undersigned further agrees that none of the undersigned shall have any right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of the Borrower to Bank unless and until all of the debts and obligations of the Borrower to Bank have been paid in full. The undersigned hereby waives any claim or right to be a creditor of the Borrower's bankruptcy estate which may arise upon payment by the undersigned of any obligation under this Guaranty.

Check applicable box:

- ☒ This Guaranty is unlimited and applies to all indebtedness of Borrower, whether now existing or hereafter arising.
- ☐ This Guaranty applies to all indebtedness of Borrower evidenced by its promissory note/line number _____ dated _____ (including all extensions, renewals, and modifications thereof) in the principal amount of \$ _____.
- ☐ This Guaranty is limited to an amount of \$ _____ plus accrued interest, late fees, costs of collection (including attorneys' fees) and all other obligations and indebtedness which may accrue or be incurred with respect to the Borrower's indebtedness and obligations to Bank.

To secure the payment of all obligations of the undersigned hereunder, the undersigned hereby grants a security interest and lien in the following goods and property owned by the undersigned:

("Collateral").

The undersigned hereby agrees to execute and deliver to Bank any security agreement, deed of trust, mortgage, UCC financing statement, or other document required by the Bank in order to protect its security interest or lien in the Collateral. This document shall constitute a security agreement under the Uniform Commercial Code of South Carolina ("Code"), and in addition to having all other legal rights and remedies, the Bank shall have all rights and remedies of a secured party under the Code.

EXHIBIT F

ACCOUNT# / NOTE#

9521674730 00001

1457SC (0704)



Initials: ABD

Page 1 of 4

This agreement shall inure to the benefit of Bank, its successors and assigns, and the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, and shall remain in force until a written notice revoking it has been received by Bank; but such revocation shall not release the undersigned from liability to Bank, its successors and assigns, or the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, for any indebtedness, obligation or liability of the Borrower which is hereby guaranteed and then in existence or from any renewals, extensions or modifications thereof in whole or in part, whether such renewals, extensions or modifications are made before or after such revocation, with or without notice to the undersigned. The undersigned waives presentment, demand, protest and notices of every kind and assents to any one or more extensions, modifications, renewals or postponements of the time or amount of payment or any other indulgences given to Borrower. The undersigned shall be responsible for and shall reimburse the Bank for all costs and expenses incurred by the Bank in connection with the enforcement of this Guaranty or the protection or preservation of any right or claim of the Bank in connection herewith, including without limitation costs and expenses incurred by the Bank in connection with its attempts to collect the indebtedness, obligations, and liabilities guaranteed hereby. Cost and expenses shall include reasonable attorneys' fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of action by Lender described above, unless the actual attorney fees incurred, based upon Bank's counsel's normal hourly fees chargeable to Bank, shall be greater than 15% of principal and interest in which case such billed amount based on such hourly rate shall be the attorneys' fee payable hereunder."

If the Borrower is a corporation, this instrument covers all indebtedness, obligations and liabilities to Bank purporting to be made or undertaken on behalf of such corporation by any such officer or agent of said corporation without regard to the actual authority of such officer or agent. The term "corporation" shall include associations of all kinds and all purported corporations, whether correctly and legally chartered and organized.

The undersigned warrants, and represents to the Bank that: (i) this Guaranty is its legally binding obligation, enforceable against the undersigned in accordance with its terms; (ii) the execution and delivery of this Guaranty does not violate or constitute a breach of any agreement to which the undersigned is a party; (iii) that there is no litigation, claim, action or proceeding pending or, to the best knowledge of the undersigned, threatened against the undersigned which would materially adversely affect the financial condition of the undersigned or his/her ability to fulfill his/her obligations hereunder; (iv) that the undersigned has knowledge of the Borrower's financial condition and affairs; and (v) unless otherwise required in a Loan Agreement, if applicable, as long as any Obligations remain outstanding or as long as Bank remains obligated to make advances, the undersigned shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when delivered shall be the property of Bank.

This Guaranty is made in and shall be construed in accordance with the laws and judicial decisions of the State of South Carolina. The undersigned agrees that any dispute arising out of this Guaranty shall be adjudicated in either the state or federal courts of South Carolina and in no other forum. For that purpose, the undersigned hereby submits to the jurisdiction of the state and/or federal courts of South Carolina. The undersigned waives any defense that venue is not proper for any action brought in any federal or state court in the State of South Carolina.

WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS GUARANTY OR THE BORROWER'S NOTE(S), AND THE RELATED LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND THE BANK OR THE BORROWER AND THE BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO ACCEPT THIS GUARANTY AND TO MAKE THE LOAN(S) TO THE BORROWER. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

SIGNATURES ON FOLLOWING PAGE

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgement is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, GUARANTOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

Witness the signature and seal of each of the undersigned.

If Guarantor is a Corporation:

WITNESS:

NAME OF CORPORATION

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

If Guarantor is a Partnership, Limited Liability Company, or Limited Liability Partnership :

WITNESS:

NAME OF PARTNERSHIP, LLC OR LLP

By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

If Guarantor is an Individual

WITNESS:

ALBERT J DOOLEY JR

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina corporation, by _____, its _____, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness that witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____ Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina general partnership, by _____, its general partner, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____ Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw _____, a South Carolina limited liability company / limited partnership that by _____, its member or manager / general partner, sign, seal and as its act and deed, and deliver the foregoing within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____ Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named Albert J. Dooley, Jr., sign, seal and as his/her act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this 16th day of November, 2007.

(SEAL)

Notary Public for South Carolina

My commission expires: February 19, 2014

BB&T

GUARANTY AGREEMENT

BRANCH BANKING AND TRUST COMPANY

11/16/2007

LEXINGTON, SC

Dear Sirs:

As an inducement to Branch Banking and Trust Company ("Bank") to extend credit to and to otherwise deal with

HOOK POINT LLC

("Borrower").

and in consideration thereof, the undersigned (and each of the undersigned jointly and severally if more than one) hereby absolutely and unconditionally guarantees to Bank and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower, at any time, now or hereafter, incurred with or held by Bank, together with interest, as and when the same become due and payable, whether by acceleration or otherwise, in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof. The obligation of the undersigned is a guarantee of payment and not of collection.

The undersigned is Bank's debtor for all indebtedness, obligations and liabilities for which this Guaranty is made, and Bank shall also at all times have a lien on and security interest in all stocks, bonds and other securities of the undersigned at any time in Bank's possession and the same shall at Bank's option be held, administered and disposed of as collateral to any such indebtedness, obligation or liability of the Borrower, and Bank shall also at all times have the right of set-off against any deposit account of the undersigned with Bank in the same manner and to the same extent that the right of set-off may exist against the Borrower.

It is understood that any such notes, drafts, debts, obligations and liabilities may be accepted or created by or with Bank at any time and from time to time without notice to the undersigned, and the undersigned hereby expressly waives presentment, demand, protest, and notice of dishonor of any such notes, drafts, debts, obligations and liabilities or other evidences of any such indebtedness, obligation or liability.

Bank may receive and accept from time to time any securities or other property as a collateral to any such notes, drafts, debts, obligations and liabilities, and may surrender, compromise, exchange and release absolutely the same or any part thereof at any time without notice to the undersigned and without in any manner affecting the obligation and liability of the undersigned hereby created. The undersigned agrees that Bank shall have no obligation to protect, perfect, secure or insure any security interests, liens or encumbrances now or hereafter held for the indebtedness, obligations and liabilities for which this Guaranty is made.

This obligation and liability on the part of the undersigned shall be a primary, and not a secondary, obligation and liability, payable immediately upon demand without recourse first having been had by Bank against the Borrower or any other guarantor, person, firm or corporation, and without first resorting to any property held by Bank as collateral security; and the undersigned hereby waives the benefits of all provisions of law, for stay or delay of execution or sale of property or other satisfaction of judgment against the undersigned on account of obligation and liability hereunder until judgment be obtained therefor against the Borrower and execution thereon returned unsatisfied, or until it is shown that the Borrower has no property available for the satisfaction of the indebtedness, obligation or liability guaranteed hereby, or until any other proceedings can be had; and the undersigned further agrees that the undersigned is responsible for any obligation or debt, or portion thereof, of the Borrower to the Bank which has been paid by the Borrower to the Bank and which the Bank is subsequently required to return to the Borrower or a trustee for the Borrower in any bankruptcy or insolvency proceeding; and the undersigned further agrees that none of the undersigned shall have any right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of the Borrower to Bank unless and until all of the debts and obligations of the Borrower to Bank have been paid in full. The undersigned hereby waives any claim or right to be a creditor of the Borrower's bankruptcy estate which may arise upon payment by the undersigned of any obligation under this Guaranty.

Check applicable box:

- ☒ This Guaranty is unlimited and applies to all indebtedness of Borrower, whether now existing or hereafter arising.
- ☐ This Guaranty applies to all indebtedness of Borrower evidenced by its promissory note/line number _____ dated _____ (including all extensions, renewals, and modifications thereof) in the principal amount of \$ _____
- ☐ This Guaranty is limited to an amount of \$ _____ plus accrued interest, late fees, costs of collection (including attorneys' fees) and all other obligations and indebtedness which may accrue or be incurred with respect to the Borrower's indebtedness and obligations to Bank.

To secure the payment of all obligations of the undersigned hereunder, the undersigned hereby grants a security interest and lien in the following goods and property owned by the undersigned: _____

("Collateral").

The undersigned hereby agrees to execute and deliver to Bank any security agreement, deed of trust, mortgage, UCC financing statement, or other document required by the Bank in order to protect its security interest or lien in the Collateral. This document shall constitute a security agreement under the Uniform Commercial Code of South Carolina ("Code"), and in addition to having all other legal rights and remedies, the Bank shall have all rights and remedies of a secured party under the Code.

EXHIBIT G

ACCOUNT# / NOTE#

9521674730 00001

1457SC (0704)



Initials:

Page 1 of 4

This agreement shall inure to the benefit of Bank, its successors and assigns, and the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, and shall remain in force until a written notice revoking it has been received by Bank; but such revocation shall not release the undersigned from liability to Bank, its successors and assigns, or the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, for any indebtedness, obligation or liability of the Borrower which is hereby guaranteed and then in existence or from any renewals, extensions or modifications thereof in whole or in part, whether such renewals, extensions or modifications are made before or after such revocation, with or without notice to the undersigned. The undersigned waives presentment, demand, protest and notices of every kind and assents to any one or more extensions, modifications, renewals or postponements of the time or amount of payment or any other indulgences given to Borrower. The undersigned shall be responsible for and shall reimburse the Bank for all costs and expenses incurred by the Bank in connection with the enforcement of this Guaranty or the protection or preservation of any right or claim of the Bank in connection herewith, including without limitation costs and expenses incurred by the Bank in connection with its attempts to collect the indebtedness, obligations, and liabilities guaranteed hereby. Cost and expenses shall include reasonable attorneys' fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of action by Lender described above, unless the actual attorney fees incurred, based upon Bank's counsel's normal hourly fees chargeable to Bank, shall be greater than 15% of principal and interest in which case such billed amount based on such hourly rate shall be the attorneys' fee payable hereunder."

If the Borrower is a corporation, this instrument covers all indebtedness, obligations and liabilities to Bank purporting to be made or undertaken on behalf of such corporation by any such officer or agent of said corporation without regard to the actual authority of such officer or agent. The term "corporation" shall include associations of all kinds and all purported corporations, whether correctly and legally chartered and organized.

The undersigned warrants, and represents to the Bank that: (i) this Guaranty is its legally binding obligation, enforceable against the undersigned in accordance with its terms; (ii) the execution and delivery of this Guaranty does not violate or constitute a breach of any agreement to which the undersigned is a party; (iii) that there is no litigation, claim, action or proceeding pending or, to the best knowledge of the undersigned, threatened against the undersigned which would materially adversely affect the financial condition of the undersigned or his/her ability to fulfill his/her obligations hereunder; (iv) that the undersigned has knowledge of the Borrower's financial condition and affairs; and (v) unless otherwise required in a Loan Agreement, if applicable, as long as any Obligations remain outstanding or as long as Bank remains obligated to make advances, the undersigned shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when delivered shall be the property of Bank.

This Guaranty is made in and shall be construed in accordance with the laws and judicial decisions of the State of South Carolina. The undersigned agrees that any dispute arising out of this Guaranty shall be adjudicated in either the state or federal courts of South Carolina and in no other forum. For that purpose, the undersigned hereby submits to the jurisdiction of the state and/or federal courts of South Carolina. The undersigned waives any defense that venue is not proper for any action brought in any federal or state court in the State of South Carolina.

WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS GUARANTY OR THE BORROWER'S NOTE(S), AND THE RELATED LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND THE BANK OR THE BORROWER AND THE BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO ACCEPT THIS GUARANTY AND TO MAKE THE LOAN(S) TO THE BORROWER. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

SIGNATURES ON FOLLOWING PAGE

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgement is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, GUARANTOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

Witness the signature and seal of each of the undersigned.

If Guarantor is a Corporation:

WITNESS:

NAME OF CORPORATION

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

If Guarantor is a Partnership, Limited Liability Company, or Limited Liability Partnership :

WITNESS:

NAME OF PARTNERSHIP, LLC OR LLP

By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

If Guarantor is an Individual

WITNESS:

LEONARD C WINGARD

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina corporation, by _____, its _____, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness that witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina general partnership, by _____, its general partner, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw _____, a South Carolina limited liability company / limited partnership that by _____, its member or manager / general partner, sign, seal and as its act and deed, deliver the foregoing within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named Slifford C. Wingard, sign, seal and as his/her act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this 16th day of November, 2007

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: February 19, 2014



GUARANTY AGREEMENT

BRANCH BANKING AND TRUST COMPANY

LEXINGTON, SC

11/16/2007

Dear Sirs:

As an inducement to Branch Banking and Trust Company ("Bank") to extend credit to and to otherwise deal with

HOOK POINT LLC

("Borrower")

and in consideration thereof, the undersigned (and each of the undersigned jointly and severally if more than one) hereby absolutely and unconditionally guarantees to Bank and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower, at any time, now or hereafter, incurred with or held by Bank, together with interest as and when the same become due and payable, whether by acceleration or otherwise, in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof. The obligation of the undersigned is a guarantee of payment and not of collection.

The undersigned is Bank's debtor for all indebtedness, obligations and liabilities for which this Guaranty is made, and Bank shall also at all times have a lien on and security interest in all stocks, bonds and other securities of the undersigned at any time in Bank's possession and the same shall at Bank's option be held, administered and disposed of as collateral to any such indebtedness, obligation or liability of the Borrower, and Bank shall also at all times have the right of set-off against any deposit account of the undersigned with Bank in the same manner and to the same extent that the right of set-off may exist against the Borrower.

It is understood that any such notes, drafts, debts, obligations and liabilities may be accepted or created by or with Bank at any time and from time to time without notice to the undersigned; and the undersigned hereby expressly waives presentment, demand, protest, and notice of dishonor of any such notes, drafts, debts, obligations and liabilities or other evidences of any such indebtedness, obligation or liability.

Bank may receive and accept from time to time any securities or other property as a collateral to any such notes, drafts, debts, obligations and liabilities, and may surrender, compromise, exchange and release absolutely the same or any part thereof at any time without notice to the undersigned and without in any manner affecting the obligation and liability of the undersigned hereby created. The undersigned agrees that Bank shall have no obligation to protect, perfect, secure or insure any security interests, liens or encumbrances now or hereafter held for the indebtedness, obligations and liabilities for which this Guaranty is made.

This obligation and liability on the part of the undersigned shall be a primary, and not a secondary, obligation and liability, payable immediately upon demand without recourse first having been had by Bank against the Borrower or any other guarantor, person, firm or corporation, and without first resorting to any property held by Bank as collateral security; and the undersigned hereby waives the benefits of all provisions of law, for stay or delay of execution or sale of property or other satisfaction of judgment against the undersigned on account of obligation and liability hereunder until judgment be obtained therefor against the Borrower and execution thereon returned unsatisfied, or until it is shown that the Borrower has no property available for the satisfaction of the indebtedness, obligation or liability guaranteed hereby, or until any other proceedings can be had; and the undersigned further agrees that the undersigned is responsible for any obligation or debt, or portion thereof, of the Borrower to the Bank which has been paid by the Borrower to the Bank and which the Bank is subsequently required to return to the Borrower or a trustee for the Borrower in any bankruptcy or insolvency proceeding; and the undersigned further agrees that none of the undersigned shall have any right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of the Borrower to Bank unless and until all of the debts and obligations of the Borrower to Bank have been paid in full. The undersigned hereby waives any claim or right to be a creditor of the Borrower's bankruptcy estate which may arise upon payment by the undersigned of any obligation under this Guaranty.

Check applicable box:

- ☒ This Guaranty is unlimited and applies to all indebtedness of Borrower, whether now existing or hereafter arising.
- ☐ This Guaranty applies to all indebtedness of Borrower evidenced by its promissory note/line number _____ dated _____ (including all extensions, renewals, and modifications thereof) in the principal amount of \$ _____.
- ☐ This Guaranty is limited to an amount of \$ _____ plus accrued interest, late fees, costs of collection (including attorneys' fees) and all other obligations and indebtedness which may accrue or be incurred with respect to the Borrower's indebtedness and obligations to Bank.

To secure the payment of all obligations of the undersigned hereunder, the undersigned hereby grants a security interest and lien in the following goods and property owned by the undersigned:

("Collateral")

The undersigned hereby agrees to execute and deliver to Bank any security agreement, deed of trust, mortgage, UCC financing statement, or other document required by the Bank in order to protect its security interest or lien in the Collateral. This document shall constitute a security agreement under the Uniform Commercial Code of South Carolina ("Code"), and in addition to having all other legal rights and remedies, the Bank shall have all rights and remedies of a secured party under the Code.

EXHIBIT H

ACCOUNT# / NOTE#

9521674730 00001

1457SC (0704)



Initials: *YCB*

Page 1 of 4

- 111 -

This agreement shall inure to the benefit of Bank, its successors and assigns, and the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, and shall remain in force until a written notice revoking it has been received by Bank; but such revocation shall not release the undersigned from liability to Bank, its successors and assigns, or the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, for any indebtedness, obligation or liability of the Borrower which is hereby guaranteed and then in existence or from any renewals, extensions or modifications thereof in whole or in part, whether such renewals, extensions or modifications are made before or after such revocation, with or without notice to the undersigned. The undersigned waives presentment, demand, protest and notices of every kind and assents to any one or more extensions, modifications, renewals or postponements of the time or amount of payment or any other indulgences given to Borrower. The undersigned shall be responsible for and shall reimburse the Bank for all costs and expenses incurred by the Bank in connection with the enforcement of this Guaranty or the protection or preservation of any right or claim of the Bank in connection herewith, including without limitation costs and expenses incurred by the Bank in connection with its attempts to collect the indebtedness, obligations, and liabilities guaranteed hereby. Cost and expenses shall include reasonable attorneys' fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of action by Lender described above, unless the actual attorney fees incurred, based upon Bank's counsel's normal hourly fees chargeable to Bank, shall be greater than 15% of principal and interest in which case such billed amount based on such hourly rate shall be the attorneys' fee payable hereunder."

If the Borrower is a corporation, this instrument covers all indebtedness, obligations and liabilities to Bank purporting to be made or undertaken on behalf of such corporation by any such officer or agent of said corporation without regard to the actual authority of such officer or agent. The term "corporation" shall include associations of all kinds and all purported corporations, whether correctly and legally chartered and organized.

The undersigned warrants, and represents to the Bank that: (i) this Guaranty is its legally binding obligation, enforceable against the undersigned in accordance with its terms; (ii) the execution and delivery of this Guaranty does not violate or constitute a breach of any agreement to which the undersigned is a party; (iii) that there is no litigation, claim, action or proceeding pending or, to the best knowledge of the undersigned, threatened against the undersigned which would materially adversely affect the financial condition of the undersigned or his/her ability to fulfill his/her obligations hereunder; (iv) that the undersigned has knowledge of the Borrower's financial condition and affairs; and (v) unless otherwise required in a Loan Agreement, if applicable, as long as any Obligations remain outstanding or as long as Bank remains obligated to make advances, the undersigned shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when delivered shall be the property of Bank.

This Guaranty is made in and shall be construed in accordance with the laws and judicial decisions of the State of South Carolina. The undersigned agrees that any dispute arising out of this Guaranty shall be adjudicated in either the state or federal courts of South Carolina and in no other forum. For that purpose, the undersigned hereby submits to the jurisdiction of the state and/or federal courts of South Carolina. The undersigned waives any defense that venue is not proper for any action brought in any federal or state court in the State of South Carolina.

WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS GUARANTY OR THE BORROWER'S NOTE(S), AND THE RELATED LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND THE BANK OR THE BORROWER AND THE BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO ACCEPT THIS GUARANTY AND TO MAKE THE LOAN(S) TO THE BORROWER. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

SIGNATURES ON FOLLOWING PAGE

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgement is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, GUARANTOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

Witness the signature and seal of each of the undersigned.

If Guarantor Is a Corporation:

WITNESS:

NAME OF CORPORATION

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

If Guarantor Is a Partnership, Limited Liability Company, or Limited Liability Partnership :

WITNESS:

NAME OF PARTNERSHIP, LLC OR LLP

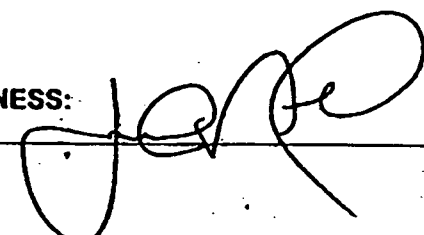
By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

If Guarantor Is an Individual

WITNESS:





RONALD L. VAUGHN

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina corporation, by _____, its _____, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness that witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____.

Witness _____

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina general partnership, by _____, its general partner, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____.

Witness _____

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw _____, a South Carolina limited liability company / limited partnership that by _____, its member or manager / general partner, sign, seal and as its act and deed, and deliver the foregoing within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____.

Witness _____

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named Ronald J. Vaughn, sign, seal and as his/her act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this 16th day of November, 2007.

Witness _____

(SEAL)

Notary Public for South Carolina

My commission expires: February 19, 2014

BB&T

GUARANTY AGREEMENT

BRANCH BANKING AND TRUST COMPANY

LEXINGTON, SC

11/16/2007

Dear Sirs:

As an Inducement to Branch Banking and Trust Company ("Bank") to extend credit to and to otherwise deal with

HOOK POINT LLC

("Borrower"),

and in consideration thereof, the undersigned (and each of the undersigned jointly and severally if more than one) hereby absolutely and unconditionally guarantees to Bank and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower, at any time, now or hereafter, incurred with or held by Bank, together with interest, as and when the same become due and payable, whether by acceleration or otherwise, in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof. The obligation of the undersigned is a guarantee of payment and not of collection.

The undersigned is Bank's debtor for all indebtedness, obligations and liabilities for which this Guaranty is made, and Bank shall also at all times have a lien on and security interest in all stocks, bonds and other securities of the undersigned at any time in Bank's possession and the same shall at Bank's option be held, administered and disposed of as collateral to any such indebtedness, obligation or liability of the Borrower, and Bank shall also at all times have the right of set-off against any deposit account of the undersigned with Bank in the same manner and to the same extent that the right of set-off may exist against the Borrower.

It is understood that any such notes, drafts, debts, obligations and liabilities may be accepted or created by or with Bank at any time and from time to time without notice to the undersigned, and the undersigned hereby expressly waives presentment, demand, protest, and notice of dishonor of any such notes, drafts, debts, obligations and liabilities or other evidences of any such indebtedness, obligation or liability.

Bank may receive and accept from time to time any securities or other property as a collateral to any such notes, drafts, debts, obligations and liabilities, and may surrender, compromise, exchange and release absolutely the same or any part thereof at any time without notice to the undersigned and without in any manner affecting the obligation and liability of the undersigned hereby created. The undersigned agrees that Bank shall have no obligation to protect, perfect, secure or insure any security interests, liens or encumbrances now or hereafter held for the indebtedness, obligations and liabilities for which this Guaranty is made.

This obligation and liability on the part of the undersigned shall be a primary, and not a secondary, obligation and liability, payable immediately upon demand without recourse first having been had by Bank against the Borrower or any other guarantor, person, firm or corporation, and without first resorting to any property held by Bank as collateral security, and the undersigned hereby waives the benefits of all provisions of law, for stay or delay of execution or sale of property or other satisfaction of judgment against the undersigned on account of obligation and liability hereunder until judgment be obtained therefor against the Borrower and execution thereon returned unsatisfied, or until it is shown that the Borrower has no property available for the satisfaction of the indebtedness, obligation or liability guaranteed hereby, or until any other proceedings can be had; and the undersigned further agrees that the undersigned is responsible for any obligation or debt, or portion thereof, of the Borrower to the Bank which has been paid by the Borrower to the Bank and which the Bank is subsequently required to return to the Borrower or a trustee for the Borrower in any bankruptcy or insolvency proceeding; and the undersigned further agrees that none of the undersigned shall have any right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of the Borrower to Bank unless and until all of the debts and obligations of the Borrower to Bank have been paid in full. The undersigned hereby waives any claim or right to be a creditor of the Borrower's bankruptcy estate which may arise upon payment by the undersigned of any obligation under this Guaranty.

Check applicable box:

- ☒ This Guaranty is unlimited and applies to all indebtedness of Borrower, whether now existing or hereafter arising.
- ☐ This Guaranty applies to all indebtedness of Borrower evidenced by its promissory note/file number _____ dated _____ (including all extensions, renewals, and modifications thereof) in the principal amount of \$ _____
- ☐ This Guaranty is limited to an amount of \$ _____ plus accrued interest, late fees, costs of collection (including attorneys' fees) and all other obligations and indebtedness which may accrue or be incurred with respect to the Borrower's indebtedness and obligations to Bank.

To secure the payment of all obligations of the undersigned hereunder, the undersigned hereby grants a security interest and lien in the following goods and property owned by the undersigned:

The undersigned hereby agrees to execute and deliver to Bank any security agreement, deed of trust, mortgage, UCC financing statement, or other document required by the Bank in order to protect its security interest or lien in the Collateral. This document shall constitute a security agreement under the Uniform Commercial Code of South Carolina ("Code"), and in addition to having all other legal rights and remedies, the Bank shall have all rights and remedies of a secured party under the Code.

("Collateral")

EXHIBIT I

ACCOUNT# / NOTE#

9521674730 00001

1457SC (0704)



Initials: *[Signature]*

Page 1 of 4

This agreement shall inure to the benefit of Bank, its successors and assigns, and the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, and shall remain in force until a written notice revoking it has been received by Bank; but such revocation shall not release the undersigned from liability to Bank, its successors and assigns, or the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, for any indebtedness, obligation or liability of the Borrower which is hereby guaranteed and then in existence or from any renewals, extensions or modifications thereof in whole or in part, whether such renewals, extensions or modifications are made before or after such revocation, with or without notice to the undersigned. The undersigned waives presentment, demand, protest and notices of every kind and assents to any one or more extensions, modifications, renewals or postponements of the time or amount of payment or any other indulgences given to Borrower. The undersigned shall be responsible for and shall reimburse the Bank for all costs and expenses incurred by the Bank in connection with the enforcement of this Guaranty or the protection or preservation of any right or claim of the Bank in connection herewith, including without limitation costs and expenses incurred by the Bank in connection with its attempts to collect the indebtedness, obligations, and liabilities guaranteed hereby. Cost and expenses shall include reasonable attorneys' fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of action by Lender described above, unless the actual attorney fees incurred, based upon Bank's counsel's normal hourly fees chargeable to Bank, shall be greater than 15% of principal and interest in which case such billed amount based on such hourly rate shall be the attorneys' fee payable hereunder."

If the Borrower is a corporation, this instrument covers all indebtedness, obligations and liabilities to Bank purporting to be made or undertaken on behalf of such corporation by any such officer or agent of said corporation without regard to the actual authority of such officer or agent. The term "corporation" shall include associations of all kinds and all purported corporations, whether correctly and legally chartered and organized.

The undersigned warrants, and represents to the Bank that: (i) this Guaranty is its legally binding obligation, enforceable against the undersigned in accordance with its terms; (ii) the execution and delivery of this Guaranty does not violate or constitute a breach of any agreement to which the undersigned is a party; (iii) that there is no litigation, claim, action or proceeding pending or, to the best knowledge of the undersigned, threatened against the undersigned which would materially adversely affect the financial condition of the undersigned or his/her ability to fulfill his/her obligations hereunder; (iv) that the undersigned has knowledge of the Borrower's financial condition and affairs; and (v) unless otherwise required in a Loan Agreement, if applicable, as long as any Obligations remain outstanding or as long as Bank remains obligated to make advances, the undersigned shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when delivered shall be the property of Bank.

This Guaranty is made in and shall be construed in accordance with the laws and judicial decisions of the State of South Carolina. The undersigned agrees that any dispute arising out of this Guaranty shall be adjudicated in either the state or federal courts of South Carolina and in no other forum. For that purpose, the undersigned hereby submits to the jurisdiction of the state and/or federal courts of South Carolina. The undersigned waives any defense that venue is not proper for any action brought in any federal or state court in the State of South Carolina.

WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS GUARANTY OR THE BORROWER'S NOTE(S), AND THE RELATED LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND THE BANK OR THE BORROWER AND THE BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO ACCEPT THIS GUARANTY AND TO MAKE THE LOAN(S) TO THE BORROWER. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

SIGNATURES ON FOLLOWING PAGE

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgement is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, GUARANTOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

Witness the signature and seal of each of the undersigned.

If Guarantor is a Corporation:

WITNESS:

NAME OF CORPORATION

By: _____ (SEAL)

Title: _____

By: _____ (SEAL)

Title: _____

If Guarantor is a Partnership, Limited Liability Company, or Limited Liability Partnership :

WITNESS:

NAME OF PARTNERSHIP, LLC OR LLP

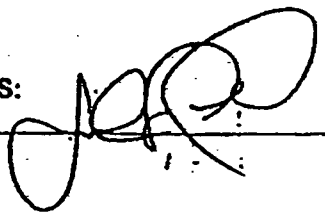
By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

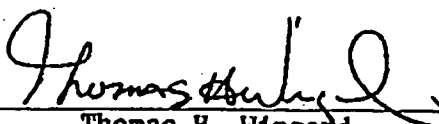
By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

By: _____ (SEAL)
GENERAL PARTNER OR MANAGER

If Guarantor is an Individual

WITNESS:




Thomas H. Wingard

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina corporation, by _____, its _____, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness that witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____.

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina general partnership, by _____, its general partner, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____.

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw _____, a South Carolina limited liability company / limited partnership that by _____, its member or manager / general partner, sign, seal and as its act and deed, and deliver the foregoing within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____.

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

PROBATE

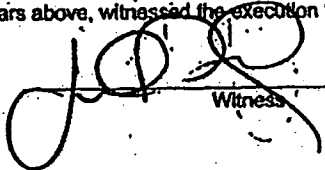
PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named Thomas H. Wingard, sign, seal and as his/her act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this 16th day of November, 2007.

(SEAL)

Notary Public for South Carolina

My commission expires: February 19, 2014


Witness

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Hook Point, LLC,

Plaintiff,

vs.

Branch Banking and Trust Company, First
Reliance Bank, and Allan Risinger,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-32-05481

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

Plaintiff Hook Point, LLC ("Hook Point") submits this Memorandum in Support of Plaintiff's Motion For Preliminary Injunction. For the reasons set forth below, Plaintiff's Motion must be granted.

FACTS

Hook Point is operated for the purpose of establishing a residential subdivision. In February 2005, Hook Point purchased approximately 19 acres fronting on Lake Murray and S.C. Highway #378 for the purpose of developing a residential subdivision named Panama Pointe Subdivision ("Panama Pointe").

On or about September 6, 2007, Branch Banking and Trust Company ("BB&T") issued a Commitment Letter to Hook Point. This Commitment Letter purported to lend Hook Point \$5,100,000 for the completion of "development and residential lots at Panama Pointe." Among other things, the Commitment Letter requires a \$1,500,000 letter of credit approved by BB&T as collateral for interest on the \$5,100,000 loan and states: "Letter of credit to be used as last resort for interest carry." (emphasis added).

Subsequently, on or about November 16, 2007, Hook Point and BB&T entered into a formal loan agreement (the "Loan Agreement").

On or about December 16, 2007, First Reliance Bank ("First Reliance") issued a Letter of Credit No. 970001231, securing certain specifically limited performance of Hook Point to BB&T (the "Letter of Credit"), for the payment of interest under the Loan Agreement with BB&T. The Letter of Credit is secured by roughly \$310,000 in cash on deposit with First Reliance, and several real properties owned by Hook Point. In the event of a draw on the Letter of Credit, First Reliance has the right to foreclose on these properties.

On December 21, 2010, BB&T delivered to First Reliance a letter attached hereto as Exhibit A. This letter is a demand for the entire payment of \$1,500,000 "evidenced by your Irrevocable Letter of Credit No. 970001231." This is the same letter of credit referenced above that is "to be used as last resort for interest carry." There is currently due to BB&T approximately \$70,000 in interest.

The Letter of Credit is set to expire on February 13, 2010, but Defendants believe First Reliance has agreed to extend the Letter of Credit for up to one year.

ARGUMENT

There is no justification whatsoever for BB&T to seek a \$1,500,000 draw on the Letter of Credit. Any payment by First Reliance Bank in excess of \$70,000 will cause Hook Point irreparable harm, for which it has no adequate remedy at law.

The Letter of Credit states that it shall be "governed by federal law applicable to the Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina ... except to the extent that such laws are inconsistent with the 2006 Revision of

Uniform Customs and Practice for Documentary Credits....” The laws of South Carolina governing letters of credit are found in Article 5 of the Uniform Commercial Code, South Carolina Code Ann. § 36-5-101, *et seq.* (1976) (the “UCC”). (There are no federal laws preempting or conflicting with the laws of South Carolina on the relevant issues.)

The Uniform Customs and Practice for Documentary Credits (“UCP”) is silent as to the impact of fraud in the presentation of documents under a letter of credit. The South Carolina Uniform Commercial Code does provide specific rules governing such fraud which are not inconsistent with the UCP’s silence and therefore govern this transaction.

South Carolina Code Ann. § 36-5-109(b) (1976) provides that:

If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(1) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(3) all of the conditions to entitle a person to the relief under the law of this State have been met; and

(4) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (a)(1).

The provisions of 36-5-109 are identical to the UCC Section 5-109. S.C. Code Ann. § 36-5-109 cmt. (1976). Even if it were to be argued that the UCP’s silence is somehow inconsistent with the UCC, the overwhelming weight of authority provides that Section 5-109’s fraud exception continues to apply in credit transactions made subject to

the UCP.¹ "Although there is a dearth of case law in South Carolina dealing with the limited fraud exception under [former fraud section of the S.C. Code], we can look with some assurance to other jurisdictions because all other states have, like South Carolina, adopted substantially verbatim the U.C.C. provisions concerning letters of credit." *Airline Reporting Corp. v. First Nat. Bank of Holly Hill*, 832 F.2d 823, 827 (4th Cir. 1987) (applying South Carolina law).

Section 36-5-109 provides that a court may issue an injunction when an applicant makes a claim of fraud and certain criteria are met. In this case, the Plaintiff has alleged fraud in both its complaint and its affidavit. Therefore, this Court must examine the four criteria listed in Section 36-5-109.

The Plaintiff seeks a preliminary injunction to prevent BB&T from drawing on the Letter of Credit, and from First Reliance paying on the Letter of Credit. The relief sought is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer, and thus meets criteria number one under the statute.

Additionally, BB&T will not be adversely affected and is adequately protected against loss that it may suffer if the injunction is granted. Defendants believe First Reliance will extend the Letter of Credit for up to one year. Thus, BB&T has all of the

¹ *Mid-America Tire, Inc. v. PTZ Trading Ltd.*, 95 Ohio St.3d 367, 385, 768 N.E.2d 619, 635 - 636 (Ohio 2002); *W. Sur. Co. v. Bank of S. Oregon*, 257 F.3d 933 (C.A. 9 2001); *3Com Corp. v. Banco do Brasil, S.A.*, 171 F.3d 739, 747 (C.A. 2 1999); *E & H Partners v. Broadway Natl. Bank*, 39 F.Supp.2d 275, 285 (S.D.N.Y. 1998); *Prairie State Bank v. Universal Bonding Ins. Co.*, 24 Kan.App.2d 740, 746, 953 P.2d 1047 (1998); *Offshore Trading Co., Inc. v. Citizens Natl. Bank of Fort Scott, Kansas*, 650 F.Supp. 1487, 1491-1492 (D.C. Kan. 1987); *First Commercial Bank v. Gotham Originals, Inc.*, 64 N.Y.2d 287, 295, 486 N.Y.S.2d 715, 719, 475 N.E.2d 1255, fn. 4 (1985); *Wyle v. Bank Melli of Tehran, Iran*, 577 F.Supp. 1148, 1164 (N.D. Ca. 1983); *Harris Corp. v. Natl. Iranian Radio & Television*, 691 F.2d 1344, 1354-1355, fn. 19 (C.A. 11 1982); *Cappaert Ent. v. Citizens & S. Internatl. Bank of New Orleans*, 486 F.Supp. 819, 829 (E.D. La. 1980); *KMW Internatl. v. Chase Manhattan Bank, N.A.*, 606 F.2d 10, 15, fn. 3 (C.A. 2 1979); *Stromberg-Carlson Corp. v. Bank Melli Iran*, 467 F.Supp. 530, 532, fn. 5 (S.D.N.Y. 1979); *United Bank Ltd. v. Cambridge Sporting Goods Corp.*, 41 N.Y.2d 254, 258, 392 N.Y.S.2d 265, 360 N.E.2d 943, fn. 2 (1976); *Intraworld Indus., Inc.*, 461 Pa. 343, 336 A.2d 316. See, also, 7A Lawrence 430, Section 5-101:23, and at 435, Section 5-101:30 (Rev. 2001); 6B Hawkland & Miller, at 5-47, Section 5-103:3 (Rev. 2001).

same protections as it did prior to any injunction. BB&T would not be adversely affected by the injunction, and accordingly the second criteria of the statute has been met.

To analyze the third criteria of the statute, the Court must look at the common law requirements for a temporary injunction. The issuance of a preliminary injunction is authorized by Rule 65, SCRPC. The purpose of a preliminary injunction is to avoid irreparable injury to a plaintiff before final adjudication of an action. *Helsel v. City of North Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) (citing *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973)). South Carolina courts have established two conditions for the granting of a temporary injunction. First, the complaint must allege facts sufficient to constitute a cause of action for injunctive relief. *Columbia Broadcasting Sys., Inc. v. Custom Recording Co., Inc.*, 258 S.C. 465, 471, 189 S.E.2d 305, 308 (1972) (quoting *Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296 (1911)). Second, when all of the circumstances are considered, it must appear that "the injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation." *Id.* In making this determination, courts consider (1) the likelihood of irreparable harm if the injunction is denied; (2) the relative harm to the plaintiff if the injunction is not granted and to the defendant if it is granted; (3) plaintiff's likelihood of success on the merits; and (4) the public interest. Flanagan, James F., *South Carolina Civil Procedure*, 508 (2nd ed. 1996); *Wynock v. Carroll*, 289 S.C. 338, 340, 345 S.E.2d 503, 504 (Ct. App. 1986).

Irreparable harm means that the injunction is reasonably necessary to protect the rights of the plaintiff pending the litigation. *Johnson v. Phillips*, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993). It does not mean that the injury is beyond the possibility of

compensation in damages. Flanagan at 508, citing *Bethel Methodist Episcopal Church v. Greenville*, 211 S.C. 442, 45 S.E.2d 841 (1947).

In this case, the Plaintiff will be significantly and irreparably harmed if the injunction is not granted. The Letter of Credit with First Reliance is secured by certain cash and real property. If the Letter of Credit is fully drawn upon, First Reliance will foreclose on the properties securing the Letter of Credit. Once the properties are foreclosed on and/or sold, those properties are lost to the Plaintiff. Additionally, the Plaintiff will lose any money or other deposits it has with First Reliance. The Plaintiff will suffer significant irreparable harm if the injunction is not granted, and it has no adequate remedy at law.

On the other hand, BB&T will not be harmed if the injunction is granted. As previously stated, First Reliance will agree to extend the Letter of Credit for up to one year. This effectively removes all risk to BB&T. With the Letter of Credit still in place at a reputable bank, BB&T remains as secure as it was prior to any injunction. BB&T suffer no harm and can still collect on the \$1,500,000 Letter of Credit should it prevail on the merits.

The third requirement for an injunction is directly related to the fourth requirement of Section 36-5-109. The Plaintiff is required to show a likelihood of success on the merits. In this case, Plaintiff has a document signed by the bank which contains the express condition that the Plaintiff alleges fraudulently induced them into the transaction. This is not a mere allegation, but is in black and white, in a document drafted by the bank that was used to induce the Plaintiff into the Loan Agreement. Indeed, courts have held that "fraud in the inducement of the issuance of a letter of credit

is grounds for a court to grant injunctive relief against the payment of such letter of credit to the beneficiary who perpetrated such fraud." *Mid-America Tire, Inc. v. PTZ Trading Ltd.*, 768 N.E.2d 619, 628 (Ohio 2002).

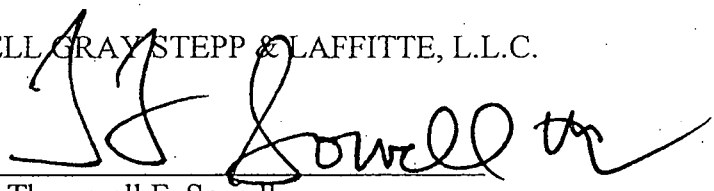
This fraudulent inducement is directly related to the entire loan transaction, including any documents related to the Letter of Credit. Accordingly, any documents presented to First Reliance were tainted by fraud. Additionally, there was fraud in the underlying transaction which would also warrant an injunction against a payment on the Letter of Credit.

The Letter of Credit provides that BB&T must confirm that "[t]he amount of the draft does not exceed the amount due to the Beneficiary under the obligations." BB&T provided a fraudulent affidavit that incorrectly confirmed the amount of the draft did not exceed the amount due under the obligations, despite the Commitment Letter which specifically provides that the Letter of Credit will only be used as a last resort for interest payments. Thus, the presentation of the Letter of Credit was fraudulent and Plaintiff is likely to succeed on the merits.

As a final condition, the Plaintiff must show that it is not against public policy to grant the injunction. Here, it is in the public's interest to make sure fraud is not committed. Section 36-5-109 is based on the premise that although letters of credit are generally payable on their face, fraud is a viable defense. Indeed, 36-5-109 specifically grants the court the authority to issue an injunction when fraud is claimed. It is in the public's best interest to allow this injunction so that a hearing on the merits of the fraud allegations can be decided before allowing BB&T to draw on the Letter of Credit. For

this reason, and the ones listed above, the Plaintiff's Motion for a Preliminary Injunction should be granted.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Thornwell F. Sowell
David Dick
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

and

Frederick A. Gertz
Gertz & Moore
Post Office Box 456
1416 Laurel Street (29201)
Columbia, South Carolina 29202
(803) 252-1524

Attorneys for Plaintiff

Columbia, South Carolina
January 3, 2011

CERTIFICATE OF SERVICE

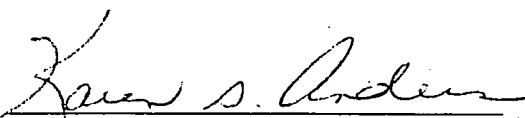
I, the undersigned of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for the Plaintiff Hook Point, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading hereinbelow specified by serving a copy of same, via U.S. Mail, to the following addresses on January 4, 2011. I hereby certify that same was also emailed to all counsel on January 3, 2011.

Pleadings: Memorandum in Support of Plaintiff's Motion for Preliminary Injunction

Counsel Served:

Frank R. Ellerbe, III, Esquire
Wilson W. McDonald, Esquire
Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, South Carolina 29202

S. Jahue Moore, Esquire
Moore, Taylor & Thomas, P.A.
Post Office Box 5709
West Columbia, SC 29171


Karen S. Anders

Columbia, South Carolina
January 4, 2011

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Hook Point, LLC,

Civil Action No.: 2010-CP-32-05481

Plaintiff,

vs.

SUPPLEMENTAL AFFIDAVIT OF
HOOK POINT, LLC

Branch Banking and Trust Company, First
Reliance Bank, and Allan Risinger,

Defendants.

PERSONALLY APPEARED BEFORE ME, the undersigned who being duly sworn, deposes and states as follows:

1. He is the managing member of Plaintiff Hook Point, LLC, is knowledgeable of the matters stated herein, and is competent to make this affidavit for Hook Point, LLC.

2. If Branch Banking & Trust Company ("BB&T") is allowed to draw anything but interest, in the approximate amount of \$70,000, against the pertinent letter of credit, Hook Point, LLC will be irreparably harmed as follows:

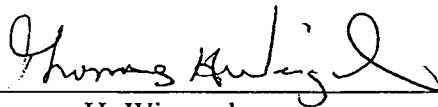
- a. The letter of credit is secured by certain cash, real property, and other collateral, and if BB&T draws upon the letter of credit, in excess of the approximately \$70,000 of interest owed, the collateral referenced above will be taken by First Reliance Bank, thereby effectively putting Hook Point, LLC out of business and bankrupting the limited liability company.
- b. If Hook Point, LLC is put out of business and/or bankrupted by a \$1,500,000 draw on the letter of credit, as stated heretofore, it will

cost Hook Point, LLC and its members an equity investment of approximately \$1,600,000.

- c. Payment of the letter of credit will have a negative domino effect on the guarantors, including the undersigned, likely causing other lenders to refuse to renew loans and lines of credit with the result that the undersigned's other businesses will be required to lay-off several employees and face other significant financial difficulties.
- d. In sum, if BB&T is permitted to draw upon the letter of credit, as it claims it is entitled to do, Hook Point, LLC will be financially ruined, will not be able to continue as a going concern, and will likely face bankruptcy.

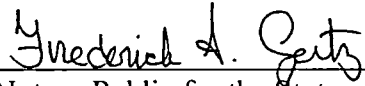
3. On information and belief, therefore, Hook Point, LLC is without an adequate remedy at law.

FURTHER AFFIANT SAYETH NOT.



Thomas H. Wingard

SWORN TO and subscribed before me
this 3rd day of January, 2011.

 (L.S.)
Notary Public for the State of South Carolina

My Commission Expires: 9-24-12

CERTIFICATE OF SERVICE

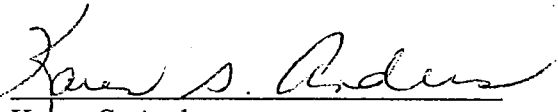
I, the undersigned of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for the Plaintiff Hook Point, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading hereinbelow specified by serving a copy of same, via U.S. Mail, to the following addresses on January 4, 2011. I hereby certify that same was also emailed to all counsel on January 3, 2011.

Pleadings: Supplemental Affidavit of Hook Point, LLC

Counsel Served:

Frank R. Ellerbe, III, Esquire
Wilson W. McDonald, Esquire
Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, South Carolina 29202

S. Jahue Moore, Esquire
Moore, Taylor & Thomas, P.A.
Post Office Box 5709
West Columbia, SC 29171


Karen S. Anders

Columbia, South Carolina
January 4, 2011

COPY

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2010-CP-32-05481

RECEIVED
FEB 11 2011
SC Court of Appeals

Hook Point, LLC.....Respondent,

v.

Branch Banking and Trust Company, First Reliance Bank,
and Allan Risinger, Defendants,
of whom Branch Banking and Trust Company.....Appellant.

NOTICE OF APPEAL

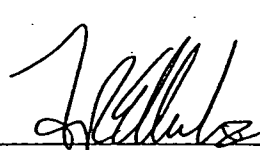
BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2011 FEB 14 A 11:11

FILED

Branch Banking and Trust Company appeals the order of the Honorable William P. Keesley dated January 7, 2011. Appellant received written notice of entry of this order on January 19, 2011.

February 11, 2011


Frank R. Ellerbe, III
Wilson W. McDonald
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900
ATTORNEYS FOR APPELLANT

Other Counsel of Record:

Thornwell F. Sowell, Esquire
David C. Dick, Esquire
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211

Frederick A. Gertz, Esquire
Gertz & Moore
1416 Laurel Street
P.O. Box 456
Columbia, SC 29202
Attorneys for Respondent

S. Jahue Moore, Esquire
Moore, Taylor & Thomas, PA
1700 Sunset Boulevard
Post Office Box 5709
West Columbia, SC 29171
Attorney for First Reliance Bank

FILED
2011 FEB 14 A 11:31
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF LEXINGTON

3
4
5 HOOK POINT, LLC)

6 PLAINTIFF,)

7 V.)

TRANSCRIPT OF RECORD

10-CP-32-5481

8 BB&T, FIRST RELIANCE BANK)

9 AND ALLAN RISINGER)

10 DEFENDANTS.)

11 JANUARY 4 & FEBRUARY 10, 2011
12 LEXINGTON, SOUTH CAROLINA

13 B E F O R E:

14 THE HONORABLE WILLIAM P. KEESLEY, JUDGE.
15

16 A P P E A R A N C E S:

17 THORNWELL F. SOWELL, ESQUIRE

18 FREDERICK A. GERTZ, ESQUIRE

19 DAVID C. DICK, JR., ESQUIRE

ATTORNEYS FOR THE PLAINTIFF

20 FRANK R. ELLERBE, III, ESQUIRE

21 WILSON W. MCDONALD, ESQUIRE

ATTORNEYS FOR DEFENDANTS BB&T AND ALLAN RISINGER

22 S. JAHUE MOORE, ESQUIRE

23 ATTORNEY FOR DEFENDANT FIRST RELIANCE BANK

24
25 STACY L. SHEPPARD
CIRCUIT COURT REPORTER

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Albert J. Dooley, Jr.				
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By Mr. Ellerbe		56		
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Court's 1	Document	38	

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1 (The following proceedings were held on
2 January 4, 2011.)

3 **THE COURT:** All right. Let me hear from the
4 moving party.

5 **MR. SOWELL:** May it please the Court, Your
6 Honor. I'm Biff Sowell here on behalf of Hook
7 Point, LLC, who is the plaintiff in the underlying
8 action and also the moving party. We are here to
9 consider -- for the Court to consider Hook Point's
10 motion for a preliminary injunction. Judge McMahon
11 signed a temporary restraining order on December the
12 23rd and so we're now here to hear the motion for a
13 preliminary injunction.

14 I know you've read most of these papers, but
15 Hook Point is the developer of approximately 19
16 acres at the intersection of Highway 378 and Lake
17 Murray in Lexington County. The defendant, BB&T,
18 was the lender with respect to both that development
19 in the amount of, I think it was, 5.1 million
20 dollars and was also the lender on a line of credit
21 in the amount of two million dollars for the
22 construction of houses on the dirt and the amenities
23 and the infrastructure after this project, which is
24 called Panama Pointe, was developed.

25 This motion for a preliminary injunction

1 revolves around a letter of credit that was issued
2 by First Reliance Bank who is represented by Jahue
3 Moore. It also revolves around a December 21, 2010
4 draw request by BB&T directed to First Reliance Bank
5 to draw 1.5 million dollars from that letter of
6 credit.

7 Now, that letter of credit is collateralized by
8 the members with Hook Point, LLC, who are Bert
9 Dooley, Ron Vaughn and two brothers, Tom Wingard and
10 Cliff Wingard, who have deposited approximately
11 \$310,000 in cash with First Reliance Bank and also
12 pledged several pieces of real estate as collateral
13 for that letter of credit and also have executed
14 personal guarantees, each of them, with respect to
15 that letter of credit to indemnify First Reliance
16 Bank in the event that the letter of credit is drawn
17 upon.

18 Now, our motion, it revolves primarily around
19 the commitment letter that was executed on September
20 the 6th, 2007. And if it pleases the Court, I'm
21 just going to hand up another copy unless you've got
22 one right there with you.

23 **THE COURT:** Hand it up, please.

24 **MR. SOWELL:** Okay.

25 Your Honor, this is the crux of our motion for

1 a preliminary injunction is a September 6th, 2007
2 commitment letter, which, incidentally, there was
3 subsequently the closing of the loan, there was a
4 loan agreement that was executed by the parties. It
5 defines loan documents as the note, the deeds of
6 trust, the mortgage, the security agreements, the
7 assignments, the UCC financing statements, the
8 guarantee agreements and, importantly, all other
9 documents executed in connection therewith.

10 This commitment letter would be one such
11 document and, therefore, it constitutes one of the
12 loan documents that has to be read in conjunction
13 with the other loan documents, but it's our position
14 that it does not conflict with any of the other loan
15 documents.

16 Now, it is pertinent in this regard, Your
17 Honor, if you look at the first paragraph, there is
18 an agreement to refund a maximum principal amount in
19 paragraph four of the loan in the amount of 5.1
20 million dollars or 75 percent of the discounted
21 retail value of the collateral, whichever is less.
22 There's also a commitment to fund a two million
23 dollar line of credit to construct houses at Panama
24 Pointe.

25 Now, the collateral for that loan is a first

1 lien mortgage as set out in paragraph three on
2 Panama Pointe with all lots and improvements, which
3 will be development improvements, I suppose houses
4 too once they were constructed, and an assignment of
5 all architectural/engineering documents and
6 construction contracts. So that's the fundamentals
7 of the loan that are set out on page one.

8 Now, there are other provisions on page two and
9 on page three. In paragraph 16, for instance, an
10 appraisal is required and it is required that upon
11 review and approval, the appraisal must reflect the
12 collateral value of not less than 6.8 million
13 dollars. Therefore, it's contemplated by this
14 commitment letter that the underlying real estate is
15 going to support the loan in an appraised amount of
16 not less than 6.8 million dollars.

17 So all of these provisions in this document on
18 pages one, two and three relate to the fundamental
19 loan, which is the 5.1 million dollars, the two
20 million dollars that's secured by the real estate.

21 Then you get up to paragraph 23, which is on
22 the last page of the document, and it has some
23 additional covenants. And it provides that with
24 respect to covenants, the borrower shall adhere to
25 the following covenants which shall be included

1 along with other covenants in the loan agreement to
2 be executed by the bank and the borrower.

3 So it is clear that these covenants as written
4 are to be incorporated into the loan agreement and,
5 therefore, whether they are expressly incorporated
6 into the loan agreement or not, they are
7 incorporated by reference into the loan agreement.

8 And then it has a paragraph A that states
9 other, colon, collateral, slash, interest reserve
10 options.

11 Now, I submit that this provision relates to
12 specifically interest on the big loan, the 5.1
13 million dollar loan, because the bank, although it's
14 not set out here in great -- in gross detail,
15 required an interest reserve account to be
16 maintained with respect to this loan in the amount
17 of somewhere between 500 and \$600,000. That was
18 just an account that was set up to pay the interest
19 carry while the project was being developed because
20 it was not generating any income.

21 So that's the first provision of the loan
22 commitment that makes it, I'll say, relatively plain
23 that this provision in paragraph 23 relates to an
24 interest reserve option and collateral with respect
25 to interest and to payment of interest only, not

1 collateral for the loan as a whole. So our
2 fundamental and primary position is that the letter
3 of credit was never intended to collateralize the
4 loan as a whole or collateralize the whole loan, it
5 was only intended to collateralize whatever interest
6 payments might be in default. And we concede that
7 we are about \$70,000 in default with respect to the
8 payment of interest on this loan today.

9 And if you look at the next paragraph, it has a
10 provision that in the event the developers have
11 presales of 50 percent or more, then the letter of
12 credit is only to be \$750,000. If their presales
13 are 40 percent, \$900,000; presales of 30 percent,
14 \$1,050,000; and presales of 20 percent, 1.2 million
15 dollars. And then, finally, if they're less than 20
16 percent presales, then the letter of credit is to be
17 for 1.5 million dollars.

18 Then very, very importantly, and this is really
19 the fundamental foundation for our motion for a
20 preliminary injunction to stop any draw on this
21 letter of credit in excess of draws with respect to
22 interest owed, is that last paragraph in paragraph
23 23 of the commitment letter to Hook Point, LLC,
24 which incidentally is signed by Allan Risinger on
25 behalf of the bank, and that paragraph which is one,

1 two, three, four paragraphs down states, Letter of
2 credit approved by BB&T and issuing bank with
3 unconditional draws. Maturity of letter to extend
4 90 days after loan maturity.

5 Now, this particular letter of credit is
6 supposed to expire, I think it's February 13, 2011,
7 but I'll let Mr. Moore speak to this later, but I
8 believe First Reliance is agreeable to extending
9 that letter of credit for up to a year beyond its
10 current expiration date.

11 But the very, and I'll get to the chase now,
12 the fundamental position factually on behalf of Hook
13 Point is that it states there, quote, Letter of
14 credit to be used as last resort for interest carry,
15 end quote.

16 Now, to amplify upon that, we filed an
17 affidavit from Tom Wingard, who's a managing member
18 of Hook Point, LLC, that that was the function of
19 this letter of credit was to use it as collateral
20 for the interest carry or any amounts of interest
21 that are in arrears, which currently is \$70,000.

22 So to put the matter in context, the bank on
23 December the 21st, and when I say the bank, I'm
24 talking about BB&T, wrote a demand letter to First
25 Reliance seeking to draw on the letter of credit in

1 the amount of 1.5 million dollars. We don't say
2 that the bank cannot draw on the letter of credit,
3 but we say the bank can only draw on the letter of
4 credit with respect to any interest that's in
5 arrears, which is currently \$70,000.

6 So you've got a dispute of an amount between
7 1.43 million dollars and 1.5 million dollars. They
8 want greatly in excess of what they're entitled to
9 pursuant to the loan documents which include this
10 letter of credit specifically incorporated by the
11 loan agreement itself in the definition of loan
12 documents.

13 And even if that were not the case, we have
14 pled, and I think we can prove, a claim for fraud in
15 the inducement that we, the members, Mr. Dooley,
16 Mr. Vaughn, Mr. Wingard and Mr. Wingard for Hook
17 Point, were fraudulently induced by representations,
18 not only representations in the commitment letter
19 itself, which are written by the way, but also oral
20 representations made by officers of the bank that
21 this letter of credit was never to be utilized for
22 anything but collateral for interest payments.

23 And according to my client, they never heard
24 otherwise from anybody at the bank until some time
25 approximately July the 22nd, 2010, which has been

1 six months ago, is when that issue first came up
2 that they ever understood that the bank was claiming
3 that it was entitled to anything with respect to
4 that letter of credit other than payment of interest
5 arrearage. And the loan was not in arrears at that
6 time.

7 But the bank has argued the lender statute of
8 frauds. It would not apply for a number of reasons:
9 One, it would not apply because we have a writing
10 signed by the bank, which is this commitment letter
11 which is clearly a loan document under the loan
12 agreement.

13 Even if it were not a loan document, under the
14 loan agreement, it would constitute a fraudulent
15 inducement to enter into the loan and so on. And
16 because it's in writing, it would not be the subject
17 of any statute of frauds. Plus, the law is clear in
18 South Carolina that the statute of frauds, the
19 lender statute of frauds or any statute of frauds
20 cannot be used to perpetrate a fraud.

21 There's a case called Gardner versus Nash.
22 It's found at 82 S.E.2d 123. It states precisely.
23 that the statute of frauds, quote, Is designed as a
24 protection against fraud. It shall not be set up as
25 a protection or support of fraud.

1 Also, it is important, Your Honor, to note that
2 the lender statute of frauds, which is found at
3 37-10-107 of the South Carolina Code, which is
4 primarily relied upon by the bank, applies unless
5 the party seeking to maintain the action or defense
6 has received a writing from the party to be charged
7 containing the material terms and conditions of the
8 promise, undertaking, accepted offer, commitment or
9 agreement and the party to be charged or its duly
10 authorized agent has signed the writing.

11 Well, I refer the Court back to the commitment
12 letter, which is on its terms a commitment. It is a
13 commitment in paragraph 23 pretty plainly that the
14 1.5 million dollar letter of credit is only
15 applicable to interest carry or interest arrears.
16 And it's signed by Allan Risinger, as stated, Senior
17 Vice President, Branch Banking and Trust company.

18 Furthermore, Your Honor, in 37-10-107(3), again
19 the lender statute of frauds, it states that
20 subsections (1) and (2), which are the pertinent
21 sections, do not apply to letters of credit.
22 Therefore, under any stretch of the imagination or
23 by any stretch of the imagination, there would not
24 be any application of a statute of fraud with
25 respect to this transaction.

1 Your Honor, in seeking a preliminary
2 injunction, we rely primarily upon a well known to
3 some commercial lawyers like Mr. Gertz particularly,
4 probably Mr. Ellerbe too, South Carolina Code
5 Section 36-5-109(b), which is cited on page three of
6 our memorandum. And it specifically allows the
7 Court to issue a preliminary injunction in a case
8 where the transaction in question is infected with
9 fraud.

10 And, in this case, we allege, and of course
11 we're only at the preliminary injunction stage,
12 we're not here for a trial on the merits, but we
13 allege that we've been fraudulently induced into the
14 transaction by the commitment letter.

15 And the -- the letter that was written, the
16 draw on the letter of credit has a representation in
17 it that the bank is entitled to draw upon the letter
18 of credit and it is owed that amount. Well, that's
19 an additional misrepresentation, either a negligent
20 misrepresentation of fraud that infects this
21 transaction.

22 So you've got two alleged fraudulent acts, one
23 is the original inducement. And it will be our
24 evidence at trial that we were not only told by,
25 orally, officers of the bank that this letter of

1 credit was not to be used for anything other than
2 interest care or interest arrears, but it was also
3 flat out stated in the commitment letter. And we
4 believe that First Reliance Bank who issued the
5 letter of credit believed the same thing when it
6 issued the letter of credit.

7 Now, that means that under 36-5-109(b), the
8 Court is entitled to issue a preliminary injunction
9 that stops a draw on this letter of credit based
10 upon the fraudulent inducement and also the
11 fraudulent representation that was made in the
12 actual letter seeking draw on the letter.

13 In most of these fraudulent inducement cases,
14 typically the plaintiff comes into court arguing
15 only an oral misrepresentation or fraudulent
16 misrepresentation or negligent misrepresentation.
17 In this case, we allege and believe we will prove
18 that the misrepresentation was not only committed in
19 the classic way, that is orally, it's also reduced
20 to writing in one of the loan documents,
21 specifically in paragraph 23 of the commitment
22 letter.

23 Now, the defendants raised the question about
24 irreparable harm and we filed a supplemental
25 affidavit last night addressing the issue of

1 irreparable harm.

2 In somewhere, I think it is in Mr. Layden's
3 affidavit, which incidentally has no reference that
4 I can see to the commitment letter whatsoever, but
5 in his affidavit, he says in his final sentence
6 that, quote, Application of the 1,500,000 dollar
7 letter of credit to the amounts owed by Hook Point
8 will directly benefit the individual guarantors, end
9 quote. That might be true if they had not deposited
10 as collateral with First Reliance Bank in connection
11 with the issuance of the letter of credit \$310,000,
12 had not given mortgages on four or five different
13 pieces of real estate and had not personally
14 guaranteed the letter of credit.

15 Now, these four members are the facilitators of
16 Hook Point, LLC, which is the developer of Panama
17 Pointe, LLC, and whatever funds they have available
18 to facilitate that development is important to the
19 development. If they have to fork over 1.5 million
20 dollars to First Reliance Bank in the case where
21 they would not owe them at this stage of the
22 proceeding more than \$70,000, it would be fatal to
23 the development of Panama Pointe, LLC as we set out
24 in the affidavit. And it would be fatal to Hook
25 Point, LLC in terms of its ability to carry on as a

1 going concern. Now, that's where it is our
2 irreparable harm.

3 On the other hand, when the Court balances the
4 harm between the irreparable harm to the plaintiff
5 and the harm alleged by the defendants, the
6 defendants in Mr. Layden's affidavit do not allege
7 any potential harm.

8 And to compound that, the bank, First Reliance
9 who issued the letter of credit, we understand is
10 willing to extend that letter of credit for up to
11 one year beyond the termination date, which I think
12 is -- or expiration date, which I think is February
13 13, 2010. So it will be extended until February 13,
14 2011 and, therefore, there wouldn't be any potential
15 harm to BB&T while we litigate the case on the
16 merits to determine whether they are correct or we
17 are correct and to determine the other issues in the
18 case that are raised by the claims for breach of
19 contract and breach of contract accompanied by
20 fraudulent act, the Unfair Trade Practices Act,
21 fraudulent inducement, negligent misrepresentation
22 and, essentially, the assertion that BB&T took over
23 the direction of this development and has squashed
24 it, quashed it, something like that, held it back
25 improperly, not allowed them to do the development

1 that was envisioned when the loan was made all while
2 receiving interest and all while receiving an
3 origination and a commitment fee of \$25,000 as set
4 out in the loan documents. So that's our position,
5 Your Honor.

6 We don't believe -- if the question of a bond
7 comes up, I want to hand up, we couldn't find
8 anything in South Carolina, but I'd like to hand up
9 something from Wright and Miller for the proposition
10 that if the bank, BB&T, is not at risk of monetary
11 loss, then the court may dispense with security for
12 the grant of a preliminary injunction under those
13 circumstances.

14 As the Court will see from this document, there
15 are about four or five pages -- well, actually about
16 six pages of case authority there in the federal
17 court, about six pages of case authority for the
18 proposition that if somebody like BB&T is not at
19 risk of monetary loss, which they would not be if
20 First Reliance agrees to extend the letter of credit
21 for up to a year, then there's no requirement that
22 the court impose a bond requirement when issuing the
23 preliminary injunction. And that's our position,
24 Your Honor. And thank you.

25 **THE COURT:** Mr. Moore, are you next?

1 MR. MOORE: I'm happy to, Your Honor. May it
2 please. Happy New Year by the way.

3 THE COURT: Same to you.

4 MR. MOORE: Your Honor, the principals in Hook
5 Point, LLC are Bert Dooley, Tom Wingard, Cliff
6 Wingard and Ron Vaughn. I think they're all here
7 today except for Mr. Vaughn. I'm here on behalf of
8 the Defendant First Reliance Bank.

9 First Reliance Bank issued the letter of credit
10 based upon the commitment letter we received. First
11 Reliance was never provided a copy of the actual
12 loan documents which BB&T changed until after this
13 litigation started.

14 The letter of credit that we issued was issued
15 based upon the wording of the commitment letter
16 which said that the letter of credit that we were
17 asked to issue would be used only as a matter of
18 last resort and -- and only to cover interest carry.
19 So we used BB&T's commitment letter in order to
20 issue the letter of credit that they asked for. And
21 until this litigation started, we were under the
22 impression, based upon representations of BB&T in
23 its commitment letter, that our letter of credit was
24 only to be used for interest.

25 The actual language of the commitment letter

1 signed by BB&T clearly provides that the letter of
2 credit is to be used as a matter of last resort for
3 interest carry. And what happened is somebody at
4 BB&T changed the loan documents so as not to
5 coincide and agree with the commitment letter. And
6 nobody bothered to tell us that, in effect, BB&T was
7 increasing our exposure over that which we had
8 relied upon in order to issue the letter of credit
9 to Mr. Dooley, Mr. Wingard, Mr. Vaughn and
10 Mr. Wingard and their company.

11 Now, BB&T apparently prepared these loan
12 documents and, for some reason, changed them and we
13 still don't know why, but as of right now, First
14 Reliance Bank does have a letter of credit. We are
15 a banking institution and are prepared to pay if
16 this Court tells us to.

17 Mr. Sowell is absolutely correct, our bank is
18 willing to extend the letter of credit to give time
19 for this litigation, assuming that Hook and
20 Mr. Dooley and his partners will agree to pay for
21 it.

22 Now, we have been told by Mr. Sowell that they
23 will pay for the extension of the letter of credit
24 as they paid for the original letter of credit, so
25 assuming they're willing to pay for the letter of

1 credit, we have no problem at all extending that
2 letter of credit so that this matter can be hashed
3 out and the letter of credit is -- we're certainly
4 good for the money.

5 One of the problems we have is that Mr. Dooley
6 and Mr. Wingard and Mr. Vaughn and Mr. Wingard have
7 certain personal guarantees and have pledged certain
8 property to First Reliance Bank. If First Reliance
9 is required now to pay on the letter of credit for
10 more than interest, that will basically place
11 Mr. Dooley and Mr. Wingard and Mr. Vaughn and Mr.
12 Wingard, as well as Hook Point in default with us,
13 which will, in effect, place their personal assets
14 at risk, as well as assets of a companion
15 development which they're basically in the process
16 of developing.

17 Now, we understood, again, we understood that
18 the letter of credit was to be used like the
19 commitment letter said, as a matter of last resort
20 to carry interest. And, certainly, we have no
21 problem at this time issuing a check for the \$70,000
22 which would cover the interest. And it would
23 certainly seem to me that if we extend the letter of
24 credit, if they're paid the interest draw in accord
25 with the terms of their commitment letter that we

1 relied upon to issue the letter of credit, if the
2 letter of credit remains good, the money is sound,
3 the -- Mr. Dooley and his companies do not go into
4 default on other loans and the status quo would be
5 preserved.

6 On the other hand, we are certainly at the --
7 we're a defendant in this case, we are at the
8 Court's disposal. If the Court tells us to pay it,
9 we will pay it and that will then necessitate,
10 apparently, a default and potential foreclosure on
11 all the other properties. But we're simply here as
12 a stakeholder. I can tell the Court our position.
13 I have Mr. McIntyre, the representative of our bank
14 here, he is prepared to testify if the Court has any
15 questions.

16 If the question is a matter of preserving the
17 status quo, however, it would seem that if we issue
18 the 70 some odd thousand dollars in interest and
19 extend the letter of credit, it doesn't appear
20 there's any skin off anybody's nose. It would
21 appear to me that the status quo would be maintained
22 and we certainly can make arrangements to cooperate
23 fully with everybody to make sure that everybody's
24 interest are protected and the status quo is
25 maintained. Thank you, sir.

1 MR. ELLERBE: Your Honor, may it please the
2 Court. Frank Ellerbe for Defendants BB&T and Allan
3 Risinger.

4 Your Honor, I'm going to give you a little bit
5 of background on this development that we've been
6 talking about. This is a failed development. The
7 plaintiff, Hook Point, is in default, owes BB&T
8 about 5.1 million dollars on two loans and we've set
9 out these things in the affidavit of Don Layden.

10 There are numerous acts of default, Your Honor,
11 including not paying principal of the second loan,
12 not making interest payments on the first loan, the
13 primary loan. There's an acceleration provision,
14 standard acceleration provision, in the loan
15 documents and Hook Point owes BB&T about 5.1 million
16 dollars today.

17 Your Honor, this was going to be a residential
18 development, not a single home has been sold since
19 the loan was issued in November of 2007. There have
20 been no lot sales, not one single lot has been sold.

21 It appears, Your Honor, that the -- that Hook
22 Point has given up on the project. The 2009 taxes
23 were not paid. The real property taxes on this
24 development were not paid by Hook Point. Finally,
25 in October of 2010, in order to prevent the property

1 from going to tax sale, BB&T paid the real property
2 taxes on this property.

3 Your Honor, the commitment letter that
4 Mr. Sowell and Mr. Moore have been talking about has
5 a provision in it that says that paragraph seven
6 calls for a 1.7 million dollar curtailment payment
7 21 months after loan closing. And a curtailment
8 payment, Your Honor, is a payment of principal.
9 That payment was not made.

10 With respect to the primary loan that
11 Mr. Sowell referred to, which is about 4.9 million
12 dollars, not a dime of principal has been paid the
13 entire time, Your Honor.

14 The commitment letter also talked about other
15 1.7 million dollar curtailment payments that were
16 scheduled. That, of course, was all based on the
17 thought, the expectation, that they'd be selling
18 homes, building homes and selling homes out there,
19 that didn't happen, therefore, those payments were
20 not paid.

21 Now, those things were waived, those
22 provisions, those requirements were waived by BB&T.
23 We're not claiming that the failure to make those
24 particular curtailment payments is an item of
25 default. The defaults came later when the taxes

1 weren't paid, when the interest payments were not
2 made and when the principal payments did come due
3 and were not made in 2010.

4 Your Honor, Mr. Sowell has acknowledged that
5 Hook Point is in default. There is not any question
6 that Hook Point is in default. There's no question
7 that under the acceleration provision of the loan,
8 everything that Hook Point owes is due and payable
9 immediately.

10 Let me illustrate one other thing about that
11 because it's important the way the arguments have
12 gone this morning. The interest, Your Honor, on the
13 principal loan, the 4.9 million dollar loan, the
14 interest has been funded entirely from the loan
15 proceeds themselves, so interest payments had been
16 credited to the loan from the loan proceeds itself.
17 There was an account, a reserve account, and that's
18 referred to as interest carry, Your Honor. So Hook
19 Point itself has not made any -- has not come out of
20 pocket to make any interest payments on this loan,
21 on the principal loan.

22 Your Honor, what happened here is this, and
23 it's actually pretty well characterized in the
24 complaint in this case, shortly after the loan was
25 taken out and the money was spent to buy the

1 property and to put in the infrastructure, all of
2 which was funded by BB&T, as the complaint says, the
3 market evaporated for this type of project, the type
4 of product that Hook Point was offering.

5 Your Honor, with respect to the plaintiff's
6 motion for a preliminary injunction, and Mr. Sowell
7 mentioned today 36-5-109(b), that's from the Uniform
8 Commercial Code as adopted by the South Carolina
9 General Assembly, this -- by the way, that's not
10 mentioned, that provision is not mentioned in the
11 motion for the preliminary injunction. It was not
12 mentioned in the complaint in the case. The first
13 time that Hook Point brought that provision up was
14 last night.

15 Your Honor, that does not change the
16 considerations with respect to a preliminary
17 injunction, temporary injunction at all. In fact,
18 it expands the requirements that the plaintiff would
19 have to show. But if you look under subsection (3)
20 of section (b) of that provision, it specifically
21 incorporates all of the requirements that a party
22 would have to show to get a preliminary injunction
23 in South Carolina, which means irreparable harm to
24 the plaintiff, a likelihood of success on the merits
25 and no adequate remedy at law. Your Honor, Hook

1 Point cannot meet its burden on any of those points.

2 With respect to the irreparable harm to the
3 plaintiff, very important, Your Honor, the focus is
4 on irreparable harm to Hook Point, not to the
5 members of Hook Point, not to the individuals. The
6 question is what is the irreparable harm to Hook
7 Point?

8 Hook Point's only development is this Panama
9 Pointe residential development that has failed, as
10 to which it owes 5.1 million dollars. If we're
11 allowed to move forward and recover on the letter of
12 credit and get the 1.5 million dollars, that will be
13 applied to what Hook Point owes. Hook Point, after
14 that money is applied to the loan, Hook Point will
15 owe 3.6 million dollars. That is no harm to Hook
16 Point, Your Honor.

17 There's been a lot of talk from lawyers about
18 other obligations and things like that, but look
19 very -- please look very carefully at the
20 affidavits, the actual affidavits that have been
21 submitted. In the first one, the first affidavit
22 that was submitted in order to get the ex parte TRO,
23 there was no facts given relating to irreparable
24 harm.

25 Last night we got a supplemental affidavit from

1 Mr. Wingard. And what is missing, if you look
2 through the supplemental affidavit, if you look
3 through it very carefully, there is no factual
4 support for the proposition that there's any
5 irreparable harm to Hook Point.

6 Panama Pointe is the only asset, and I use that
7 term loosely, for Hook Point. The LLC, the only
8 thing it owns are those 19 acres that it's been
9 trying to develop, doesn't have any other assets,
10 doesn't have any -- it didn't put anything up to
11 secure the letter of credit and all this other
12 stuff. So Hook Point will be directly benefitted
13 because it will owe less. It will owe 3.6 million
14 instead of five million. There's absolutely no way
15 to justify a finding of irreparable harm to Hook
16 Point when the letter of credit is paid.

17 Your Honor, just to -- there's some talk in
18 that affidavit about putting Hook Point out of
19 business, but that -- I mean, when you fail to pay
20 the property taxes on a residential development and
21 BB&T had to step in, that just -- that doesn't --
22 that does not -- that is not consistent. These
23 folks are -- Hook Point, the LLC, has given up on
24 this development and reducing what it owes will
25 benefit Hook Point and there's no irreparable harm.

1 Success on the merits, Your Honor, um, let me
2 talk about the commitment letter and the -- when the
3 complaint was initially filed, it appeared to be a,
4 sort of a standard lender liability, don't make us
5 pay because of things that happened. The focus has
6 changed and now the focus is on the -- more on the
7 letter of credit and that's what -- the discussion
8 we heard this morning.

9 First of all, Your Honor, the commitment letter
10 does not say that the letter of credit will only be
11 used for interest. What it says is that the letter
12 of credit will be collateral and that the letter of
13 credit will be used as a last resort for interest
14 carry. And what that meant, Your Honor, was we --
15 it's not beneficial to BB&T, but BB&T was willing to
16 consider under some circumstances drawing against
17 the letter of credit to apply against interest, to
18 apply against the interest that's owed as a last
19 resort in order to keep the interest current.

20 Because the development has failed, BB&T is not
21 willing to do that and BB&T has called on the letter
22 of credit according to its terms.

23 And I'll get to the specifics of the letter of
24 credit in just a minute, Your Honor, but this --
25 when the loan was budgeted, Mr. Sowell mentioned the

1 reserve to cover interest and I mentioned it, too,
2 as well. It's a very important feature of the loan.
3 Part of the loan proceeds were held by BB&T and
4 drawn against to make payments as interest came due.

5 Interest never fell behind, Your Honor, because
6 there was a reserve account. Even if no interest
7 had been paid, the total amount of interest over the
8 life of the loan was approximately somewhere between
9 five and \$600,000. It makes no sense within the
10 documents themselves to suggest that you need a 1.5
11 million dollar letter of credit for interest only
12 when the interest -- the total amount of interest on
13 the loan was only going to be between five and
14 \$600,000 and we were going to hold in an account an
15 amount to cover that interest. So it's -- it is
16 absolutely inconsistent to require -- for BB&T to
17 have required a 1.5 million dollar letter of credit,
18 that makes no sense.

19 Most significantly, Your Honor, under the loan
20 agreements and under the commitment letter, Hook
21 Point itself was required to go get the letter of
22 credit. Your Honor, I'm now referring to the letter
23 of credit, which is Exhibit D to the Layden
24 affidavit.

25 The draft terms and conditions, Your Honor,

1 requires BB&T, as the beneficiary of the letter of
2 credit, to submit the original letter of credit, a
3 statement by the beneficiary that the borrower has
4 failed to perform its obligations to the beneficiary
5 under the loan agreement and promissory note dated
6 November 16, 2007, executed by and between Hook
7 Point, LLC as borrower and Branch Banking and Trust
8 as lender. We also have to -- our statement also
9 has to say that the amount of draft does not exceed
10 the amount due to the beneficiary under the
11 obligations.

12 Your Honor, that -- there is absolutely no
13 discussion in the letter of credit itself about
14 interest only. This is -- the letter of credit was
15 applied for by Hook Point. It was issued by First
16 Reliance. BB&T, as the beneficiary, had the right
17 to approve it, but it was Hook Point itself that
18 applied for this letter of credit.

19 And Your Honor knows that the principals of
20 Hook Point are sophisticated business people. These
21 are successful business people who are -- two of
22 them are lawyers that are transaction lawyers who do
23 real estate. They know what a letter of credit is
24 about, Your Honor. They knew how important the
25 actual terms in the letter of credit are, and that's

1 really the crux of this case, Your Honor, is that
2 the obligation to First Reliance arise from the
3 letter of credit itself.

4 The suggestion that somehow BB&T committed a
5 fraud that resulted in Hook Point applying for a
6 letter of credit that says what this letter of
7 credit says, which is they're in default under the
8 loan agreement from November 2007 which mentions
9 nothing about it's only for interest or anything
10 like that, and it's a 1.5 -- I mean, that theory
11 does not -- plaintiff -- Hook Point cannot show that
12 it will have any likelihood of success on that
13 theory, Your Honor, because the document itself, its
14 letter of credit that it obtained is inconsistent
15 with its theory about what the commitment letter
16 says. So the commitment letter says what it says.

17 As a result of that, Hook Point went and got a
18 letter of credit. According to the strict terms of
19 the letter of credit, BB&T has absolutely complied
20 with it. There's no -- it's now been acknowledged
21 that Hook Point has not met its obligations under
22 the loan agreement.

23 The amount of the draft, which we asked for 1.5
24 million dollars, is much less than the 5.1 million
25 dollars that is owed and, therefore, the theory that

1 this document was a result of fraud on the part of
2 BB&T will not succeed on the merits, Your Honor, and
3 does not give them any basis on that prong of the
4 three prong test of showing that they're entitled to
5 a preliminary injunction.

6 First Reliance agreed to issue a 1.5 million
7 dollar letter of credit that referred specifically
8 to certain specified loan agreements. If they
9 didn't get those loan agreements before they -- and
10 review those loan documents before they issued the
11 letter of credit, then that was their problem, but
12 they were absolutely -- they issued this letter of
13 credit, it was absolutely their responsibility to
14 know what it was they were dealing with.

15 The third element, Your Honor, under South
16 Carolina law for the issuance of a preliminary
17 injunction is the question of whether Hook Point has
18 an adequate remedy at law.

19 Your Honor, all of these claims that had been
20 asserted in the complaint are claims for money
21 damages. There is no claim for injunctive relief.
22 All of their claims, to the extent that you can --
23 over a failed development, you can go forward on a
24 claim for lost profits. Now, I'm not sure how you
25 do it, but if they are successful, their damage will

1 be measured in dollars, Your Honor. They'll be
2 required to prove their damages and they will -- if
3 they can prove their damages, they can be
4 compensated in money damages if no basis for
5 injunctive relief, and that alone precludes any
6 preliminary injunction being granted.

7 Your Honor, a couple of things to mention to
8 you from the arguments. Mr. Sowell mentioned and he
9 gave you some federal, I think, a federal treatise
10 suggesting that a bond is not required, that is
11 inconsistent with South Carolina law. And I'd like
12 to cite you a couple of cases, recent cases.

13 AJG Holdings, which is 674 S.E.2d 505, the
14 Court of Appeals held that a bond was required under
15 Rule 65 in every case. And it relied on a Supreme
16 Court case Atwood Agency versus Black, which is 646
17 S.E.2d 882, where the court again held -- the
18 Supreme Court held that a bond was required, that in
19 South Carolina, a bond is required.

20 Your Honor, it has been argued at some length
21 that BB&T can't be harmed. First of all, under
22 South Carolina law, the considerations are, it's
23 very clear, the plaintiff must show inadequate --
24 excuse me -- irreparable harm to Hook Point,
25 likelihood of success and no adequate remedy at law.

1 The argument's been advanced to Your Honor that
2 BB&T is perfectly secure because of the proposed
3 extension of the letter of credit. I've got a
4 document I'd like to submit. This is from the FDIC
5 web site, Your Honor. It's not the easiest thing to
6 review or look at.

7 And, Your Honor, the actual web site is the
8 federal -- the first page, Federal Financial
9 Institution's Examination Counsel. And what it --
10 the first page, the second paragraph says, You can
11 obtain reports of condition and income data for
12 individual institutions in the form of PDF or SDF or
13 various other things. And through this site, you
14 can obtain financial and structural information for
15 most FDIC insured institutions.

16 And we ask -- you can do a search, Your Honor,
17 for various banks. And this -- the subsequent pages
18 are the search that we did with respect to First
19 Reliance Bank. And page three of the document, Your
20 Honor --

21 **MR. SOWELL:** Your Honor, let me say, I don't
22 think this is appropriate evidence because it's
23 hearsay. I don't think he can go to the Internet
24 and pick up things and offer it as evidence on that
25 ground, so I object to it.

1 **THE COURT:** Mr. Moore, do you want to be heard?

2 **MR. MOORE:** Your Honor, you know, First
3 Reliance Bank is an appropriately insured FDIC
4 institution. I would tend to agree that the
5 document in question is hearsay, but I would also
6 suggest that we're now about, apparently, about to
7 now go into not only hearsay, but now testimony of
8 counsel.

9 Apparently, he's now going to put off some --
10 in something he got off the Internet and now is
11 apparently going to go into an explanation of what
12 the document apparently means. If there was some
13 former hint of insolvency, I would assume that
14 Mr. Ellerbe would have placed that in the form of an
15 affidavit with appropriate explanation.

16 It's my understanding First Reliance is one of
17 the few small banks in South Carolina that is not
18 under an agreement with the FDIC. They are solvent.
19 They are operating in a number of branches, but I
20 think this is hearsay, but certainly the numbers
21 don't make any sense at all without explanation.
22 Apparently, Mr. Ellerbe now purports not only to
23 give us a hearsay document, but to explain what that
24 hearsay document purportedly means.

25 **THE COURT:** Mr. Ellerbe.

1 **MR. ELLERBE:** Your Honor, this is a government
2 report. There's a hearsay exception that allows us
3 to put in there -- put this document in as a
4 government report. It's a document that's made
5 available to the public so the public can understand
6 the condition of financial institutions. And
7 there's nothing mysterious about what I'm about to
8 take you through, the document speaks for itself.

9 **THE COURT:** The objection is sustained. You
10 may make your proffer, however.

11 **MR. ELLERBE:** Thank you, Your Honor.

12 If you look on page -- we have columns, Your
13 Honor, that run, unfortunately, on the first two
14 pages of this report, but if you see, we've got a
15 column for '07, 12/31/07, 12/31/08 and 12/31/09.
16 And if you follow that through all the way down to
17 almost the end, we see net income of the company
18 First Reliance. For '07, the document shows that
19 the net income was \$3,113,000. For '08, the net
20 income was \$1,330,000. For '09, December 31, '09,
21 was a negative \$5,368,000.

22 And, Your Honor, we -- it's not our intent to
23 cast aspersions on First Reliance, but we've been --
24 you've been told today that BB&T can't possibly
25 suffer any harm because the letter of credit is

1 still there, but, first of all, the whole point of
2 the letter of credit, Your Honor, is to have
3 immediate, certain, no messing around ability to
4 recover funds that are represented by the letter of
5 credit, so interfering with that is -- upsets the
6 commercial practices relating to letters of credit.

7 In addition, a long delay with an insti -- a
8 smaller institution that is, as a lot of financial
9 institutions, is having difficulties and has shown a
10 decreased performance, '07, '08 to '09, is
11 problematic and is of concern and certainly would
12 necessitate, at the minimum, a bond in the amount of
13 1.5 million dollars if Your Honor was inclined to
14 issue a preliminary injunction in this case.

15 **THE COURT:** Madame Court Reporter, make that a
16 court's exhibit.

17 (Court's Exhibit Number 1, document, marked
18 for identification purposes.)

19 **THE COURT:** Court's Exhibit Number 1 is the
20 document which was being referred to in the proffer,
21 the objection as to which having been sustained, the
22 Court will not consider it.

23 All right. Go ahead, Mr. Ellerbe.

24 **MR. ELLERBE:** Your Honor, the Plaintiff Hook
25 Point has failed to meet its burden and it's got to

1 meet -- it's got to make showing on all three of
2 those elements, they failed to do that. The ex
3 parte TRO should be dissolved and the motion should
4 be denied. And BB&T should be allowed to recover on
5 the letter of credit according to the terms of the
6 letter of credit and proceed with the foreclosure
7 and claims on the guarantees as the case moves
8 forward. Thank you very much.

9 **THE COURT:** All right. Mr. Sowell, do you have
10 any response?

11 **MR. SOWELL:** Briefly, Your Honor.

12 Mr. Ellerbe said in his statements that we had
13 not pled any claims for injunctive relief. In the
14 seventh cause of action, we specifically plead a
15 claim for injunctive relief as to all defendants,
16 that's on pages eight and nine of the complaint.
17 And in the prayer, we specifically seek a TRO, a
18 preliminary injunction and a permanent injunction
19 with respect to any payments on this letter of
20 credit beyond what would be owed on the interest,
21 which currently is about \$70,000.

22 Mr. Ellerbe spent, I guess, maybe 50 percent of
23 his argument talking about the structure of the loan
24 and that's not what we're really here about, that's
25 a diversion. But to the extent we've been diverted,

1 we have two claims so far in our complaint. One of
2 them is a fairly conventional lender liability claim
3 where we claim that they have breached their
4 agreements with us and breached the implied
5 covenants of good faith and fair dealing by
6 inappropriately, in not funding the two million
7 dollar line of credit that was required to build
8 houses.

9 If they had properly funded the line of credit
10 and allowed us to build houses, we don't believe we
11 would be where we are today. Instead, we believe
12 that that development would have gotten an
13 appropriate jump-start, houses would have been sold
14 and we wouldn't be in a fight with BB&T over whether
15 they properly funded the line of credit or not.

16 The second claim that we have so far is the
17 claim related to the letter of credit and is
18 specifically seeking an injunction from the Court to
19 prevent them from drawing on that letter of credit
20 beyond the \$70,000 that's owed in interest or any
21 interest that's owed in the future.

22 I guess, the bottom line of all of this is we
23 have a fight over whether or not that commitment
24 letter was a fraud in the inducement. We also have
25 a position that we take with respect to that

1 commitment.

2 With respect to the letter of credit itself,
3 which as Mr. Ellerbe pointed out, the BB&T Bank has
4 to make a statement to draw on the letter of credit,
5 quote, The amount of the draft does not exceed the
6 amount due to the beneficiary under the obligations,
7 end quote, we take the position, and we have so
8 stated, that that is an additional fraudulent or
9 negligent misrepresentation because it's clear from
10 the commitment letter which induced us into this
11 transaction, that they're only entitled to draw with
12 respect to the interest which currently is about
13 \$70,000.

14 And it is, I think, abundantly clear that even
15 though a letter of credit is intended to be
16 relatively liquid, that under 36-5-109, specifically
17 subparagraph (b), if an applicant claims that the
18 required document is materially fraudulent or that
19 honor of the presentation would facilitate a
20 material fraud by the beneficiary on the issuer,
21 that would be First Reliance, or the applicant, that
22 would be Hook Point, a court of competent
23 jurisdiction may temporarily or permanently enjoin
24 the issuer from honoring a presentation or grant
25 similar relief against the issuer or other persons

1 if the court makes certain findings. And they are
2 required finding one through four.

3 Your Honor, all we're asking the Court to do,
4 we've got a dispute and we'll have a litigation over
5 whether or not the bank has violated certain
6 provisions and covenants of good faith and so forth
7 with respect to the loan and the line of credit. We
8 also have a dispute over whether we were
9 fraudulently induced into a letter of credit that on
10 its face appears to be for a million and a half
11 dollars when we believe it's only good at this point
12 for \$70,000. And it's going to be no harm to the --
13 BB&T if First Reliance agrees to extend that letter
14 of credit for another year and the status quo can be
15 maintained, which is what a preliminary injunction
16 is all about.

17 And so we think for those reasons and for the
18 reasons set forth in our affidavit and supplemental
19 affidavit with respect to irreparable harm, which is
20 pretty detailed in the supplemental affidavit, we're
21 entitled to a preliminary injunction. Thank you.

22 **THE COURT:** Mr. Moore, do you have anything
23 else?

24 **MR. MOORE:** If I can just make one additional
25 comment because there's a lot of argument that Mr.

1 Ellerbe made which I think is essential to the
2 overall equities of this case.

3 One of the things he basically said was that
4 there was to be a 500,000 dollar interest set aside
5 reserve account which was to go to guard against
6 interest. And he's correct on that.

7 And he says, well, see, if the letter of credit
8 had been issued, it wouldn't have been necessary
9 because we already had a half a million dollars set
10 aside. And he's absolutely correct about that.

11 There was \$500,000 that was supposed to be set
12 aside to cover interest. And then, according to the
13 commitment letter, our million and a half is a
14 matter of last resort where we do not pay until
15 everything but the last resort for interest has been
16 governed or taken.

17 So what -- Mr. Ellerbe's absolutely correct,
18 \$500,000 of interest would have had to be burned up
19 before we should have had to be expected to pay
20 anything if the loan documents had been issued
21 according to the commitment letter.

22 Now, what basically happened is this. As the
23 Court is well aware from having closed transactions
24 before, there's a commitment letter issued and then
25 the borrower provides to the bank those things

1 necessary to close. Well, Mr. Ellerbe says, well,
2 you should have seen the final documents before you
3 issued your letter of credit. Well, we couldn't
4 have seen the final documents before we issued the
5 letter of credit. The letter of credit is going to
6 be issued based upon the commitment not the final
7 documents. We had no way of knowing at all that the
8 bank was going to change the deal without telling
9 us.

10 Now, First Reliance is clearly an innocent
11 party here. And First Reliance had every right in
12 the world to believe that BB&T would keep its word
13 and would issue the documents in accord with the
14 commitment letter.

15 If BB&T had kept its word and issued the
16 documents in accord with the commitment letter, the
17 letter of credit would have had \$500,000 of interest
18 that would have had to be consumed before the letter
19 of credit could ever be called.

20 The English translation of that is, according
21 to the commitment letter upon which we issued the
22 letter of credit, the chances of the letter of
23 credit ever being called are highly, highly, highly
24 remote. Why is that? Because the \$500,000 of
25 interest could almost never be used during the

1 period of time that the letter of credit would have
2 been in existence and, therefore, First Reliance
3 would have charged a premium for the letter of
4 credit in accord with the fact that its risk of ever
5 being called was remote.

6 Now what they've done is this. They've changed
7 the loan documents from what they told us it was
8 going to be. And now they come in and say, well,
9 we're entitled to execute on the letter of credit
10 even though it was issued for a different purpose
11 and under different agreements than we basically set
12 forth initially.

13 Now, we understand that the documents they
14 executed are different from what they told us they
15 were going to execute, but the truth of the matter
16 is they have some right significant allegations made
17 by these developers that they have changed the
18 documents and they have changed the game and they
19 have done some things they should not have done in
20 regard to this subdivision.

21 We're sitting here as an innocent third party.
22 Mr. Ellerbe basically says First Reliance is somehow
23 to blame for not seeing the documents in advance
24 that didn't exist. That's an unfair argument.

25 We are certainly a solvent bank guaranteed by

1 FDIC. We're willing to extend this letter of credit
2 to give these people time to work out their
3 differences. And we certainly are willing to be a
4 party to working out whatever differences these
5 folks have.

6 We'll go to any mediation. We'll go to
7 wherever anybody wants us to go. We'll cooperate
8 with everybody, but, at this point in time, it
9 certainly seems that under these circumstances with
10 these allegations and with this set of facts, to
11 basically place all of the other loans that these
12 folks have in the default and to put a whole nother
13 series of foreclosures in place is going to do
14 nothing but create more litigation, more
15 consternation, more aggravation and more distress.

16 We have a bad situation that certainly
17 reasonably human beings ought to be able to sit down
18 and work through. And it would certainly seem that
19 a preservation of the status quo would be cried out
20 for in equity under the facts with which the Court
21 has.

22 I know I've talked too much. I'm simply a
23 stakeholder in the matter, but I thank you for
24 listening to me, Your Honor.

25 **THE COURT:** Yes, sir.

1 Mr. Ellerbe, do you have some --

2 **MR. ELLERBE:** Your Honor, may I comment very
3 briefly?

4 Mr. Moore, I think, got carried away talking
5 about BB&T making representations and telling First
6 Reliance, that's not the way it works, Your Honor.
7 Hook Point applied for the letter of credit. First
8 Reliance issued the letter of credit. BB&T is the
9 beneficiary of the letter of credit.

10 The letter of credit talks -- on its terms
11 refers to the specific loan documents. I'm sure
12 that the loan documents were available in draft form
13 and that First Reliance knows how to make sure that
14 -- of what it's committing to. That's certainly
15 part of the transaction, we would expect that. That
16 was their commitment.

17 When their letter of credit refers to those
18 documents, that was what First Reliance was
19 committing to and that's what we're asking to be
20 enforced, Your Honor. And there just isn't any
21 basis for enjoining BB&T from moving forward and
22 getting that security to reduce the five million
23 dollars it's owed.

24 I mean, BB&T is the one that's still going to
25 be the loser here because this project is still not

1 going to be successful. We're just going to be owed
2 somewhat less money. Thank you.

3 **THE COURT:** Yes, sir.

4 (Pause.)

5 **THE COURT:** Explain to me your interpretation
6 of this sentence, Letter of credit to be used as
7 last resort for interest carry.

8 **MR. ELLERBE:** Your Honor, it was -- the letter
9 of credit was going to be used for two purposes, to
10 secure the loan and, in addition, it can be drawn
11 against as a last resort. If the interest reserve
12 account was depleted, then under some circumstances,
13 the bank could draw on the letter of credit to keep
14 the interest payments current. So it was an
15 additional function of the letter of credit, Your
16 Honor.

17 **THE COURT:** Why do you need that sentence?

18 **MR. ELLERBE:** I don't know why they needed that
19 sentence specifically, Your Honor, except to
20 indicate that if sales didn't go well and they
21 wanted -- it was a benefit because it ate into our
22 collateral, the eight and a half letter of credit
23 collateral, it ate into that. So it was a benefit
24 to the plaintiff, to Hook Point.

25 **THE COURT:** Explain to me that again how it's a

1 benefit to Hook Point.

2 MR. ELLERBE: It benefitted -- it was -- using
3 the letter of credit, the fact that BB&T was willing
4 to call on the letter of credit, which secure --
5 which was collateral securing the principal
6 obligation, the five million dollars, the fact that
7 BB&T was willing to call on that or consider calling
8 on that to pay interest, to draw against it, reduce
9 the collateral, to pay interest as a last resort was
10 a benefit to Hook Point because if they had done
11 that, then the loan wouldn't have gone into default.

12 MR. SOWELL: Your Honor, may I make one point
13 in response to that question?

14 THE COURT: Yes, sir.

15 MR. SOWELL: I mean, the first page of the
16 commitment letter makes it plain that the collateral
17 for the loan is the real estate.

18 I mean, this paragraph 23 is off on page four
19 all by itself. And it references interest reserve
20 options and specifically says, quote, Letter of
21 credit to be used as last resort for interest carry.
22 It doesn't say anything about it being collateral
23 for the loan. Thank you.

24 MR. ELLERBE: Your Honor --

25 THE COURT: I'm going to tell you, I understand

1 what you're saying, I think, Mr. Sowell, and I'm
2 going to take my time and hopefully read through
3 every single word, every single line you gave me,
4 it's a pretty strained interpretation. I mean,
5 you've got a loan, you've got a debt, the debt
6 includes principal and interest and fees and other
7 costs and the collateral secures it all.

8 I don't know why they added this sentence in
9 here. I'm still struggling to figure out if I've
10 got my head wrapped around why you even needed that
11 sentence in there about the letter of credit being
12 used as a last resort for interest carry, that
13 doesn't make -- I don't know why you put that in
14 there.

15 I'm struggling to see how the plaintiff's going
16 to prevail on the merits to be quite honest with
17 you. It doesn't relieve the, you know, the fact
18 that it's a terrible situation. The one thing I do
19 know is that if I extend this, I'm going to require
20 a bond.

21 Yes, sir.

22 **MR. SOWELL:** Your Honor, if you were to do so,
23 our position would be that the bond only should
24 extend to the interest.

25 Now, on the first --

1 **THE COURT:** That part I understand.

2 **MR. SOWELL:** Now, on the first question,
3 though, it's our position that not only did it state
4 in the letter of credit itself that it was to be
5 used as a last resort for the interest carry, our
6 clients were told that by officers of the bank. So
7 we don't rely just on the letter. We rely upon
8 conversations with officers of the bank. And I
9 think maybe I ought to call Mr. Dooley and get him
10 to testify to that issue just to put it in the
11 record, if it pleases the Court.

12 **THE COURT:** Is there an affidavit -- you all
13 have given me too much credit. If you all thought
14 that I took my days off and sat and read this,
15 you're giving me way too much credit.

16 Now, I should have, I realize that, but the
17 truth of the matter is what I did was I got a call
18 from -- or communication from Judge McMahon, Will
19 you hear this, and I got in touch with you all
20 immediately and set up a hearing and that's pretty
21 much all I've done. That doesn't mean I'm not going
22 to take every ounce of energy I've got and pour into
23 this to try to get you a prompt answer, but if you
24 all think I'm familiar with it off the top of my
25 head or because I've studied it, I can't claim that

1 credit.

2 MR. SOWELL: I would like to call Bert Dooley
3 briefly.

4 THE COURT: Do y'all want to be heard on
5 witnesses?

6 MR. ELLERBE: Your Honor, we don't have an
7 objection.

8 THE COURT: Mr. Dooley, would you come up. I
9 told the Clerk I didn't need them to be in here, but
10 I need to swear you.

11 ALBERT J. DOOLEY, JR.,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SOWELL:

15 Q Mr. Dooley, would you state your full name?

16 A Albert J. Dooley, Jr.

17 Q And are you a member of Hook Point, LLC?

18 A I am.

19 Q And, also, a personal guarantor on the
20 collateral for the First Reliance letter of credit?

21 A I am.

22 Q Did you participate in the discussions and the
23 negotiations and the conversations with respect to
24 the obtaining of this commitment letter that we've
25 talked about that's dated September the 6th, 2007?

1 **A** I did.

2 **Q** And you've seen the provision in the commitment
3 letter that states that, quote, Letter of credit to
4 be used as last resort for interest carry, end
5 quote?

6 **A** I have.

7 **Q** All right. Now, did you understand from the
8 conversations you had with officers of BB&T that
9 that was the case?

10 **MR. ELLERBE:** Your Honor, we've gotten to the
11 point leading, but now I think we need to have the
12 witness testify.

13 **THE COURT:** It's a leading question.

14 **MR. SOWELL:** Okay.

15 **BY MR. SOWELL:**

16 **Q** Did you have conversations with officers of
17 BB&T about what this letter of credit was to be used
18 for?

19 **A** Yes.

20 **Q** And what were those conversations and who were
21 they with?

22 **A** To the best of my recollection, they were with
23 Allan Risinger solely. I believe he was the only
24 bank officer in the room at the time.

25 When the commitment letter came out, initially

1 there had been no discussion of the letter of
2 credit. It was just a straight development loan as
3 we had done the previous loan with another bank.
4 And Mr. Risinger indicated we were going to be
5 required to have a letter of credit.

6 Basically, the second paragraph, and I'm going
7 from memory because I don't have it in front of
8 me --

9 Q Do you mean the letter of credit?

10 A No, I'm talking about the commitment letter.

11 Q I'll hand you a copy.

12 A At the time this was done, we felt like,
13 obviously, that this was going to be a successful
14 venture.

15 The first paragraph under item A was
16 negotiated. That was negotiated with the bank. We
17 did not want the letter of credit in there because
18 we didn't feel it was needed. We thought that we
19 would never use up half a million dollars worth of
20 interest.

21 But this part, this second paragraph, states
22 that if we were able to show the viability of this
23 project by showing presales of 50 percent of the
24 lots, the bank would reduce that down, that
25 obligation down to \$750,000 for interest. Presales

1 of 40, it would stay at 900 and so on. And you can
2 read what it says. That paragraph was specifically
3 negotiated and it was to be for interest if it took
4 longer to sell the lots than was anticipated.

5 Remember this was 2007, there have been two
6 loan note modifications done since that time. So
7 nothing was ever mentioned to me that the purpose of
8 this letter of credit was anything other than for
9 interest until I sat in a meeting with Mr. Don
10 Layden. I believe Wilson McDonald was there. I
11 believe Donald Young was there and Allan Risinger,
12 along with myself and Mr. Wingard and Mr. Vaughn. I
13 don't remember the exact date, but it was in mid
14 2010. And a statement was made at that point
15 regarding, well, we can use anything we want to with
16 a million five. My reaction, I almost fell out of
17 my chair because the entire time this was for
18 interest.

19 We resisted it to begin with, told them we
20 didn't think we needed it, that's why that paragraph
21 is in there. That was not in the initial discussion
22 we had.

23 Q Until you had this meeting in the middle of
24 2010 with Mr. Layden, Mr. Young, Mr. Risinger, did
25 you ever understand that BB&T was taking the

1 position that this letter of credit was for anything
2 other than as a last resort for interest carry?

3 A No. It was always interest.

4 MR. SOWELL: Please answer any questions by Mr.
5 Ellerbe.

6 CROSS-EXAMINATION

7 BY MR. ELLERBE:

8 Q Mr. Dooley, do you have the letter of credit?

9 A I do.

10 Q Do you see -- is that the commitment letter or
11 the letter of credit?

12 A Oh, excuse me. No, I don't have the letter of
13 credit, I'm sorry.

14 Q I didn't think so.

15 Do you see anything in there, in the letter of
16 credit itself, that indicates that it'll only be
17 used for interest?

18 A No.

19 Q And you're familiar with letters of credit,
20 aren't you, Mr. Dooley?

21 A Somewhat, yes, sir.

22 Q How long have you been practicing law, sir?

23 A May will be 30 years.

24 Q Congratulations.

25 A If I make it that long.

1 Q And you do transactional work?

2 A I used to a lot.

3 Q Commercial loans?

4 A Do some commercial stuff, yes.

5 Q You understand a letter of credit is supposed
6 to be governed by the terms of the letter of credit?

7 A I do.

8 Q Let me ask you now to look with me at the
9 commitment letter in the paragraph you talked about.

10 A Okay.

11 Q And you mentioned the presale requirement
12 paragraph?

13 A Right.

14 Q As -- if you -- if there had been any presales
15 -- and, first of all, there weren't any presales; is
16 that correct?

17 A Right.

18 Q And there haven't been any sales?

19 A Correct.

20 Q Of homes or lots?

21 A Correct.

22 Q If there had been sales, isn't it correct, that
23 75 percent of the money would go to pay down
24 principal?

25 A Of a closing, is that what you're referring to,

1 or a presale?

2 Q I'm talking about curtailments. Turn over in
3 the commitment letter to paragraph 15.

4 A Okay.

5 Q I'm afraid this is some jargon. I think this
6 letter of commitment has a lot of jargon in it, you
7 can help us with. Lot released curtailments will be
8 75 percent of the gross sales price.. Doesn't that
9 mean that 75 percent of the gross sales price will
10 go to reduce -- to curtail the principal?

11 A Uh-huh. That was the anticipation when we
12 started, yes, sir.

13 Q So this option that the letter of credit would
14 be reduced depending on presales relates to the fact
15 that those presales were going to reduce principal;
16 isn't that right, Mr. Dooley?

17 A Presale can't reduce principal. A sale can
18 reduce principal. A presale means that someone has
19 a contract. And there's also in the -- language in
20 the documents that requires us to deposit any
21 presale down payments that the public may have done
22 with the bank to prove we had those. So, no, sir.
23 Your answer's, no, a presale would not have had --
24 would result in a curtailment.

25 Q When a presale results in a closing --

1 A Yes.

2 Q -- the money then is used as a curtailment
3 payment and pays down principal?

4 A Correct.

5 Q So it makes sense to reduce the letter of
6 credit as you've got presales because that indicates
7 the principal's going to be paid down, right, Mr.
8 Dooley?

9 A I can't speak if it makes sense. That's not
10 what it was for, Mr. Ellerbe.

11 Q But that would be a good reason for reducing
12 the size of the letter of credit if you had presales
13 that you had reason to believe would result in
14 principal curtailments?

15 A I think it also would make a good reason that
16 if you had 50 percent of your project presold, there
17 would be no need for additional interest preserved.
18 Why would there be a need for it?

19 And the second thing is if BB&T desired
20 additional collateral of a million five, why didn't
21 they take the mortgage on the lots? Why didn't they
22 take the cash money? Why didn't they require that?
23 They didn't.

24 Q Isn't it the case, Mr. Dooley, that you
25 originally proposed \$750,000 in cash and some lots

1 and then you proposed, as an alternative, the letter
2 of credit?

3 A I don't recall that.

4 Q Who applied for the letter of credit,
5 Mr. Dooley?

6 A I don't think anybody signed for an application
7 for the letter of credit. I think we contacted
8 Mr. McIntyre's bank. And Mr. McIntyre -- we were
9 told by Mr. Risinger that they would negotiate and
10 get the terms of the letter of credit. And,
11 specifically, I don't recall seeing that letter of
12 credit prior to the closing and the letter of credit
13 is dated the same day as the note and the other loan
14 documents.

15 Q The borrower on the letter of credit is Hook
16 Point, LLC; isn't that correct?

17 A Uh-huh.

18 Q And the issuer is First Reliance?

19 A Uh-huh.

20 THE COURT: Say yes or no.

21 THE WITNESS: Yes, I'm sorry.

22 BY MR. ELLERBE:

23 Q BB&T had the right to review the letter of
24 credit to make sure it was satisfied, correct,
25 before they went forward with the closing?

1 **A** To the best of my understanding, a
2 representative from BB&T and a representative of
3 First Reliance were the only two people reviewing
4 the language in that letter of credit prior to
5 closing or at closing.

6 **Q** Now, there's been a lot of talk about your
7 group, Hook Point, and its members having to put up
8 collateral and all that stuff. So y'all were
9 heavily involved in persuading First Reliance to put
10 up the letter of credit, to issue the letter of
11 credit?

12 **A** We were told what we needed to put up to issue
13 the letter of credit, yes, sir.

14 **Q** By First Reliance?

15 **A** Yes.

16 **MR. ELLERBE:** Nothing further, Your Honor.

17 **THE COURT:** Mr. Moore, did you want to ask any
18 questions?

19 **MR. MOORE:** No, sir, I don't have any
20 questions.

21 **THE COURT:** Mr. Sowell, do you have any
22 redirect?

23 **MR. SOWELL:** No, sir, Your Honor.

24 **THE COURT:** Thank you very much, Mr. Dooley.
25 You can step down.

1 Any other witnesses?

2 MR. SOWELL: No, sir.

3 MR. ELLERBE: No, Your Honor.

4 THE COURT: All right. Now, in my own defense
5 to what I said earlier, you all understand I was in
6 Edgefield when I got this contact.

7 I saw this morning when I woke up that there
8 were communications that apparently took place
9 yesterday. Do I have, either in electronic form or
10 in documents, everything I need through here or is
11 -- if you all assume it's in the file, you may be
12 making an assumption that's not completely accurate.
13 There's sometimes some lag -- I tell you what, I'll
14 just declare the hearing over and notify you of my
15 decision in writing as promptly as I can, but you
16 all make sure I've got everything I need.

17 Now, I've got this memorandum from you and I've
18 got the letter of commitment, your memo.

19 MR. SOWELL: And the supplemental affidavit,
20 it's behind there.

21 THE COURT: All right. Is that it?

22 MR. ELLERBE: Thank you, Your Honor.

23 THE COURT: Thanks very much, folks.

24 (The proceedings were concluded for January
25 4, 2011.)

1 (The following proceedings were held on
2 February 10, 2011.)

3 **THE COURT:** All right. Where are we.

4 **MR. ELLERBE:** Your Honor, Frank Ellerbe for
5 Defendant BB&T.

6 Your Honor, we understood your order to require
7 the immediate extension of the letter of credit.
8 Letter of credit is a technical document. It's a
9 negotiable instrument. It was our understanding
10 that the only difference between the existing letter
11 of credit and the extended letter of credit would be
12 a new date on it.

13 We had been trying to -- we had made inquiries
14 repeatedly in the last, I guess, about six weeks,
15 since January the 4th and we have been told
16 different things about the letter of credit, but it
17 has not -- the extended letter of credit has not
18 appeared and it has not been issued. And on that
19 ground, Your Honor, since it was a condition of the
20 issuance of the injunction, we believe the
21 injunction should be dissolved and BB&T would then
22 be able to move forward on its rights under the
23 letter of credit.

24 **THE COURT:** When does it expire?

25 **MR. ELLERBE:** It expires on the 13th, Your

1 Honor, Sunday.

2 THE COURT: All right. Mr. Sowell, do you have
3 anything?

4 MR. SOWELL: Your Honor, my position is set out
5 in my e-mail, which I sent an hour or two ago, and
6 that is that the letter has already been extended by
7 agreement of counsel for First Reliance in open
8 court. If it has to be formalized, I understand
9 that First Reliance is ready to formalize it.

10 THE COURT: Mr. Moore.

11 MR. MOORE: Your Honor, we've told them that we
12 consider the letter extended. My client has been in
13 discussions with BB&T. BB&T wanted us to make some
14 modifications to the language which would allow us
15 to -- would allow them to take monthly draws.

16 We have provided them copies of the proposed
17 language in accord with what they asked us to do.
18 We're waiting to hear back from them as far as if
19 it's okay or not.

20 If they want the letter of credit to look just
21 like the old one did, okay, but they've told us they
22 wanted changes in it. And we'll accept the changes
23 they want to make or make life easier on them which
24 allow them to take monthly draws, but they have yet
25 to tell us the exact changes they want to have made

1 in the letter.

2 Mr. McIntyre is telling me that if they don't
3 want the changes now that they told us they wanted,
4 I'll have one more -- he'll drive to Florence in the
5 morning and have the exact same letter of credit
6 signed and brought back in the morning.

7 It expires on -- I think it actually expires on
8 the 13th, which is either Sunday or Monday, but we
9 are -- and always have in open court, we indicated
10 we considered the letter extended pursuant to the
11 Court's order. We're still willing to do it. We
12 just -- they need to tell us if they want changes in
13 it or not. If they don't want the changes in it,
14 I'll have it to them tomorrow.

15 **THE COURT:** Yes, sir.

16 **MR. ELLERBE:** We don't want any changes in it,
17 Your Honor. We've never wanted any changes in the
18 letter of credit. And if the letter of credit -- if
19 we have the letter of credit extended for a year
20 tomorrow, then we're okay.

21 **THE COURT:** Sounds like y'all can work on any
22 kind of modifications after that.

23 Do you have something else, Mr. Moore?

24 **MR. MOORE:** We'll have it delivered tomorrow.

25 **THE COURT:** I need it to them in writing. If

1 it's not in writing by the 13th, my order expires,

2 okay? Is that clear?

3 **MR. ELLERBE:** That's very clear, Your Honor.

4 **MR. MOORE:** Thank you.

5 **THE COURT:** Thanks, gentlemen.

6

7 END OF PROCEEDINGS

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Common Pleas
Clerk : Beth A. Carrigg
Lexington County Judicial Center
Lexington, SC 29072
(803) 785-8212

Received From: HOOK POINT LLC

Date : 1/21/2011

Paying for: HOOK POINT LLC,

RECEIPT # 140516

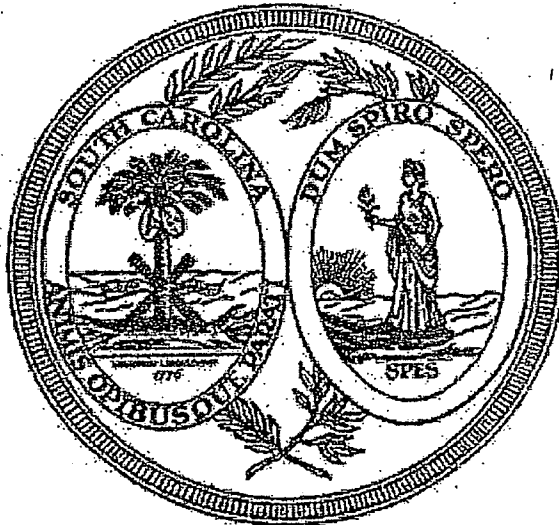
Clerk: amarin

Payment Type: Check \$50,000.00

Reference # 113140

Total Paid 50,000.00

Comment: 2010CP3205481





ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

February 7, 2011

VIA EMAIL AND U.S. MAIL

Thornwell F. Sowell, Esquire
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211

S. Jahue Moore, Jr., Esquire
Moore, Taylor & Thomas, P.A.
P.O. Box 5709
West Columbia, SC 29171

Frank R. Ellerbe, III
1901 MAIN STREET, SUITE 1200
POST OFFICE BOX 944
COLUMBIA, SOUTH CAROLINA 29202
PH
(803) 779-8900 | (803) 227-1112 *direct*
FAX
(803) 252-0724 | (803) 744-1556 *direct*
fellerbe@robinsonlaw.com

**Re: Hook Point, LLC vs. BB&T, First Reliance Bank and Allan Risinger
Case No. 2010-CP-32-05481**

Biff and Jake:

We have been informed that the \$70,000 payment from the First Reliance letter of credit has been received by BB&T. However, BB&T has not received the original letter of credit back and we have heard nothing about the letter of credit being extended. As you know, the letter of credit has an expiration date of February 13, 2011. While we don't believe that passage of that date will prevent BB&T from collecting the full amount left on the letter of credit, Judge Keesley ordered the letter of credit extended as a condition of the injunction. I intend to write him tomorrow to ask that the injunction be dissolved if the letter of credit is not extended as required by his order.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/lla

cc: Frederick A. Gertz, Esq.



IRREVOCABLE LETTER OF CREDIT

Borrower: Hook Point LLC
PO Box 1594
Lexington, SC 29071-1594

Lender: First Reliance Bank
Lexington
801 N Lake Drive
Lexington, SC 29072

Beneficiary: Branch Banking & Trust Company
309 Columbia Ave
Lexington, SC 29072

NO.: 970001231

EXPIRATION DATE. This letter of credit shall expire upon the earlier of the close of business on 02-13-2012 and all drafts and accompanying statements or documents must be presented to Lender on or before that time, or the day that Lender honors a draw under which the full amount of this Letter of Credit has been drawn (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of One Million Four Hundred Thirty Thousand & 00/100 Dollars (\$1,430,000.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions: DRAFT MUST BE ACCOMPANIED BY: 1) The original letter of credit. 2) A notarized, sworn statement by the Beneficiary, or an officer thereof, that: a) The Borrower has failed to perform its obligations to the Beneficiary under the Loan Agreement and Promissory Note dated November 16, 2007, executed by and between Hook Point, LLC as Borrower and Branch Banking & Trust Company as Lender b) The amount of the draft does not exceed the amount due to the Beneficiary under the obligations; and; c) The signer has the authority to act for the Beneficiary with regard to the Letter of Credit. All drafts must be wired directly into the Beneficiary's account at BB&T into account #0005221067241 ABA #053201607.

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER First Reliance Bank IRREVOCABLE LETTER OF CREDIT NO. 970001231 DATED 02-11-2011," and the amount of each draft shall be marked on the draft. Only Beneficiary or Beneficiary's transferee may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

PERMITTED TRANSFEREES. This Letter of Credit may be transferred by Beneficiary upon prior written notice to Lender of the transfer. The transferee shall be deemed the new Beneficiary of this Letter of Credit and the documents of the transferee, including drafts required under this Letter of Credit, will be processed by Lender (or any intermediary) without the original Beneficiary's intervention and without any further obligation of Lender to the original Beneficiary.

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee under the "Permitted Transferees" paragraph above (the "Permitted Transferee"), the documents required for a draw shall include all documents required elsewhere in this Letter of Credit, except that such documents may be in the name of and executed by either the original Beneficiary or the presenter permitted by the "Permitted Transferees" paragraph above.

COMPLIANCE BURDEN. Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of South Carolina.

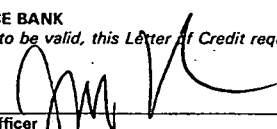
EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

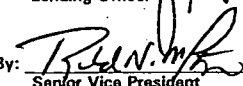
Dated: February 11, 2011

LENDER:

FIRST RELIANCE BANK

(Note: In order to be valid, this Letter of Credit requires dual officer signatures, one of which at the SVP level or higher)

By: 
Lending Officer

By: 
Senior Vice President

ENDORSEMENT OF DRAFTS DRAWN:

Date	Negotiated By	Amount In Words	Amount In Figures
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LASER PRO Lending, Ver. 5.55.00.002 Copr. Harland Financial Solutions, Inc. 1997, 2011. All Rights Reserved. - SC L1C7ILPLIC43LOC.FC TR-15244 PR-26

2-18-11

BB+T

Fifty Six Thousand Two Hundred Thirty-Four ⁶⁸/₁₀₀ \$56,234.68

March 17, 2011

309 Columbia Avenue
Lexington, SC 29072
(803) 359-5111
Fax (803) 359-6683

BY HAND DELIVERY

Mr. Richard McIntyre
Market President- Lexington
First Reliance Bank
801 North Lake Drive
Lexington, SC 29072

Re: First Reliance Irrevocable Letter of Credit No. 970001231

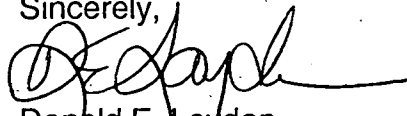
Dear Richard:

Enclosed please find the following documents to substantiate the sight draw and immediate demand by Branch Banking and Trust Company ("BB&T") on First Reliance Bank for \$32,314.12 evidenced by your Irrevocable Letter of Credit No. 970001231 ("Letter of Credit"):

1. The Sight Draw as required by the Letter of Credit;
2. The original Letter of Credit; and
3. A notarized statement from a BB&T officer that (a) Hook Point, LLC ("Borrower") has failed to perform its obligations under the Loan Agreement and Promissory Note dated November 16, 2007, (b) the draw amount does not exceed the obligations of Borrower to BB&T and (c) as signor, I have authority to act for BB&T as it relates to the Letter of Credit.

As these documents meet the specific requirements of the Letter of Credit, BB&T expects immediate payment by First Reliance in accordance with the Letter of Credit. We appreciate your prompt and immediate attention to this matter.

Sincerely,



Donald E. Layden
Senior Vice President
Area Executive

cc: S. Jahue Moore, Esquire
Thornwell F. Sowell, Esquire
Frank R. Ellerbe, III, Esquire

DRAWN UNDER First Reliance Bank
IRREVOCABLE LETTER OF CREDIT No. 970001231
DATED 02-11-2011

Date: March 17, 2011

At sight

Attention: Mr. Richard McIntyre
Market President- Lexington
First Reliance Bank
801 North Lake Drive
Lexington, SC 29072

YOU, FIRST RELIANCE BANK, are directed to pay to the order of BRANCH BANKING AND TRUST COMPANY, a North Carolina Bank Corporation, 309 Columbia Avenue, Lexington, SC 29072 the sum of THIRTY TWO THOUSAND THREE HUNDRED FOURTEEN AND 12/100ths DOLLARS (\$32,314.12) FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF IRREVOCABLE LETTER OF CREDIT NO. 970001231.

WIRE DRAFT DIRECTLY TO BRANCH BANKING AND TRUST COMPANY ACCOUNT #0005221067241 ABA #05320 1607 ON OR BEFORE March 17, 2011

BRANCH BANKING AND TRUST
COMPANY, a North Carolina
Bank Corporation

By 
[Authorized Officer]

STATEMENT OF AUTHORIZED OFFICER OF
BRANCH BANKING & TRUST COMPANY,
A North Carolina Bank Corporation

PERSONALLY appeared before me, James Allan Risinger, who, being duly sworn, says:

1. That James Allan Risinger is an officer of Branch Banking & Trust Company, a North Carolina Bank Corporation (the "Beneficiary") having authority to act for the Beneficiary with regard to the First Reliance Bank Irrevocable Letter of Credit No. 970001231 dated 02-11-2011 (the "Letter of Credit").

2. That Hook Point, LLC has failed to perform its obligations to the Beneficiary under the Loan Agreement and Promissory Note dated November 16, 2007 executed by and between Hook Pont, LLC as Borrower and Branch Banking and Trust Company as Lender (the "Obligations").

3. That the amount of the draft on the Letter of Credit does not exceed the amount due the Beneficiary under the Obligations.



By: James Allan Risinger
Title: Senior Vice President
of Branch Banking & Trust Company

SWORN TO and subscribed before me
this 17th day of March, 2011.

Janice B. Dent
Notary Public for South Carolina
My Commission Expires: 7/27/2016

FIRST RELIANCE
BANK
IRREVOCABLE LETTER OF CREDIT

Borrower: Hook Point LLC
PO Box 1594
Lexington, SC 29071-1594

Lender: First Reliance Bank
Lexington
801 N Lake Drive
Lexington, SC 29072

Beneficiary: Branch Banking & Trust Company
309 Columbia Ave
Lexington, SC 29072

NO.: 970001231

EXPIRATION DATE. This letter of credit shall expire upon the earlier of the close of business on 02-13-2012 and all drafts and accompanying statements or documents must be presented to Lender on or before that time, or the day that Lender honors a draw under which the full amount of this Letter of Credit has been drawn (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of One Million Four Hundred Thirty Thousand & 00/100 Dollars (\$1,430,000.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions: DRAFT MUST BE ACCOMPANIED BY: 1) The original letter of credit. 2) A notarized, sworn statement by the Beneficiary, or an officer thereof, that: a) The Borrower has failed to perform its obligations to the Beneficiary under the Loan Agreement and Promissory Note dated November 16, 2007, executed by and between Hook Point, LLC as Borrower and Branch Banking & Trust Company as Lender b) The amount of the draft does not exceed the amount due to the Beneficiary under the obligations; and; c) The signer has the authority to act for the Beneficiary with regard to the Letter of Credit. All drafts must be wired directly into the Beneficiary's account at BB&T into account #0005221067241 ABA #053201607.

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER First Reliance Bank IRREVOCABLE LETTER OF CREDIT NO. 970001231 DATED 02-11-2011," and the amount of each draft shall be marked on the draft. Only Beneficiary or Beneficiary's transferee may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted herein; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

PERMITTED TRANSFEREES. This Letter of Credit may be transferred by Beneficiary upon prior written notice to Lender of the transfer. The transferee shall be deemed the new Beneficiary of this Letter of Credit and the documents of the transferee, including drafts required under this Letter of Credit, will be processed by Lender (or any intermediary) without the original Beneficiary's intervention and without any further obligation of Lender to the original Beneficiary.

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee under the "Permitted Transferees" paragraph above (the "Permitted Transferee"), the documents required for a draw shall include all documents required elsewhere in this Letter of Credit, except that such documents may be in the name of and executed by either the original Beneficiary or the presenter permitted by the "Permitted Transferees" paragraph above.

COMPLIANCE BURDEN. Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of South Carolina.

EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

Dated: February 11, 2011

LENDER:

FIRST RELIANCE BANK

(Note: In order to be valid, this Letter of Credit requires dual officer signatures, one of which at the SVP level or higher)

By: _____

Lending Officer

By: _____

Senior Vice President

ENDORSEMENT OF DRAFTS DRAWN:

Date	Negotiated By	Amount In Words	Amount In Figures
------	---------------	--------------------	----------------------

LASER PRO Lending, Ver. 5.65.03.032 Capr. Market Financial Solutions, Inc. 1997, 2011. All Rights Reserved. - SC L/CPL/PLC43LOC.FC TR-15244 PB-26

2-18-11

BB&T

Fifty Six Thousand Two Hundred Thirty-Four ⁶⁸/₁₀₀ \$56,234.68

CERTIFICATE OF COUNSEL

The undersigned attorney for Appellant, Branch Banking and Trust Company, certifies that this Record on Appeal contains all material proposed to be included by any of the parties. Counsel further certifies that this Record on Appeal contains no additional materials.

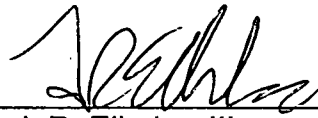


Frank R. Ellerbe, III
Wilson W. McDonald
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900
Attorneys for Appellant

June 28, 2011

CERTIFICATE OF COUNSEL

The undersigned attorney for Appellant, Branch Banking and Trust Company, certifies that this Record on Appeal contains all material proposed to be included by any of the parties. Counsel further certifies that this Record on Appeal contains no additional materials.



Frank R. Ellerbe, III
Wilson W. McDonald
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900
Attorneys for Appellant

June 28, 2011

RECEIVED
AUG 01 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2010-CP-32-05481

RECEIVED
JUL 05 2011
SC Court of Appeals

Hook Point, LLC.....Respondent,

v.

Branch Banking and Trust Company, First Reliance Bank,
and Allan Risinger, Defendants,
of whom Branch Banking and Trust Company is.....Appellant.

PROOF OF SERVICE

This is to certify that I, Leslie Allen, legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Record on Appeal** in the foregoing matter by placing copies of same in the United States Mail, postage prepaid, in envelopes addressed as:

Thornwell F. Sowell, Esquire
David C. Dick, Esquire
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211

Frederick A. Gertz, Esquire
Gertz & Moore
1416 Laurel Street
P.O. Box 456
Columbia, SC 29202

Dated at Columbia, South Carolina, this 30th day of June, 2011.

A handwritten signature in cursive script that reads "Leslie Allen". The signature is written in dark ink and is positioned above a horizontal line.

Leslie Allen