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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes, III, Special Circuit Court Judge

Appellate Case No. 2015-000035
Lower Case No. 2013-CP-07-00610

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SC Court of Appeals

First South Bank Respondent,

v.

John E. Rosenberg and Phillip J. Brust..... Defendants,

Of Whom The Estate of Phillip J. Brust is.....Appellant.

RECORD ON APPEAL – VOLUME II OF II

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INDEX

Record Volume I of II

ORDERS

Order of Judge Dukes Denying Motion to Dismiss dated August 22, 2013.....	1
Order Granting Plaintiff's Motion for Summary Judgment Against Defendant Rosenberg dated October 2, 2013	4
Protective Order dated March 18, 2014.....	9
Order of Judge Dukes Granting Plaintiff's Motion for Summary Judgment Against Defendant Brust dated August 5, 2014.....	15
Order of Judge Dukes Denying Brust's Motion to Amend filed December 10, 2014.....	29
Order of Judge Dukes Denying Brust's Motion for Reconsideration dated December 18, 2014	36

PLEADINGS

Complaint dated March 8, 2013.....	38
Defendant Brust's Motion to Dismiss dated April 17, 2013	64
Defendant Brust's Memorandum in Support of Motion to Dismiss dated June 24, 2013	66
Defendant Brust's Supplemental Memorandum in Support of Motion to Dismiss dated July 31, 2013	75
Defendant Brust's Answer filed September 9, 2013	82
Plaintiff's Motion for Summary Judgment against Defendant Brust dated October 23, 2013.....	96
Defendant Brust's Motion to Compel dated January 28, 2014	103
Defendant Brust's Motion to Amend Answer and Cross-claims against Defendant Rosenberg dated May 30, 2014.....	144
Defendant Brust's Memorandum in Response to Plaintiff's Supplemental Memorandum in Support of Motion for Summary Judgment dated July 7, 2014.....	167
Defendant Brust's Supplemental Memorandum in Opposition to Motion for Summary Judgment dated July 28, 2014	200

Defendant Brust's Motion for Reconsideration of the Summary Judgment Order dated August 18, 2014.....	204
First South Bank's Opposition to Motion to Amend dated September 11, 2014	237
Defendant Brust's Supplemental Memorandum in Support of Motion for Reconsideration dated October 15, 2014	245
Plaintiff's Reply to Defendants' Supplemental Memorandum in Support of Motion for Reconsideration dated November 3, 2014.....	270
Notice of Appeal dated January 9, 2015	336

HEARING TRANSCRIPT

Transcript of Summary Judgment Hearing dated June 3, 2014.....	364

DEPOSITION TRANSCRIPTS

Deposition of Terry Finger	425

Record Volume II of II

DEPOSITION TRANSCRIPTS

Deposition of Patrick Wright.....	474

DISCOVERY

Defendant Brust's First Set of Interrogatories and Requests for Production to Plaintiff dated October 9, 2013	659
Plaintiff's First Set of Requests to Admit to Defendant Philip J. Brust (dated October 3, 2013)	673
Defendant Philip J. Brust's Responses to Plaintiff's First Set of Requests to Admit (dated December 9, 2013).....	702
Plaintiff's Responses to Discovery Requests dated December 20, 2013	709
Plaintiff's First Supplemental Responses to Discovery Requests dated April 2, 2014	725
Defendant Philip J. Brust's Supplemental Responses to Plaintiff's First Set of Requests to Admit (dated April 28, 2014).....	735
Plaintiff's Second Supplemental Responses to Discovery Requests dated May 1, 2014	738

AFFIDAVITS

Affidavit of William C. Barksdale.....743

Exhibits

Deposition of Terry Finger Exhibit 1 (2001 Power of Attorney).....749

Deposition of Patrick Wright Exhibits

Exhibit 2 (First South Bank policies).....751

Exhibit 4 (January 9, 2006 Commitment Letter) 909

Exhibit 5 (January 18, 2006 instruction letter).....912

Exhibit 7 (Credit Narrative Ecological Investments, LLC) 915

Exhibit 8 (Guaranty).....920

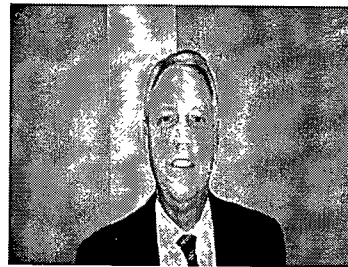
Exhibit 9 (2006 Power of Attorney).....922

Plaintiff's Exhibit 1 (Brust PFS 2005-2010).....924

Certificate of Counsel.....940

In The Matter Of:
First South Bank v.
Rosenberg, et al.

Patrick Wright
May 23, 2014



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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT) CASE NO. 2013-CP-07-00610

3
4
5 FIRST SOUTH BANK,) 30 (b) (6)
6 Plaintiff,) DEPOSITION OF
7 -versus-) PATRICK WRIGHT
8 JOHN E. ROSENBERG AND PHILIP J.)
9 BRUST,)
10 Defendants.)

11
12
13
14 DATE: Friday, May 23, 2014

15 TIME: 10:05 a.m.

16 LOCATION: Finger & Fraser, PA
17 35 Hospital Center Commons
18 Suite 200
Hilton Head Island, South Carolina
29926

19 REPORTED BY: Janice D. Hayward, RMR
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22 Charleston, South Carolina 29418
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RECORD 0476

INDEX TO EXAMINATIONS

Examination By Mr. Gaskins:	5
Examination By Mr. Silver:	168
Examination By Mr. Gaskins:	183

INDEX TO EXHIBITS

Defendants' Exhibits	
Defendants' <u>Exhibit 1</u> , amended notice	7
Defendants' <u>Exhibit 2</u> , bank policies	18
Defendants' <u>Exhibit 3</u> , retention policy	24
Defendants' <u>Exhibit 4</u> , commitment letter	42
Defendants' <u>Exhibit 5</u> , instruction letter	58
Defendants' <u>Exhibit 6</u> , fax	63
Defendants' <u>Exhibit 7</u> , credit memo	64
Defendants' <u>Exhibit 8</u> , guaranty agreement	85
Defendants' <u>Exhibit 9</u> , power of attorney	98
Defendants' <u>Exhibit 10</u> , agreement	103
Defendants' <u>Exhibit 11</u> , complaint	108
Defendants' <u>Exhibit 12</u> , emails	128
Defendants' <u>Exhibit 13</u> , closing checklist	131
Defendants' <u>Exhibit 14</u> , checklist	133
Defendants' <u>Exhibit 15</u> , checklist	134
Defendants' <u>Exhibit 16</u> , checklist	135
Defendants' <u>Exhibit 17</u> , checklist	136
Defendants' <u>Exhibit 18</u> , 1-21-09 emails	137

Janice D. Hayward, RMR
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1	Defendants' <u>Exhibit 19</u> , 1-21-09 email	138
2	Defendants' <u>Exhibit 20</u> , 4-26-10 email	145
3	Defendants' <u>Exhibit 21</u> , 1-19-10 email	146
4	Defendants' <u>Exhibit 22</u> , emails	147
5	Defendants' <u>Exhibit 23</u> , emails	148
6	Defendants' <u>Exhibit 24</u> , plaintiff's responses	167
7		
8		
9	Plaintiff's Exhibits	
10	Plaintiff's <u>Exhibit 1</u> , financial statements	174
11	Plaintiff's <u>Exhibit 2</u> , payoff letter	179
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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1 (Patrick Wright, after being sworn,
2 testified as follows:)

3 EXAMINATION

4 BY MR. GASKINS:

5 Q Good morning, Mr. Wright.

6 A Good morning.

7 Q I introduced myself earlier, but my name
8 is Brandon Gaskins, and I represent Philip Brust who
9 is a defendant in the case of First South Bank
10 versus John Rosenberg and Philip Brust.

11 We are here for the purpose of
12 taking your deposition. Do you know what a
13 deposition is?

14 A I do.

15 Q So you understand, I'll be asking you
16 questions related to this lawsuit.

17 A I do.

18 Q And for the sake of the court reporter and
19 the record we're trying to make, please verbalize
20 your responses. And instead of uh-huh or huh-uh,
21 please try to say yes, no. And I'm bad about it
22 too, and I will try to catch you, but just try your
23 best to do that.

24 A I will.

25 Q Okay. So you understand that you are --

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1 you've been sworn in and you're under oath and you
2 have an obligation to answer my questions
3 truthfully?

4 A I do.

5 Q Is there any reason why you can't answer
6 my questions truthfully today?

7 A No.

8 Q So you're not under the influence of
9 alcohol or drugs or any medication that would affect
10 your ability to tell the truth?

11 A No.

12 Q If you don't understand any of my
13 questions, please direct your questions, confusion
14 to me instead of the bank's attorney. Do you
15 understand that?

16 A I do.

17 Q If you don't say anything, I'm going to
18 assume that you understand the question. Is that
19 fair?

20 A Yes.

21 Q Throughout the day, hopefully we won't be
22 here too long, but you may need to take a break or
23 others may need to take a break. That's perfectly
24 fine. Just let me know. What I will ask you to do
25 is answer the question that's been posed to you

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1 before we take any break.

2 A Okay.

3 Q If -- during any breaks you're not
4 supposed to have any conversations with your
5 attorney. If you do, I am allowed under the rules
6 of civil procedure to inquire into those
7 discussions.

8 So I just want you to be aware
9 of that and realize that although normally
10 attorney-client privilege does apply to your
11 communications, I do have that ability to inquire
12 into those communications during the course of your
13 deposition. Do you understand that?

14 A I do.

15 Q Did you do anything to prepare today for
16 this deposition?

17 A I spoke to my counsel and he very briefly
18 briefed me on what we would be covering today.

19 Q Okay. And you don't have to tell me what
20 you all talked about.

21 Did you review any documents?

22 A I have reviewed the list of documents that
23 were a part of the subpoena or the court record that
24 would be entered into the conversation today.

25 (Marked for identification was Defendants'

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1 Exhibit 1.)

2 BY MR. GASKINS:

3 Q Mr. Wright, you've been handed what's been
4 marked as Exhibit 1. This is an amended notice of
5 Rule 30(b)(6) deposition. I'm not sure if you have
6 seen this document before because it was just sent
7 out to correct the address of where we were holding
8 the deposition. But otherwise, it's consistent with
9 the previous notice. Have you seen this document
10 before?

11 A Yes, I have the original version of this.

12 Q And is this the document that you were
13 referring to?

14 A It is.

15 Q Okay. And when you said you reviewed
16 certain documents on a list, are you referring to
17 what's on page three as Exhibit A?

18 A I reviewed this particular letter and the
19 exhibit, not the other documents that are attached
20 to it.

21 Q Okay. You didn't review any other
22 documents?

23 A Just this list in anticipation of this
24 deposition.

25 Q Okay. So you reviewed all of these to the

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1 extent that they identify a specific document?

2 A Yes.

3 Q Okay. Did you review any other documents?

4 A No.

5 Q Did you talk to anybody else besides the
6 bank's lawyer about this deposition?

7 A No.

8 Q Have you given a deposition before?

9 A Yes.

10 Q Okay. When was that, or first, let me ask
11 you how many times?

12 A This will be the second time, I think,
13 I've done a deposition. I did one other one in
14 2012.

15 Q And was that in a lawsuit?

16 A It was..

17 Q Civil lawsuit? And did that involve the
18 bank?

19 A It did.

20 Q First South Bank?

21 A It did.

22 Q Okay. And were you all the plaintiff or
23 the defendant?

24 A We were the plaintiff.

25 Q Who was the defendant?

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1 A Bank of the Ozarks.

2 Q Where was that case pending?

3 A It was a federal case and it was decided
4 in Charleston.

5 Q Tell me about that case.

6 A It was a case involving the participation
7 agreement between the two banks and a discrepancy
8 and a disagreement over the interpretation of that
9 document.

10 Q How were you involved in that litigation?

11 A I was the primary relationship manager on
12 the credit for First South Bank.

13 Q Okay. What was the credit involving?

14 A It was a loan. The borrower was Lakeside
15 Development, LLC which was a piece of commercial
16 property in Bluffton, South Carolina.

17 Q And you were the loan officer?

18 A I was the loan officer for First South
19 Bank on that particular loan.

20 Q Any other depositions that you remember?

21 A No.

22 Q What is -- first of all, what's your
23 current address?

24 A I currently live at 2204 Red Fox Court in
25 Murfreesboro, Tennessee.

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1 Q What's your zip code?

2 A 37129.

3 Q How long have you been at that address?

4 A I'm living there temporarily with my
5 family, my parents, until I relocate my family to
6 Nashville for a new job that I took.

7 Q Where is your family currently residing?

8 A They live here in Bluffton.

9 Q You married?

10 A I am.

11 Q What's your wife's name?

12 A Laura.

13 Q Laura Wright?

14 A Laura Conway Wright, um-hum.

15 Q Where is she from originally?

16 A She was born in Nashville but spent most
17 of her growing up life in Montana.

18 Q Do you have any children?

19 A No. She has three boys, but they're not
20 my children. They're -- I mean, they're in our life
21 but I don't have any legal rights to them.

22 Q How old are they?

23 A I have a five-, seven- and ten-year-old.

24 Q Do you have any other relatives in
25 Beaufort County?

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1 A No.

2 Q Where are you currently working?

3 A I work for InsBank in Nashville,
4 Tennessee.

5 Q Spell that.

6 A I-n-s-B-a-n-k.

7 Q How long have you been there?

8 A Two and a half months.

9 Q And what's your role there?

10 A I'm a first vice-president and
11 relationship manager.

12 Q Where did you work before InsBank?

13 A I worked at First South Bank. You want
14 the other employers, or?

15 Q Yeah. We'll get to that. Here in
16 Bluffton?

17 A Yes.

18 Q How long were you working in the Bluffton
19 branch?

20 A I joined the Bluffton branch in May of
21 2005.

22 Q And when did your employment end?

23 A February of 2014.

24 Q Why did your employment end?

25 A I chose to move back to Nashville for a

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1 job opportunity.

2 Q And that was your decision?

3 A Yes.

4 Q You weren't terminated?

5 A No.

6 Q Where did you work at prior to
7 First South?

8 A I worked at First Citizens Bank.

9 Q Where at?

10 A I worked in the Bluffton office and spent
11 most of my time with them in Charleston.

12 Q What was your role at First Citizens?

13 A I was a relationship manager for the
14 commercial group as well as a business banking
15 manager when I was in Charleston.

16 Q How long did you work at First Citizens?

17 A I joined them in 2003 through May of 2005,
18 so two and a half years.

19 Q Where did you work before First Citizens?

20 A I worked at Bank of America in Charleston.

21 Q How long did you work at Bank of America?

22 A I joined what is now Bank of America in
23 August of 1990.

24 Q And you stayed there until 2003 when you
25 went to First Citizens?

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RECORD 0487

1 A Yes. That's correct.

2 Q What -- I guess over that period of time
3 you may have had different jobs at Bank of America?

4 A Um-hum.

5 Q Can you walk me through the different jobs
6 beginning in 1990 and worked through 2003?

7 A I was a relationship manager. I was a
8 credit department manager. I was a relationship
9 manager for the professional and executive banking
10 group. I was a recruiter and a staffing manager.

11 Q You were a staffing manager --

12 A Um-hum.

13 Q -- around 2003 when you left?

14 A That's right.

15 Q Where did you work before Bank of America?

16 A I worked for what is now SunTrust Bank in
17 Murfreesboro, Tennessee.

18 Q How long did you work there?

19 A Joined them in May of '86 till, through
20 July of '90.

21 Q What was your role there?

22 A I was a credit analyst, and then I moved
23 into a commercial relationship manager position.

24 Q Where did you work before that?

25 A I worked at a men's clothing store during

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1 college.

2 Q Okay. So the job in Murfreesboro was your
3 first job out of college?

4 A Correct.

5 Q So you've been in banking your entire
6 career?

7 A Yes.

8 Q And that's been approximately 28 years, is
9 that right, if my math is correct?

10 A Something like that. Yes, '86 to '14, so.

11 Q Tell me about your job at First South
12 Bank.

13 A I was a relationship manager, and I also
14 had the title of area executive which basically
15 meant I was kind of the portfolio manager for the
16 Bluffton office.

17 Q And is the Bluffton office the only
18 presence that First South has in the Beaufort/Hilton
19 Head area?

20 A Yes.

21 Q And was your role -- was that your role
22 throughout your time at First South?

23 A Yes.

24 Q What were your duties and
25 responsibilities?

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1 A I had a -- I managed the staff of six
2 people and managed a portfolio of commercial clients
3 and did business calls and sales and marketing.

4 Q What does sales and marketing entail?

5 A Calling on potential clients of the
6 commercial bank for loan opportunities.

7 Q Did you originate loans?

8 A I did.

9 Q Tell me, to the extent there is a normal
10 process for originating loans, tell me what that is.

11 A For a new client that we might be looking
12 at a loan request from, we would meet with the
13 client, talk about the transaction, determine if it
14 was something that we felt like was a bankable
15 credit, something the bank wanted to pursue as far
16 as a loan, and then go through the process of
17 underwriting that credit.

18 Q Tell me about the underwriting process.
19 What does that entail?

20 A It involves gathering financial
21 information, other documents that make up a loan
22 decision which would include appraisals and, you
23 know, different legal documents that would come into
24 play depending on the transaction, and taking that
25 information and putting it through an underwriting

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1 process in the bank to see if it's a loan that would
2 fit the criteria set forth in our bank's policy.

3 Q Who did you report to?

4 A I reported to W.C. Lyerly, III -- he goes
5 by Chip -- in Columbia, South Carolina.

6 Q So you didn't report to anybody in
7 Bluffton --

8 A No.

9 Q -- when you were that branch manager?

10 A Correct.

11 Q When you originated commercial loans did
12 you have to get approval from anybody to underwrite
13 the loan or did you have, I guess, your own
14 discretion?

15 A We had individual loan authority up to a
16 certain dollar amount, and then over that dollar
17 amount it progressed up into the other levels of
18 bank management including my boss and then other
19 folks on the credit administration side of the bank.

20 Q What was that level?

21 A I believe my individual authority for
22 secured lending was a half a million dollars, and
23 anything over that had to go through other channels
24 in the bank. Other people had to review that and
25 take a look at those credits.

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1 Q How about a loan above 2.5 million, what
2 was the approval chain of command?

3 A It would have been myself, my boss, senior
4 credit officer, and the chief credit officer of the
5 bank.

6 (Marked for identification was Defendants'
7 Exhibit 2.)

8 BY MR. GASKINS:

9 Q You've been handed what's been marked as
10 Defendants' Exhibit 2, and these are what has been
11 explained to us by the bank's counsel or maybe the
12 bank itself as the policies and procedures of the
13 bank that were in effect in January and February of
14 2006. And I know there are a lot of documents
15 there, but does that look correct?

16 A It appears to be the manual, yes.

17 Q And the first page has an index with tabs
18 and the policy name. Do you see that?

19 A Um-hum. I do.

20 Q I'm going to ask you to turn to tab three.
21 And you can take that clip off if it helps, but I
22 guess just be careful. If you go to the last page
23 in tab three.

24 MR. SILVER: Can you tell me what
25 page 'cause I don't have tabs in my copy.

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1 MR. GASKINS: Oh, you don't? I'm
2 sorry. The tabs -- it will be 1723.

3 MR. SILVER: Very good. Thank you.

4 MR. GASKINS: You're welcome. Sorry
5 there are no tabs in there.

6 MR. SILVER: That's fine.

7 BY MR. GASKINS:

8 Q Do you recognize this document that has
9 the Bates label 17FSB/EI 001723 at the bottom?

10 A Yes.

11 Q What is it?

12 A It's the loan approval flow chart for the
13 approval process for loans at First South Bank.

14 Q And the date at the top says 12-16, 2004.
15 Do you see that?

16 A Yes.

17 Q And based on that do you think this policy
18 was effective beginning around that date?

19 A I assume that it has the date on it. That
20 would be the effective date.

21 Q Tell me where you fall on this flow chart.
22 In 2006, beginning of 2006, where you fell on this
23 flow chart?

24 A My role would have been area executive.

25 Q And so below you is the banking group

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1 president. Who would that have been?

2 A That is Mr. Lyerly who I referenced
3 earlier.

4 Q And he's the president of the bank?

5 A Yes.

6 Q And so you would have to go to him for --
7 to get any approvals above your dollar threshold, is
8 that correct?

9 A He would be one of the people that I would
10 go to, yes.

11 Q Who's below the banking group president?

12 A The senior credit officer or chief credit
13 officer.

14 Q And that's for loans above two million?

15 A I believe so.

16 Q So you would have to go to the senior
17 credit officer or chief credit officer to get
18 approval of loans over two million?

19 A That's correct, in addition to Mr. Lyerly
20 who's the banking group president.

21 Q Who was the senior credit officer or chief
22 credit officer in January and February of 2006?

23 A At that time Frank Callison was the senior
24 credit officer. Larry Harper was the chief credit
25 officer.

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1 Q Okay. What's the difference between the
2 two roles, between senior and chief?

3 A Chief credit officer is the most senior
4 credit officer within the bank.

5 Q Okay.

6 A Senior credit officer would have been one
7 of the other approval officers for commercial loans.

8 Q All right. What about, there's a
9 directors loan committee?

10 A Yes.

11 Q Who was on the directors loan committee?

12 A I don't know who was on the loan committee
13 at that time.

14 Q Below it, it says two-thirds of legal
15 limit. What does that mean?

16 A That would be up to two-thirds of whatever
17 our legal lending limit would be at the time the
18 credit was being considered.

19 Q Do you know what the legal limit was in
20 January or February of 2006?

21 A I don't remember.

22 Q Do you have an idea, ballpark?

23 A I don't know.

24 Q Coming back to Exhibit 1, which is the
25 30(b)(6) deposition notice, and you understand that

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1 pursuant to this notice you have been designated by
2 the bank to testify about the issues set forth on
3 Exhibit A of Exhibit 1, correct?

4 A Yes.

5 Q Are there any -- have you looked at those
6 and determined if there are any issues on here that
7 you're not prepared or knowledgeable about to
8 testify?

9 A I don't see any that I wouldn't be
10 prepared to testify.

11 Q If you look at Number 16, you see bank
12 document retention policy and any documents
13 destroyed, do you see that?

14 A Yes.

15 Q And you have knowledge about the bank's
16 document retention policy?

17 A I know the bank has a retention policy but
18 I don't have the -- I don't know the details of
19 those.

20 Q Do you have an idea of what they are?

21 A They vary for different types of
22 documents, but I don't know, don't know the
23 individual parts of that.

24 Q You had to abide by the policy, right,
25 while you worked for First South?

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1 A Yes.

2 Q But you don't know what you had to abide
3 by?

4 A These documents would have been held in
5 our Spartanburg office, and I was not in that
6 office, so.

7 Q What documents are you referring to?

8 A The documents that are, many of the
9 documents that are listed on this exhibit.

10 Q Okay. Well, tell me about how those
11 documents get from Bluffton to Spartanburg.

12 A I believe they're sent by a courier
13 service that the bank uses.

14 Q And you do that on a daily, weekly basis?

15 A On an as-needed basis.

16 Q What is as-needed generally?

17 A I don't know what it would be now. It
18 was -- at one time we used it quite often, and we
19 were very busy, but I couldn't tell you what it's
20 like now.

21 Q Well, in 2006 do you remember what it was?

22 A I don't know how often. I mean, we have
23 people, a service that comes in every day. Some
24 days there's stuff that we put in. Some days
25 there's not. Some days we get information. Some

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1 days we send up information. So just kind of
2 depends on what's going on.

3 Q Do you remember if the bank had a document
4 retention policy in 2006?

5 A I assume we did.

6 Q Why are you assuming you did?

7 A I just said I don't know of all the ins
8 and outs of the policy.

9 Q I understand you may not remember all the
10 ins and outs, but I'm asking you if the bank had a
11 document retention policy in 2006?

12 A I assume we did.

13 Q You don't know?

14 A I assume we did.

15 Q So is that a no? You don't know if the
16 bank had a retention policy in 2006?

17 A I don't know.

18 MR. GASKINS: Give me one minute. I
19 apologize for the delay. I have a lot of
20 documents here.

21 (Marked for identification was Defendants'
22 Exhibit 3.)

23 BY MR. GASKINS:

24 Q You've been handed what's been marked as
25 Exhibit 3 which appears to be the bank's record

1 retention policy which was approved by the board
2 April 17th, 2013. Do you agree that that's what
3 that document is?

4 A Yes.

5 Q And you would have been working at
6 First South when this policy became effective,
7 correct?

8 A Yes.

9 Q Take a minute and review it.

10 A (Witness complied.)

11 Q Have you reviewed it?

12 A Yes.

13 Q And is this the record retention policy
14 that was in effect during your employment in 2013?

15 A Yes.

16 Q And you said that you assume that the bank
17 had a retention policy in 2006, correct?

18 A Yes.

19 Q And does this appear to be similar to what
20 you think the bank's policy would have been in 2006?

21 A I can't speak to what was on the 2006
22 record, but I would assume that a lot of the
23 information is the same.

24 Q Do you see anything that's different from
25 your recollection of what the record retention

Janice D. Hayward, RMR
843.478.6756

1 policy was in 2006?

2 A I don't know if there are changes or not.

3 Q Do you know what the purpose of the
4 retention policy is?

5 A It's the bank's guidelines for retaining
6 documents and what documents are retained and what
7 documents are not retained.

8 Q Why would the bank have such a policy?

9 A To have recordkeeping for our own systems
10 as well as for regulators and other people who would
11 look at our files.

12 Q So it's to protect the bank and comply
13 with any federal and state regulations that may
14 apply, correct?

15 A Yes.

16 Q And it's all employees' obligation to
17 comply with the retention policy, correct?

18 A Yes.

19 Q Turn to the second page which is document
20 number 1627 at the bottom. And you see a section
21 entitled storage. Do you see that?

22 A I do.

23 Q The second sentence says, the department
24 had a branch manager responsible for maintaining
25 departmental records in an orderly and readily

Janice D. Hayward, RMR
843.478.6756

1 accessible fashion. Do you see that?

2 A Yes.

3 Q Okay. And we established earlier that you
4 were the branch manager at the Bluffton branch,
5 correct?

6 A That's correct.

7 Q So you would have been responsible for
8 maintaining departmental records in an orderly and
9 readily accessible fashion?

10 A For the documents we held in Bluffton,
11 yes.

12 Q And was that the policy in 2006?

13 A I don't know.

14 Q To the best of your recollection?

15 A I would assume so but I don't know.

16 Q All right. Turn a couple pages to page
17 1629, and you see the section for commercial loans?

18 A Yes.

19 Q And you would agree that this is the
20 document retention schedule for various documents
21 relating to commercial loans?

22 A Yes.

23 Q See where it says customer correspondence?

24 A Yes.

25 Q And that record retention period is six

Janice D. Hayward, RMR
843.478.6756

1 years after account closed?

2 A Yes.

3 Q And do you believe that was in effect in
4 2006?

5 A I don't know.

6 Q Do you have any reason to think that that
7 was not?

8 A I don't know the answer to that.

9 Q Well, tell me, how do you define after
10 account closed? Does that mean after the loan is
11 paid off?

12 A I would assume in this case, yes, that's
13 what it was referring to.

14 Q And I'm not asking you to assume. I mean,
15 we established that you were the branch manager and
16 you had certain responsibilities and you had an
17 obligation to comply with this. This is 2013. This
18 is less than -- or about a year ago.

19 Why are you assuming? Do you
20 know?

21 A My understanding is that after account
22 closed would be after the loan is paid off.

23 Q Okay. So you would have to retain those
24 documents six years after the loan is paid off, is
25 that right?

Janice D. Hayward, RMR
843.478.6756

RECORD 0502

1 A Yes.

2 Q Turn to page 1631. And you can turn
3 actually to the page before because the section is
4 deposit operations. And I know this case doesn't
5 necessarily deal with deposit operations, but I want
6 to ask you about it anyways.

7 Going back to page 1631, you see
8 an entry for power of attorney, powers of attorney.
9 Do you see that?

10 A Yes.

11 Q And it says 15 years after close, is that
12 right?

13 A Yes.

14 Q So you would interpret after close to be
15 the same, after the account closed? And I
16 understand this is a deposit operation so it's a
17 little bit different than a loan, but as long as
18 there was an active account, the bank would have an
19 obligation to keep the power of attorney during that
20 period and then for 15 years after that account
21 closes, is that right?

22 A I believe so.

23 Q Do you know if the bank used this
24 retention schedule for powers of attorney outside
25 deposit operations?

Janice D. Hayward, RMR
843.478.6756

1 A I don't know.

2 Q Well, do you know what the normal practice
3 is for powers of attorney used to close commercial
4 loans?

5 A I don't.

6 Q All right. Turn to page 1632. And you
7 see the section entitled real estate mortgage loans?

8 A Yes.

9 Q I ask you to turn the page. You see entry
10 for correspondence?

11 A Yes.

12 Q And that's three years after the account
13 closed?

14 A Yes.

15 Q So according to this the bank would have
16 to keep any correspondence regarding a real estate
17 mortgage loan during the time that the loan was
18 active and for three years after it was repaid, is
19 that correct?

20 A Yes.

21 Q Do you have any reason to believe that
22 that was not the same retention schedule from 2006
23 until 2013?

24 A I don't know.

25 Q You don't know?

Janice D. Hayward, RMR
843.478.6756

1 A I don't know if it's the same or not. No,
2 I don't know.

3 Q All right. Let's turn to the loan that is
4 the subject of this litigation which was closed on
5 February 2nd, 2006, does that sound right?

6 A Sounds right.

7 Q Okay. Tell me how -- well, first of all,
8 what was your involvement in that loan?

9 A I was the account officer who met with the
10 borrower and underwrote the loan and was primarily
11 responsible for managing that loan.

12 Q How did -- who did you deal with on behalf
13 of the borrower regarding this loan?

14 A John Rosenberg was my contact.

15 Q Did you know Mr. Rosenberg prior to
16 originating this loan?

17 A I did.

18 Q How did you know him?

19 A He was a guarantor on another credit with
20 First South Bank that I managed.

21 Q And what was that credit?

22 A Airpro Cooling and Heating.

23 Q What was the nature of the credit?

24 A It was an operating company that was
25 started to do cooling and heating repairs and

Janice D. Hayward, RMR
843.478.6756

1 installation.

2 Q I was asking about the credit. What was
3 the nature of it? Was it a line of credit? Was
4 it --

5 A We had a line of credit as well as
6 equipment loans for some of their service vehicles.

7 Q When did that relationship with
8 Mr. Rosenberg and Airpro begin?

9 A I'm not exactly sure. It was already on
10 the books when I got to the bank in 2005. I
11 would -- it was before I got to the bank.

12 Q Were you, prior to this loan being
13 originated and that process beginning, were you
14 familiar with Mr. Rosenberg's involvement in
15 Ecological Investments, LLC or the Butterfly
16 Kingdom?

17 A Not until we started discussing the loan.

18 Q How did those discussions begin?

19 A He asked for some time to meet and said
20 that the loan he had with, or they had with the
21 current bank was coming up for renewal, and he was
22 trying to get a renewal there but was also looking
23 at other banks for possibly financing the loans.

24 Q Okay. What did he tell you about
25 Ecological Investments?

Janice D. Hayward, RMR
843.478.6756

1 A He gave me some background on what had
2 gone on with the credit and the property and told me
3 about the interest that was in the property from
4 someone who wanted to purchase it and that they
5 would like to renew the loan and -- or would like to
6 establish a relationship with First South Bank and,
7 you know, see the loan through until the property
8 sold.

9 Q Did he tell you about the Butterfly
10 Kingdom?

11 A We spent some time talking about it but
12 not in great detail.

13 Q What was your understanding of what the
14 Butterfly Kingdom was going to do or going to be?

15 A My understanding was that it was going to
16 be a large commercial development out near I-95
17 where the property is now that would have involved
18 leisure as well as hotels and restaurants and
19 basically a kind of a stand-alone commercial
20 development with a number of different commercial
21 entities involved with it.

22 Q When did he approach you about refinancing
23 the loan for Ecological Investments?

24 A Sometime in October or early November of
25 2005.

Janice D. Hayward, RMR
843.478.6756

1 Q At that time did he tell you whether
2 Butterfly Kingdom was going to be pursued or were
3 they abandoning the idea of the Butterfly Kingdom?

4 A My understanding was the original concept
5 was not going forward but there were some other
6 interested parties who were looking at doing another
7 commercial development on that tract.

8 Q When you say other interested parties, you
9 mean somebody outside of Ecological Investments?

10 A Yes.

11 Q So they had interest in purchasing the
12 property that Ecological Investments owned, is that
13 right?

14 A That was my understanding from
15 Mr. Rosenberg.

16 Q Did he tell you -- what did he tell you
17 about the Ecological Investments purchase of the
18 property?

19 A Just that property was taken down with an
20 investor group to do the original Butterfly Kingdom
21 financing, that didn't come to fruition after 2011.

22 Q Let me ask you, did he tell you who
23 Ecological Investments bought it from?

24 A We didn't go into detail about that, no.

25 Q Did you ever ask about that?

Janice D. Hayward, RMR
843.478.6756

1 A I don't remember asking about that.

2 Q Do you remember asking how much he bought
3 it for?

4 A I don't remember if I asked or not. I
5 can't remember.

6 Q That would have been pertinent
7 information?

8 A Correct.

9 Q All right. So after he approached you
10 about refinancing the loan, and I believe that loan
11 was with SunTrust, is that right?

12 A I believe that's correct.

13 Q Okay. Do you remember the outstanding
14 principal on that loan around the time he approached
15 you?

16 A I want to say it was two million to
17 2.1 million, or something like that.

18 Q Did he say how much he wanted to borrow to
19 refinance that loan?

20 A We talked about refinancing the existing
21 balance as well as some additional interest carry
22 until the property sold.

23 Q What different loan options did you all
24 discuss?

25 A We discussed a two-year interest only loan

Janice D. Hayward, RMR
843.478.6756

1 on the property to allow time for the contract to
2 come to fruition and for the property to be sold.

3 Q What contract are you referring to?

4 A The -- I'm not sure there's -- I'm sorry.
5 I misspoke.

6 The interest in the property
7 based on the conversations that were happening at
8 the time, we wanted to allow time for that to come
9 to fruition and then for the property to eventually
10 be sold and the loan to be paid off.

11 Q But at the time he didn't have a contract?

12 A I don't remember there being a physical
13 contract at the time we were talking.

14 Q He didn't have a definite buyer at that
15 time, did he?

16 A He had interested parties that we talked
17 about, so I knew there were some interested --

18 Q But an interested party is not a definite
19 buyer. You'd agree with that?

20 A That's correct.

21 Q Do you know what the interested parties
22 were willing to pay for the property?

23 A I remember talking about a number in the
24 five to five point two or three million dollar range
25 for the property.

Janice D. Hayward, RMR
843.478.6756

1 Q Did give you an appraisal?

2 A He did not provide an appraisal.

3 Q So you were basing all this off what
4 Mr. Rosenberg told you?

5 A In our initial conversations, that's -- I
6 assumed he knew the number that was being
7 entertained in terms of what they were willing to
8 offer and pay for the property.

9 Q Okay. After that did you do anything to
10 confirm what he told you?

11 A Well, once we got to the point of agreeing
12 on a loan package for him, we would have had an
13 appraisal done on the property to confirm that.

14 Q What about, did you have any discussions
15 with a potential buyer?

16 A I did not.

17 Q Did you discuss any other options besides
18 an interest only loan?

19 A I don't remember discussing anything else
20 other than the offer that we put in place with them.

21 Q Are interest only loans something that the
22 bank prefers to engage in?

23 A I don't think we prefer to do it. It was
24 certainly something that was offered at that
25 particular time.

Janice D. Hayward, RMR
843.478.6756

1 Q Tell me generally what an interest loan
2 is.

3 A Interest only loan means that you pay
4 interest on the outstanding principal balance of the
5 loan and no principal is due until maturity and/or
6 the property sold.

7 Q And those are risky loans for the bank,
8 aren't they?

9 A I wouldn't characterize them as risky.

10 Q Okay. Did you know Phil Brust prior to
11 originating the Ecological Investments loan?

12 A No.

13 Q When did you first meet Mr. Brust?

14 A I didn't meet Mr. Brust in person until
15 after the loan had been on the books for a period of
16 time.

17 Q How long after?

18 A I can't remember the exact date he came
19 into the office.

20 Q Did you ever talk with him?

21 A I did speak with him on the phone.

22 Q Prior to the loan closing?

23 A I did.

24 Q When was your first communication with
25 Mr. Brust?

1 A Sometime in 2005, late 2005 after I met
2 with Mr. Rosenberg.

3 Q Okay. And you all had a conversation over
4 the phone, I'm assuming?

5 A We did.

6 Q Did you call him?

7 A I don't remember.

8 Q Okay. What was the purpose of the
9 conversation?

10 A During the conversation I had with
11 Mr. Rosenberg, Mr. Brust was offered up and was
12 entered in as another member of the LLC of
13 Ecological and as a guarantor, personal guarantor on
14 the loan.

15 So I spoke with him about
16 getting financial information from him to support
17 the loan request that was in the process of being
18 underwritten.

19 Q How do you know he was going to be a
20 personal guarantor on the loan?

21 A I called him and said I need financial
22 information based on your being a personal guarantor
23 on the loan and he --

24 Q And that's what I'm asking about. Why did
25 you think he was going to be a personal guarantor on

Janice D. Hayward, RMR
843.478.6756

1 the loan?

2 A Mr. Rosenberg had said with the current
3 structure they had that Mr. Brust was one of the
4 members of the LLC and that he would be willing to
5 guaranty, personally guaranty the loan.

6 Q Did Mr. Brust ever tell you that?

7 A He did in a conversation we had when I
8 asked for financial statements.

9 Q What did he say?

10 A I just said that's part of your being
11 willing to personally guaranty the loan, and he
12 affirmed that he would be providing me financial
13 information and that he understood.

14 Q Did he agree during these conversations
15 that he would personally guaranty anything besides
16 the loan?

17 A We never talked about anything but the
18 loan request that was pending at the time.

19 Q Did you talk to anybody in the bank about
20 this prospective loan prior to sending a commitment
21 letter?

22 A Yes. We would have discussed it in the
23 bank before I sent the commitment letter.

24 Q Do you remember who you discussed it with?

25 A Would have been Chip, Mr. Lyerly, Mr.

Janice D. Hayward, RMR
843.478.6756

1 Callison, and Mr. Harper.

2 Q Did you do any inquiries regarding the
3 outstanding loan with SunTrust when you were
4 considering whether to loan this money to Ecological
5 Investments?

6 A I remember Mr. Rosenberg giving me some
7 information on what the proposed payoff was, but
8 didn't do any other additional inquiries until we
9 would have gotten the payoff from the attorney.

10 Q Do you know why they took that loan out,
11 when I say they, Ecological Investments?

12 A Why they took the loan out at SunTrust?

13 Q Yeah.

14 A I don't know.

15 Q You didn't inquire?

16 A I mean, I assume they were trying to
17 recoup some money that they had put into the
18 property when they purchased it to do whatever
19 improvements that they were thinking about doing at
20 the time.

21 Q But you didn't look to see how much they
22 purchased it for?

23 A I can't remember.

24 Q Did you have any other discussions with
25 Mr. Brust prior to the loan closing other than the

Janice D. Hayward, RMR
843.478.6756

1 one that we just discussed?

2 A I don't remember any other conversations.

3 Q So you just remember that one
4 conversation?

5 A Yes.

6 Q Is that a yes?

7 A Yes.

8 Q Do you remember when that was?

9 A Late 2005, November -- October, November
10 timeframe, something like that.

11 Q That would have been prior to you issuing
12 a commitment letter?

13 A Yes.

14 Q Does the bank have a policy on commitment
15 letters, or did they have a policy on commitment
16 letters in 2006?

17 A We typically did commitment letters for
18 loans of this size just to memorialize the agreement
19 between the bank and the borrower.

20 Q I understand that may be what you
21 typically did. Did the bank have a policy on
22 commitment letters in 2006?

23 A I don't remember our policy on that.

24 (Marked for identification was Defendants'
25 Exhibit 4.)

Janice D. Hayward, RMR
843.478.6756

1 BY MR. GASKINS:

2 Q You've been handed what's been marked as
3 Exhibit 4 which appears to be the commitment letter
4 that you sent to Ecological Investments on
5 January 9th, 2006. Do you agree with that?

6 A Yes.

7 Q Who drafted this letter?

8 A I did.

9 Q Do you remember when you drafted it?

10 A It's dated January the 9th, so I would
11 assume somewhere around that time period.

12 Q Okay. And why did you draft it?

13 A The loan had been approved by the bank and
14 we put the commitment letter together just to,
15 again, incorporate the terms of our agreement with
16 the borrower.

17 Q Is this an important document for the
18 bank?

19 A Yes.

20 Q Why is that?

21 A It involves the borrower agreeing to the
22 terms and conditions that we've outlined in the loan
23 request.

24 Q And do you consider this commitment letter
25 to be binding if it's signed by the borrower?

Janice D. Hayward, RMR
843.478.6756

1 A I do.

2 Q And it's binding not only on the borrower
3 but it would be also binding on the bank, is that
4 right?

5 A Yes.

6 Q In your opinion? I'm not asking for a
7 legal opinion, but that's --

8 A Yes, in my opinion.

9 Q Let's start at the top. And it is
10 addressed to Mr. John E. Rosenberg, Mr. Philip J.
11 Brust, Ecological Investments, LLC, Hilton Head
12 Island, South Carolina, but it doesn't have an
13 address. Why is that?

14 A I'm not sure. I may not have had the
15 address for the LLC.

16 Q Well, how -- who did you deliver this
17 commitment letter to?

18 A I mailed the commitment letter to
19 Mr. Brust for his signature to his personal address.

20 Q And how do you know that?

21 A I had that information from his personal
22 financial statement and tax returns.

23 Q You had what information?

24 A His address, his personal address.

25 Q But his personal address isn't on here, is

Janice D. Hayward, RMR
843.478.6756

1 it?

2 A That's correct.

3 Q Would you normally include the address of
4 the recipient on the letter?

5 A Normally I would, but in this case knowing
6 he was out of town and he was not going to be -- not
7 in the area, I would have just mailed the letter to
8 him under a separate envelope to his personal
9 address.

10 Q So you would address the envelope but not
11 the letter, is that what you're saying?

12 A I would have sent the commitment letter
13 like this to his personal address.

14 Q Why didn't you include the address on the
15 letter if you had it?

16 A I don't know. It was addressed to the
17 LLC, and he was signing as a personal guarantor so I
18 sent it to his personal address.

19 Q Yeah, I know. I'm asking why you wouldn't
20 include that information on the letter. I mean,
21 that's typically what you do when you write a
22 letter, right?

23 A Yeah, typically you do. But again, in
24 this case I knew I was going to have to mail it to
25 him at his home because he was not in the area.

Janice D. Hayward, RMR
843.478.6756

1 Q How did you deliver it to Mr. Rosenberg?

2 A Mr. Rosenberg came into the bank after I
3 received the letter back from Mr. Brust to sign the
4 letter.

5 Q When did you receive the letter back from
6 Mr. Brust?

7 A I'm not sure.

8 Q Can you give me an estimate how long after
9 you sent it?

10 A I don't remember.

11 Q One week?

12 A I don't remember.

13 Q How did Mr. Rosenberg know to come in and
14 sign it?

15 A I assume that I emailed him or spoke with
16 him when the letter arrived back from Mr. Brust.

17 Q Why were you waiting on Mr. Brust's
18 signature?

19 A Well, he was out of town and I knew that
20 would take longer to get than Mr. Rosenberg who was
21 local to the area.

22 Q So you only sent one letter. You had one
23 commitment letter and it was sent to Mr. Brust?

24 A Yes.

25 Q But his address wasn't included on the

Janice D. Hayward, RMR
843.478.6756

1 letter, is that right?

2 A His personal address was not included,
3 that's correct.

4 Q Did you have any communications with
5 Mr. Brust confirming that he received the commitment
6 letter?

7 A I don't recall.

8 Q So you never saw Mr. Brust sign this
9 document, did you?

10 A I did not.

11 Q Did you see Mr. Rosenberg sign it?

12 A I don't remember.

13 Q But you remember he came to the bank?

14 A I remember him coming into the bank to
15 sign the letter.

16 Q Let's go down to principal amount. Says
17 up to \$2.6 million, correct?

18 A Yes.

19 Q And that ended up being the amount of the
20 loan, right?

21 A That's correct.

22 Q And earlier you testified that the amount
23 of the existing loan to SunTrust was around 2.1 and
24 I think -- so approximately 2.2?

25 A That's correct.

Janice D. Hayward, RMR
843.478.6756

1 Q Why did you add an additional 400,000 on
2 top of the -- approximately 400,000 on top of the
3 existing debt?

4 A We were requested to find the interest
5 carried during the time period that the two million
6 two loan was on the books as well as some other
7 property expenses.

8 Q Is that your normal practice to finance
9 the interest payments that are paid to the bank?

10 A At that time it was not uncharacteristic
11 to finance interest payments.

12 Q How about now, is that normal?

13 A It's not normal at First South.

14 Q Why the change in practice?

15 A The market is much different today than it
16 was eight years ago.

17 Q And what do you mean by that?

18 A There's been a tremendous slowdown in the
19 commercial business in this area.

20 Q Did the bank have some bad experiences
21 with interest only loans where they financed their
22 own interest payments?

23 A I think we had some other loans that ran
24 into difficulty.

25 Q Can you give me an estimate of how many?

Janice D. Hayward, RMR
843.478.6756

1 A I don't know.

2 Q A good bit though, right?

3 A I just remember having other, knowing
4 about other loans that were --

5 Q And that started to be a problem, to
6 change the bank's normal course of business, is that
7 right?

8 A It did change as a result.

9 Q Okay. Going down to the purpose which we
10 were just discussing some, number three, it says
11 fund up to 50,000 in expenses such as property taxes
12 and other nominal expenses. What was that money
13 for?

14 A Primarily for the property taxes.

15 Q And Ecological Investments needed that
16 money to pay the property taxes?

17 A That would have been for future property
18 taxes during the life of the loan.

19 Q Do you know what the property taxes were?

20 A I don't recall.

21 Q You didn't find it concerning that
22 Ecological Investments needed a loan to pay property
23 taxes?

24 A These were for property taxes going
25 forward into the future. And as part of the

Janice D. Hayward, RMR
843.478.6756

1 financing option, we offered them the ability to pay
2 property taxes as part of that from the loan
3 proceeds.

4 Q I understand that's part of what you
5 offered. I'm asking you, did you find it
6 concerning?

7 A No.

8 Q No. It wasn't a concern to you that the
9 Ecological Investments didn't have sufficient funds
10 to pay property taxes in the future?

11 A I didn't see that as not being able to pay
12 it based on the financial information I had from the
13 guarantors supporting the loan.

14 Q Well, if they were going to support the
15 loan, couldn't the guarantors pay the property taxes
16 themselves without getting money from the bank?

17 A They could have paid the taxes.

18 Q So why did you feel the need to advance
19 them an extra 50,000?

20 A I made that a part of our loan package.

21 Q I understand that. I'm asking why.

22 A I knew property taxes were going to be
23 due, and they asked me to finance those as part of
24 that.

25 Q And you just gave them what they wanted?

Janice D. Hayward, RMR
843.478.6756

1 A I agreed to pay the property taxes for the
2 future.

3 Q Is it normal to finance property taxes for
4 the bank?

5 A It was not uncommon on a transaction such
6 as this to include other property-related expenses.

7 Q Let's go down to the fee, rate and terms,
8 the paragraph beginning after number two. See where
9 it says legal maturity shall be 24 months from the
10 date of closing at which time all outstanding
11 principal plus any accrued but unpaid interest fees
12 and other charges shall be due and payable. Do you
13 see that?

14 A Yes.

15 Q So at the end of this term, this 24-month
16 term, Ecological Investments was going to have to
17 pay the \$2.6 million, correct?

18 A The 2.6 million would be due and payable
19 at that time.

20 Q Did you determine what the source of
21 repayment was?

22 A The initial source of repayment would have
23 been the sale of the property for the entire debt to
24 be extinguished as a result of the sale.

25 Q That was speculative, right?

Janice D. Hayward, RMR
843.478.6756

1 A There was interest but we didn't have a
2 contract.

3 Q So yes, it was speculative?

4 A It was speculative.

5 Q Let's go down to primary collateral. And
6 it mentions the 82.68 acres in Jasper County also
7 known as Butterfly Kingdom PUD. Describe that
8 property to me. First of all, are you familiar with
9 it?

10 A I am.

11 Q Describe it to me.

12 A It's an 82-acre tract that is out off of
13 Red Dam Road, which is in Jasper County, right
14 before you get to Interstate 95. And it actually
15 has frontage and viewing from Interstate 95.

16 Q Did you go out and look at the property
17 before you loaned?

18 A I did.

19 Q And at this time you felt like this was
20 sufficient collateral to secure the loan?

21 A From a collateral standpoint, from that
22 and based on what I knew about the interest in the
23 property.

24 Q What did you know about the interest in
25 the property?

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843.478.6756

1 A Just that there was, as I said earlier,
2 interest and that the number had been in the five to
3 \$5.2 million range for the property.

4 Q All right. Let's go to the next page. Do
5 you see the section captioned guarantor?

6 A I do.

7 Q It says, payment of the loan shall be
8 unconditionally guaranteed, jointly and severally,
9 by John E. Rosenberg and Philip J. Brust,
10 hereinafter the guarantors, right?

11 A Yes.

12 Q Do you see anything in there that requires
13 the guarantors to guaranty anything beyond the loan?

14 A Unconditionally guaranty, jointly and
15 severally, by Rosenberg and Brust.

16 Q But that's limited to the loan, correct?

17 A Yes.

18 Q So that would exclude any other borrowing,
19 right?

20 A Yes.

21 Q All right. Let's go down to deposit
22 relationship. See where it says borrower and
23 guarantors agree to maintain the primary deposit
24 relationship with bank throughout the life of the
25 loan. Why was that required?

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1 A We typically ask for a deposit
2 relationship when we're engaging in a new loan
3 request.

4 Q And that was a requirement for this loan
5 according to the commitment letter, is that right?

6 A That's correct.

7 Q Did Mr. Brust ever establish or maintain a
8 primary deposit relationship with First South?

9 A No, he did not.

10 Q So earlier you were telling me these terms
11 are binding, but not always, right?

12 A I did not require Mr. Brust to establish a
13 personal deposit relationship with us.

14 Q So this commitment letter, at least that
15 part of it wasn't binding on them, is that right?

16 A I did not require him to do that.

17 Q So that's a yes?

18 A Yes. He did not maintain a deposit
19 relationship with the bank.

20 Q And the bank didn't bind him to that,
21 right?

22 A I did not require that.

23 Q All right. Let's go to conditions
24 precedent to closing, and you asked for review of
25 current personal financial statements of the

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1 guarantors as well as the 2004 federal tax return or
2 other satisfactory financial information on the
3 borrower, correct?

4 A Yes.

5 Q Is that all you asked for with regards to
6 financial statements?

7 A Yes.

8 Q So you only asked for current. You didn't
9 ask for past years information with regard to the
10 guarantors?

11 A Yeah, I just asked for the current return,
12 the latest return.

13 Q All right. Let's turn to the next page.
14 See the section, closing requirements?

15 A Um-hum, yes.

16 Q See the last sentence? Says, borrower's
17 counselor shall provide an opinion letter to the
18 bank as to the validity and enforceability of the
19 loan documents and such other matters as bank may
20 reasonably require.

21 And that was a condition of the
22 loan according to this commitment letter, right?

23 A Yes.

24 Q The bank didn't get an opinion letter for
25 this loan, did they?

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1 A I don't recall if we did or not.

2 Q That would be important, right? Well, let
3 me back up. Why would you ask for an opinion
4 letter?

5 A Basically just to verify that the
6 information being provided to the bank was true and
7 accurate and enforceable based on the attorney's
8 opinion.

9 Q And that's important to have an attorney
10 certify that you have enforceable documents, right?

11 A Yes.

12 Q Did you ever see an opinion letter
13 regarding this loan?

14 A I don't recall.

15 Q You don't recall seeing one?

16 A No.

17 Q But according to the bank's retention
18 policy, if it had one, it had a duty to retain that,
19 right, during the term of the loan?

20 A I believe so based on what's in that
21 document.

22 Q So if there's an opinion letter, it should
23 be in the bank's files, right?

24 A I would think so, yes.

25 Q And if it's not, it's either because one

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1 was not provided or somebody destroyed it, is that
2 right?

3 A I would assume so.

4 Q Okay. Let's go to the next paragraph.
5 You may indicate your acceptance of the terms and
6 conditions offered by signing below and returning
7 the original copy of this letter to bank. If not
8 accepted by January 12th, 2006, and if a resulting
9 loan is not closed by January 31st, 2006, then this
10 commitment will expire and neither bank nor borrower
11 will be obligated hereunder.

12 And that was a condition of this
13 commitment letter, right?

14 A Yes.

15 Q Rather, it was a condition of the loan
16 pursuant to this commitment letter, correct?

17 A That's correct.

18 Q And the loan wasn't closed by
19 January 31st, 2006, was it?

20 A It was slightly after, shortly after that.

21 Q So the answer is no?

22 A That's correct.

23 Q Let's go down to the bottom where the
24 guarantor signed. See where Mr. Brust purportedly
25 signed?

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1 A Yes.

2 Q It's hard to read, isn't it?

3 A On this copy it's a little hard to read.

4 Q Do you remember if the original was any
5 better?

6 A I would assume it's better than the copy.

7 Q And why are you assuming that?

8 A Typically originals are easier to read
9 than copies.

10 Q Did you ever do anything to confirm that
11 Mr. Brust actually signed this commitment letter?

12 A No, I did not.

13 MR. GASKINS: I need to take a break
14 real quick.

15 (Recess.)

16 (Marked for identification was Defendants'
17 Exhibit 5.)

18 BY MR. GASKINS:

19 Q Mr. Wright, you've been handed what's been
20 marked as Exhibit 5. Do you recognize this
21 document?

22 A Yes.

23 Q What is it?

24 A It's an attorney instruction letter that
25 we provided to Mr. Finger's office.

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1 Q And this is your signature --

2 A Yes.

3 Q -- on this instruction letter? You
4 drafted this?

5 A I didn't draft it. My legal, my loan
6 assistant would have prepared the document itself.
7 I would have reviewed it.

8 Q You would have reviewed it and corrected
9 anything that you saw was inaccurate or missing?

10 A Yes.

11 Q And this was sent on January 10th, 2006,
12 is that right?

13 A Yes.

14 Q Okay. And that was one day after you sent
15 the commitment letter?

16 A Yes.

17 Q It was sent to Mr. Finger, Terry Finger?

18 A Yes.

19 Q And you included his address on this
20 letter, didn't you?

21 A I did. It was -- yes, it's included.

22 Q Tell me what this instruction letter is.
23 Why does the bank send it?

24 A It's just a guideline document to allow us
25 to be working from the documents that will be

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1 required to close and -- some of the documents that
2 will be required to close, some of the bank's
3 expectations as to how the loan will be closed.

4 Q Why did you send it to Mr. Finger?

5 A We were advised that he would be the
6 closing counsel for the borrower.

7 Q Does it say anywhere in here that
8 Mr. Finger represents the borrower?

9 A I don't see that specifically notated.

10 Q All right. Let's go down to the second
11 paragraph, second sentence. It says your acceptance
12 of this closing engagement letter is so indicated by
13 your signature which is to be affixed at the end of
14 the letter. Do you see that?

15 A Yes.

16 Q So this was a closing engagement letter?

17 A Yes.

18 Q And the bank was engaging Mr. Finger?

19 A We were engaging him to prepare the
20 documents, the closing documents for the loan.

21 Q Okay. So he was working on behalf of the
22 bank pursuant to this engagement letter?

23 A As it relates to this commitment letter --
24 as the engagement letter, yes.

25 Q All right. Walk me through the different

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1 instructions starting with prior to closing. What
2 were the instructions with regards to those?

3 A Can you repeat the question?

4 Q Describe to me the instructions that were
5 given to Mr. Finger prior to closing for this loan
6 to Ecological Investments.

7 A It lays out his signing of this document,
8 the closing instruction letter, insured closing
9 letter, title binder, settlement statement, listing
10 of fees to be collected, and documents that we asked
11 his office to prepare.

12 Q Let's walk through those documents. What
13 documents did you ask that his office draft or
14 instruct that his office draft?

15 A A legal description of the property
16 securing the mortgage, assignment of leases and
17 rents, and then copies of the Articles of
18 Incorporation and operating agreement for Ecological
19 Investments.

20 Q These aren't all the documents that would
21 be used at the closing, are they?

22 A No.

23 Q Are most of those done on bank forms?

24 A Many of them are done on bank forms.

25 Q And I see here where this doesn't mention

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1 a guaranty. Mr. Finger didn't draft the guaranty,
2 did he?

3 A He did not.

4 Q That was a bank form?

5 A Yes.

6 Q I don't see anything on here about a power
7 of attorney, do you?

8 A I do not.

9 Q Let's go to prior to funding. Tell me
10 what these instructions are.

11 A That the bank would have a legally binding
12 recorded first lien interest in the property.
13 Property is described below that, and a fully
14 executed promissory note.

15 Q And the promissory note is the agreement
16 that binds the borrower to repay the loan, correct?

17 A That's correct.

18 Q Very important document, right?

19 A Yes.

20 Q That's why it's important to have this
21 prior to funding the loan, right?

22 A That's correct.

23 Q And you didn't say anything about a
24 guaranty in here, did you?

25 A It is not referenced in this document.

Janice D. Hayward, RMR
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1 Q All right. Let's go to post closing.
2 Original closing documents, doesn't say anything in
3 there about a guaranty either, does it?

4 A Not specifically, no.

5 Q Is there anything in here instructing
6 Mr. Finger to provide an opinion letter?

7 A I don't see anything.

8 Q See anything in here that discusses a
9 power of attorney?

10 A No.

11 Q And this closing engagement letter was
12 signed by you and Mr. Finger, correct?

13 A Yes.

14 Q And that engagement letter or instruction
15 letter was later modified, correct?

16 A I believe it was.

17 (Marked for identification was Defendants'
18 Exhibit 6.)

19 BY MR. GASKINS:

20 Q You've been handed what's been marked as
21 Exhibit 6 which appears to be a fax cover sheet with
22 a new instruction letter attached, is that right?

23 A Yes.

24 Q And that's your handwriting on the fax
25 cover sheet, correct?

Janice D. Hayward, RMR
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1 A Yes.

2 Q You sent it to Jane Mimmicks. Who's that?

3 A I believe Jane is a paralegal, or was the
4 paralegal for Terry Finger at the time.

5 Q And you were advising her that the
6 instruction letter had been revised to change the
7 loan amount to 2.6 million instead of 2.5 and the
8 appraisal fee is 1900 instead of 1800, correct?

9 A Yes.

10 Q And you say, all other items remain
11 unchanged, correct?

12 A Yes.

13 Q Okay. So you didn't add anything about a
14 guaranty, did you?

15 A Not in this letter, no.

16 Q And you didn't add anything about an
17 opinion letter, did you?

18 A No.

19 Q And you didn't add anything about a power
20 of attorney, did you?

21 A No.

22 (Marked for identification was Defendants'
23 Exhibit 7.)

24 BY MR. GASKINS:

25 Q You've been handed what's been marked as

Janice D. Hayward, RMR
843.478.6756

1 Exhibit 7. Are you familiar with this document?

2 A Yes.

3 Q And you drafted this document, correct?

4 A Yes.

5 Q Okay. What is this?

6 A This is a credit memo that would accompany
7 the loan request packet that the bank would prepare
8 for loan approvals.

9 Q What's the purpose of it?

10 A It's just to document the information on
11 the borrower and the nature of the credit and the
12 different underwriting aspects of the loan for the
13 bank's officers to review as part of the approval
14 process as well as to document the file for internal
15 and external examination.

16 Q All right. Let's go down to the second
17 paragraph which is underlined. Why did you
18 underline it?

19 A I just wanted to make sure they saw the --
20 felt like it was important to the underwriting of
21 the credit, the strength of the guarantors and the
22 other strong points of the credit.

23 Q As I understand it, the, I guess, primary
24 reasons that the bank was willing to loan Ecological
25 Investments \$2.6 million was liquidity of Rosenberg

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RECORD 0539

1 and Brust and that the borrower intends to liquidate
2 a portion of the acreage to pay down all or part of
3 loan during this time period, is that right?

4 A Yes.

5 Q Would you have entered into this loan if
6 Rosenberg and Brust didn't guaranty it?

7 A No.

8 Q Why not?

9 A They provided a very strong backup
10 repayment source for us with their liquidity.

11 Q Is it the bank's policy to make credit
12 decisions based primarily on the strength of the
13 guarantors?

14 A It's not the bank's policy but it's
15 certainly something we very strongly consider in the
16 underwriting process.

17 Q It's a consideration. Should it be the
18 primary consideration?

19 A I think it can be depending on the nature
20 of the transaction.

21 Q You mention a policy for interest only
22 loans. Are you familiar with that policy?

23 A Yes.

24 Q And that policy allows for you to make
25 interest only loans based primarily on the strength

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843.478.6756

1 of the guarantors?

2 A That would have been one of the
3 considerations for making the loan.

4 Q I understand that. That wasn't my
5 question.

6 A Repeat your question, please.

7 Q Does the bank's interest only loan policy
8 allow the bank to make interest only loans based
9 primarily on the strength of the guarantors?

10 A I don't think it restricts it.

11 Q So it's your position that it does allow
12 it?

13 A It would allow it, yes.

14 Q Does the bank's interest only loan policy
15 allow the bank to make credit decisions based on
16 speculative events in the future such as liquidating
17 collateral?

18 A Yes.

19 Q Think that's a good policy?

20 A It's not my place to say.

21 Q I'm asking you if you think it's a good
22 policy. I'm just asking your opinion.

23 A I think depending on what's going on in
24 the commercial market and wherever you are doing
25 business, it could or could not be, so.

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1 Q Think that's a good policy in January of
2 2006 with regards to the Butterfly Kingdom?

3 A I think based on what we knew about the
4 credit, that it was within the guidelines to make
5 that loan.

6 Q All right. Let's move down. It also says
7 the primary repayment source will be monthly draws
8 from the loan to cover interest. So your primary
9 repayment source was the money that you were
10 financing, or loaning?

11 A In this case, yes, we were funding the
12 interest carried on the loan.

13 Q Do you think that's a good policy?

14 A I think at the time of this credit, that
15 it was certainly within reason to do that.

16 Q Do you think that practice is consistent
17 with the bank's policy at the time?

18 A I'm not familiar with other credits in
19 other markets but I would think we probably had
20 other loans where we did this.

21 Q So it was done but you don't know whether
22 it was consistent with the policy or not, is that
23 what you're saying?

24 A I don't believe it to be inconsistent with
25 the policy.

Janice D. Hayward, RMR
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1 Q Okay. Let's go down to the next paragraph
2 that's underlined. And it talks about although the
3 primary repayment source is the draw on the note,
4 the guarantors have a minimum cash flow surplus of
5 500M. That means 500,000, right?

6 A Yes.

7 Q To service annual interest payments of
8 182,000, right?

9 A Yes.

10 Q Based on the full 2.6 million being drawn.
11 Where did you come up with this minimum cash flow
12 surplus of 500,000?

13 A I would have noted that in my underwriting
14 from the financial debt statements they provided and
15 tax returns.

16 Q What does that mean, minimum cash flow
17 surplus?

18 A It means after other debts and other
19 expenses are taken into consideration, that was
20 their surplus, collective surplus on a monthly.

21 Q Say that last part again? I didn't --

22 A That was their collective cash flow
23 surplus.

24 Q So they had 500,000?

25 A Yes.

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1 Q It's not enough to repay the principal on
2 a \$2.6 million loan, is it?

3 A I'd have to run the amortization on that.
4 I'm not sure.

5 Q I mean, what type of amortization would
6 you need to run if you've got \$500,000 and a
7 \$2.6 million loan?

8 A No, 500,000 is obviously less than
9 2.6 million.

10 Q So they didn't have enough liquidity on
11 their own to repay the principal, did they?

12 A They had enough liquidity to repay the
13 principal. This is cash flow. This is after they
14 pay their expenses.

15 Q Explain to me the difference between
16 liquidity and cash flow.

17 A Cash flow is what they generate from the
18 income that they make from whatever sources come in
19 versus their debt. Liquidity is what they actually
20 hold in assets.

21 Q Okay. And how did you determine they had
22 500,000 in cash flow surplus?

23 A I would have taken their financial
24 statements and tax returns and run an analysis to
25 see what the monthly surplus would have been -- or

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843.478.6756

1 the annual surplus would have been.

2 Q Mr. Brust was retired, right?

3 A Um-hum.

4 Q Is that a yes?

5 A Yes.

6 Q He didn't have much income coming in, did
7 he?

8 A I don't remember his income, but I don't
9 remember it being a lot.

10 Q So was this based primarily on
11 Mr. Rosenberg's financial position?

12 A It would have been based on both of
13 theirs.

14 Q Would you have made the loan if only
15 Mr. Rosenberg guarantied the loan?

16 A No.

17 Q Would you have made the loan if only
18 Mr. Brust guarantied the loan?

19 A Had Mr. Brust been the only guarantor and
20 the only member of the LLC or the primary member of
21 the LLC, I would have recommended approval for the
22 loan.

23 Q All right. Let's move to the next page.
24 Let's go to the second paragraph. Do you see where
25 it says that the 82.6 acres was -- and I'm

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1 paraphrasing here, was sold by Jasper County for
2 \$4,000 an acre in February 2001? Do you see that?

3 A Yes.

4 Q And I was asking you earlier whether you
5 inquired into how and the amount of the purchase of
6 the property by Ecological Investments.

7 A Yes.

8 Q And does this refresh your memory?

9 A Yes.

10 Q And based on my math, 82.68 acres being
11 sold for 4,000, approximately 4,000 an acre comes
12 out to approximately \$330,000. Would you agree with
13 that?

14 A Yes.

15 Q And at the very bottom of the page you
16 state, the as-is value of the property as of
17 December 11th, 2005 is 5.2 million, correct?

18 A Yes.

19 Q Pretty big difference between 330,000 and
20 5.2 million, isn't it?

21 A Yes.

22 Q 4.9 million, that's a lot of money, isn't
23 it?

24 A Yes.

25 Q It didn't raise any red flags to you that

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1 the property may not be worth 5.2 million if it was
2 being sold for 330,000?

3 A Well, the appraisal I assume had looked at
4 current market comps and determined that on a per
5 acre value that was a market number, market value at
6 the time.

7 Q Do you always rely on appraisals as being
8 accurate, especially in 2006?

9 A We certainly rely on them as a third-party
10 valuation to help us determine value.

11 Q But they're not always accurate, are they?

12 A No. I mean --

13 Q Did you do anything to confirm that the
14 appraisal you received showing it was valued at 5.2
15 was consistent with the industry standards and
16 appraisal at the time?

17 A I reviewed the appraisal and looked at the
18 comps, and it would have also been reviewed within
19 the bank by other officers in the bank.

20 Q Who else would have reviewed it?

21 A I believe Mr. Callison reviewed it, and
22 I'm not sure if Mr. Harper reviewed it or not.

23 Q And it didn't raise one red flag at all?
24 You had a property being bought for 330,000 and four
25 years later you've got an appraisal for 5.2 million?

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1 A Based on the improvements they had made to
2 the property, the zoning issues that had changed
3 since they purchased the property, and reviewing the
4 comps at the time, I was comfortable with the
5 \$5.2 million value.

6 Q Do you think that property was ever worth
7 \$5.2 million?

8 A I'm not educated to make that. That's why
9 you have appraisals done.

10 Q You're not educated to make valuations of
11 property?

12 A I have my opinions.

13 Q Yeah, in your opinion, do you think that
14 property was ever worth \$5.2 million?

15 A I don't know.

16 Q You're familiar with the property, right?

17 A Um-hum. Yes.

18 Q But you don't have an opinion?

19 A No.

20 Q Would it sell today for 5.2 million?

21 A I don't know.

22 Q Let's go to the next page. Explain this
23 financial information breakdown for me.

24 A This is information that was taken from
25 the Ecological LLC's tax return. It just shows

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1 their assets and liabilities and net worth as well
2 as the income and expenses.

3 Q Okay. Cash, how much is that, 12,000?

4 A Um-hum. Yes.

5 Q That's not going to pay down much
6 principal on a \$2.6 million loan, is it?

7 A That's not uncommon for a real estate
8 holding company not to show a lot of cash or value
9 since the value is held at cost.

10 Q This wasn't a real estate holding company,
11 was it?

12 A Ecological, in essence, was a real estate
13 holding company.

14 Q What makes you say that?

15 A 'Cause its primary asset was the real
16 estate that we're talking about, the 82.68 acres.

17 Q That's how you define a real estate
18 holding company?

19 A Not necessarily, but that was the primary
20 asset in this particular entity was the real estate.

21 Q Well, I understand that. But I'm asking
22 you why you think they were a real estate holding
23 company.

24 A They weren't operating at the time we did
25 this loan. There was no separate operation. The

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1 asset that was being considered, the asset that
2 makes up the primary portion of their balance sheet
3 was real estate.

4 Q It was a failed company, wasn't it?

5 A Again, this is a -- it's property that's
6 held by an LLC.

7 Q Okay. Let's go down to land,
8 1.026 million. Where did that come from?

9 A That was the value they showed on their
10 tax return.

11 Q Of what land?

12 A The 82.68 acres.

13 Q Okay. And we were just discussing that
14 there was a \$5.2 million appraisal. So your
15 discrepancy there didn't raise any red flags?

16 A The million dollar value is what they --
17 would have been the amount they had cost in that
18 property. Would not have been market value
19 necessarily.

20 Q Well, I mean, shouldn't that raise red
21 flags in itself if they've got one million dollars
22 tied up in land and they've got a \$2.2 million loan
23 on it or mortgage, that wasn't concerning to you?

24 A The value shown on the tax return would
25 not necessarily be reflective of what the market

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1 value is.

2 Q I'm not asking about the market value.

3 A It's not uncommon at all for there to be a
4 difference of that kind of magnitude between the
5 market value and what they're showing on their
6 returns.

7 Q That's not what I'm asking you. I'm
8 asking you whether the fact that they had
9 1.026 million tied up in this land and had a
10 \$2.2 million mortgage on it, you didn't find that
11 concerning at all?

12 A Not based on how that property was valued
13 on their tax return.

14 Q Okay. Why not?

15 A That's the cost they're showing in the
16 property, what they have in the property, not what
17 the market value is.

18 Q I understand that. But they owe more on
19 it than it's worth, or what they paid for it, is
20 that right?

21 A Based on a tax return showing their cost
22 versus what they owe on it, that shows a deficit net
23 worth.

24 Q Okay. Well, let's take it out of the tax
25 returns. We have a piece of property that they

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1 bought for \$330,000, right?

2 A Yes.

3 Q And they have a \$2.2 million mortgage on
4 it. That wasn't concerning to you at all?

5 A No.

6 Q Which explains why we're in the room
7 today, I guess.

8 MR. SILVER: Hey, enough.

9 BY MR. GASKINS:

10 Q So their net worth was minus 338,000, is
11 that right?

12 A The book value of that company was a minus
13 338,000.

14 Q I mean, tell me why you include it if --
15 if I'm hearing you right, you act like it's not
16 really relevant to your determination. Why was it
17 included in this?

18 A We typically include the financial
19 information on the borrower's part of our analysis
20 and write-up.

21 Q Why, if you're just going to disregard it?

22 A It was a new credit to the bank and I
23 wanted the bank to see a financial statement on the
24 borrower.

25 Q Somebody probably thought it was

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1 important, right? The bank had a negative net worth
2 and you all were about to loan it 2.6 million?

3 A This was something that would have been
4 reviewed by the other officers in the bank in
5 addition to myself.

6 Q So you figured somebody thought this
7 information was important; otherwise, you wouldn't
8 have included it, right?

9 A This is something we typically put in our
10 credit write-ups.

11 Q Why do you typically do it?

12 A Because it states the borrower's
13 information and it gives a snapshot of the
14 borrower's financial situation.

15 Q It's not a good snapshot, is it?

16 A It is what it is. It's not a bad snapshot
17 when you know that the property has more value than
18 what it's showing on the statement.

19 Q The property that they bought for 330,000?

20 A Yes.

21 Q All right. Let's go to the next page. At
22 the top you admit that Ecological Investments did
23 not have any income to offset the large amount of
24 expenses shown on its income statement for tax
25 purposes, right?

Janice D. Hayward, RMR
843.478.6756

1 A Yes.

2 Q So you're relying mostly on the financial
3 strength and liquidity of the two guarantors, is
4 that right?

5 A In addition to the value of the property
6 and the marketability of the property.

7 Q Okay. Let's go down to the guarantor
8 analysis. And at the bottom of the first paragraph
9 regarding Mr. Rosenberg, it says, Rosenberg's
10 statement shows significant liquidity with over
11 800,000 in marketable securities and a modest level
12 of debt.

13 What do you mean by modest level
14 of debt?

15 A That his debt was not out of line with his
16 asset holdings, did not have a tremendous amount of
17 debt offsetting those assets.

18 Q Can you give me an estimate of what that
19 ratio would be?

20 A Without looking at his statement I
21 couldn't do that.

22 Q But the personal financial statement he
23 gave you was out of date, right, according to this
24 anyway, if you look at the second paragraph?

25 A Yes.

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1 Q Did you ever do anything to confirm that
2 his personal financial statement was accurate?

3 A I typically ask for a validation of their
4 liquidity when we get a personal financial
5 statement.

6 Q I understand you may typically do that.
7 Did you do that to verify --

8 A I don't recall. I don't recall with this
9 statement. I had other statements from him he had
10 provided.

11 Q All right. So that was January 31st,
12 2006, right?

13 A Yes.

14 Q Which was the expiration date of the
15 commitment letter, right?

16 A I believe that -- I'd have to look back
17 and see.

18 Q And the loan wasn't closed until
19 February 2nd, 2006, right?

20 A I believe that's right.

21 Q Were you at the closing?

22 A I did not attend the closing.

23 Q Why not?

24 A I don't know.

25 Q In 2006 did you typically go to commercial

1 loan closings?

2 A I attended some closings, and some I was
3 not able to attend.

4 Q How did you determine which ones you would
5 go to and which ones you wouldn't?

6 A Schedules and notification and other time
7 aspects.

8 Q Did you have any discussions with
9 Mr. Finger about the closing prior to it?

10 A I don't remember speaking with Mr. Finger.
11 I know I talked with his paralegal a few times.

12 Q And what were you and his paralegal
13 discussing?

14 A I don't remember the exact nature, just
15 questions or issues that might have come up that we
16 needed to talk about in terms of getting to the
17 closing.

18 Q Do you remember any of those issues?

19 A I don't.

20 Q Did you talk with Mr. Rosenberg about the
21 closing prior to the closing?

22 A I would have spoken to him. I don't
23 recall any particular conversations about it.

24 Q Did you speak with Mr. Brust --

25 A No.

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1 Q -- about the closing?

2 A I did not.

3 Q It's your position that as a condition of
4 this loan Mr. Brust was required to sign a guaranty,
5 right?

6 A Yes.

7 Q Do you know whether Mr. Brust was at the
8 closing or not?

9 A I don't know.

10 Q You don't have any idea?

11 A I don't know.

12 Q Nobody discussed that with you before?

13 A No.

14 Q Did you know that Mr. Rosenberg would be
15 signing the guaranty on his behalf?

16 A I did not know that prior to closing.

17 Q Never asked anybody?

18 A No.

19 Q You just assumed that he would, you just
20 assumed Mr. Brust would be there?

21 A I assumed he would be there.

22 Q But you never talked with him about it?

23 A No.

24 Q Did you ever provide him a copy of the
25 guaranty that you wanted him to sign?

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1 A I don't recall.

2 Q That would be a pretty important document
3 for this loan, right?

4 A Yes.

5 Q A guaranty?

6 A Yes.

7 Q 'Cause it was based primarily on the
8 strength and liquidity of the guarantors, right?

9 A Yes.

10 Q And you didn't do anything to inform
11 Mr. Brust about what he would be signing and why it
12 was important?

13 A I had the commitment letter where I
14 understood, based on our phone conversation and the
15 commitment letter, he knew he would be responsible
16 as a personal guarantor on the loan.

17 Q And that commitment letter had about one
18 sentence about a guaranty requirement, right?

19 A Yes.

20 Q Your guaranty form is a lot more than one
21 sentence, right?

22 A Yes.

23 Q And you didn't feel that you had a duty to
24 talk with Mr. Brust about what you wanted him to
25 sign and guaranty?

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1 A No.

2 Q You didn't think you had an obligation to
3 do it?

4 A No.

5 Q Does the bank or did the bank in 2006 have
6 a policy that required you to discuss the guaranty
7 requirements with the guarantors?

8 A I'm not aware of a policy that we had to
9 have that conversation.

10 Q So you don't know if Mr. Brust ever saw
11 the guaranty prior to the closing, do you?

12 A I don't know.

13 (Marked for identification was Defendants'
14 Exhibit 8.)

15 BY MR. GASKINS:

16 Q You've been handed what's been marked as
17 Exhibit 8, and that is the guaranty agreement
18 purportedly between First South Bank and Mr. Brust
19 which is the subject of this lawsuit, correct?

20 A Yes.

21 Q And this is the bank's form that it was
22 using at the time for guaranty agreements?

23 A Yes.

24 Q Did it ever use any others?

25 A This was our standard form. Occasionally

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1 attorneys would prepare documents and it had a
2 different guaranty. But this was the form that we
3 used most often.

4 Q There are a lot of blanks in here which I
5 presume are to be filled out by either the bank or
6 the closing attorney, is that right?

7 A Yes.

8 Q Okay. Which one, the bank or the
9 attorney?

10 A The bank would have prepared this
11 document.

12 Q Would you have done that?

13 A My assistant would have done that, my loan
14 assistant.

15 Q And would you have reviewed the document
16 before it went out?

17 A Yes.

18 Q And do you remember reviewing this one?

19 A I don't particularly -- I don't remember
20 the situation, but I assume I reviewed it.

21 Q After you reviewed it what would you have
22 done with this guaranty?

23 A It would have been part of the loan
24 documents that we would have delivered or gotten to
25 the attorney for the loan closing.

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1 Q So you would have delivered this and other
2 closing documents to Mr. Finger, is that right?

3 A Yes.

4 Q All right. Let's start at the top. And
5 you see A and B with checkmarks. Explain these two
6 different options.

7 A One appears to be a specific guaranty as
8 it relates to an individual loan. The other is
9 guarantying payment and performance of each and
10 every debt.

11 Q Of the borrower?

12 A Of the borrower.

13 Q In this case the borrower is Ecological
14 Investments, right?

15 A That's correct.

16 Q And Mr. Brust would be the guarantor under
17 this agreement, right?

18 A Yes.

19 Q Who determines which box is checked?

20 A The assistant actually checks the boxes
21 based on the information received from the credit
22 underwriting package that she gets.

23 Q So that -- explain that to me. The credit
24 underwriting package determines which box is
25 checked?

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1 A The information in that document or those
2 documents would instruct her as to what type of
3 guaranty to --

4 Q Okay. What type of information is that?

5 A Well, this is part of it. I'm referring
6 to Exhibit 7 and other documents that would come
7 from that. She would use that document as her basis
8 for underwriting.

9 Q All right. What information in there
10 would she use to determine which box to check? And
11 when you're referring to Exhibit 7, what information
12 in Exhibit 7 would indicate to her which box to
13 check?

14 MR. SILVER: You mean Exhibit 8?

15 BY MR. GASKINS:

16 Q I mean what information in Exhibit 7 would
17 she rely on to determine which box to check, A or B,
18 in Exhibit 8? Does that make sense?

19 A Yeah. I'm not sure Exhibit 7 -- this is
20 just one of the documents that would have
21 accompanied that. There would also have been
22 another loan, a setup form that she would have used
23 as well in determining how to complete the guarantor
24 document.

25 Q Well, understanding you don't have that

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1 document in front of you, generally what information
2 in there would indicate to her which box to check?

3 A Unless we would have specifically
4 identified something outside of payment and
5 performance of each and every debt, that is
6 traditionally how she would have, or typically how
7 she would have completed that.

8 Q Explain that to me again. I'm not sure I
9 understand.

10 A The information from the loan setup form
11 as well as the other data that I just referred to
12 would have given her an indication of how to
13 complete this particular form.

14 This is a form that is in our
15 loan document software, and she would be accountable
16 for preparing as it relates to the individual loans
17 if, in fact, we had guarantors which in this case we
18 did.

19 Q I understand that. And I'm asking you
20 about what specific information from those sources
21 would she look at to determine whether to check box
22 A or box B?

23 A I'm not sure.

24 Q Why are you not sure?

25 A I'm not sure.

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1 Q I mean, this is what you did for seven
2 years at First South. This isn't the only guaranty
3 you've had, right?

4 A No.

5 Q Okay. Well, tell me generally how the
6 bank decides whether to check box A or box B?

7 A Typically we check box B because it
8 guaranties to the lender payments and performance of
9 each and every debt responsible by that borrower.

10 Q So is it fair to say that's the bank's
11 default position, to check box B, unless it has some
12 other indication to check box A?

13 A Yes.

14 Q And who was your assistant who would have
15 filled this out?

16 A Shanna Ethington.

17 Q Does she still work for First South?

18 A As far as I know, yes.

19 Q In the Bluffton branch?

20 A As far as I know, yes.

21 Q So with regards to this guaranty, do you
22 think box B was checked because that was the bank's
23 default position?

24 A I would assume so.

25 Q Okay. Do you have anything in the file,

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1 in the commitment letter where Mr. Brust agreed to
2 guaranty the payment and performance of each and
3 every debt, liability, and obligation of every type
4 and description which borrower may now or at any
5 time hereafter owe to the lender?

6 A I don't know if it speaks to that or not.
7 It says payment of the loan.

8 Q The loan is a specific single debt,
9 correct?

10 A Yes.

11 Q Okay. So shouldn't the bank have checked
12 box A here?

13 A It could have been checked in this case.

14 Q Box A could have been checked?

15 A I believe so.

16 Q It should have been checked, shouldn't it?

17 A It could have been checked.

18 Q Based on the commitment letter that says
19 only the loan is going to be guaranteed, shouldn't
20 box A have been checked?

21 A Yes.

22 Q All right. Let's go to number four..
23 Well, let me back up. As far as you know, neither
24 you nor Miss Ethington checked with Mr. Brust to see
25 which box to check?

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1 A No.

2 Q All right. Let's go to number four. And
3 there's a blank, and it says unlimited. Do you see
4 that?

5 A Yes.

6 Q Okay. What does that indicate?

7 A He's to be liable for all indebtedness
8 without any limitation to amount.

9 Q And did Miss Ethington insert unlimited?

10 A Yes.

11 Q And why would she have inserted unlimited?

12 A 'Cause we typically do unlimited
13 guaranties.

14 Q So that would have been, again, the bank's
15 default position?

16 A Yes.

17 Q Was there anything in the file or the
18 commitment letter where Mr. Brust agreed to
19 guaranty -- to provide an unlimited guaranty?

20 A It doesn't say an unlimited guaranty on
21 the commitment letter.

22 Q But it does say a principal amount of up
23 to \$2.6 million?

24 A Yes.

25 Q So 2.6 should have been entered in this

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1 blank in number four, isn't that right?

2 A Not necessarily, because had there been
3 issues with collection, that amount could have been
4 more than 2.6, and it speaks to that.

5 Q Exactly. So you wouldn't need an
6 unlimited because you would have the principal
7 amount of 2.6 plus attorneys' fees, collection costs
8 and accrued interest?

9 A That's correct.

10 Q So that amount should have been 2.6,
11 correct?

12 A It could have been 2.6.

13 Q But it should have been 2.6, do you agree
14 with that?

15 A Yes.

16 Q Okay. Let's go down to the bottom where
17 it says, this guaranty is, and it has boxes for
18 unsecured, secured by mortgage or security agreement
19 dated blank, and another box for secured by blank.
20 And this is checked, unsecured, right?

21 A Yes.

22 Q And Miss Ethington would have inserted
23 that check?

24 A Yes.

25 Q This was not an unsecured loan, was it?

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1 A The loan was not unsecured. The guaranty
2 was unsecured.

3 Q Tell me the difference.

4 A We are not requiring him to place any
5 additional collateral toward his guaranty when we
6 check the unsecured box.

7 Q Looking at all these blanks, the ones that
8 have been inserted by the bank and Miss Ethington or
9 Miss Ethington on behalf of the bank, they're all in
10 capital letters, correct?

11 A Yes.

12 Q Okay. Except when we get down to the
13 bottom where you see Mr. Brust's name. Do you see
14 that?

15 A I do.

16 Q And following Mr. Brust's name in the
17 signature block, there's a comma followed by, by
18 John E. Rosenberg, comma, attorney in fact. Do you
19 see that?

20 A Yes.

21 Q That's not in all caps, is it?

22 A No.

23 Q And does that indicate to you that that
24 was inserted by somebody other than Miss Ethington?

25 A Yes.

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1 Q And that appears to be, maybe a typewriter
2 perhaps?

3 A Perhaps.

4 Q So you believe that would have been done
5 by either Mr. Rosenberg or Mr. Finger or somebody in
6 Mr. Finger's office?

7 A I believe it was done by somebody in
8 Mr. Finger's office.

9 Q So when this guaranty went to the bank it
10 more than likely only had Philip J. Brust in that
11 signature block, is that right?

12 A No. I think Mr. Rosenberg would have
13 signed it at the closing.

14 Q No. I understand that. But I'm saying
15 when it left, when this form left the bank and went
16 to Mr. Finger, don't you think that it only had
17 Philip J. Brust in the signature block?

18 A Yes. I believe that to be true.

19 Q And not the, by John E. Rosenberg?

20 A Yes.

21 Q And based on that, isn't it fair to say
22 that the bank didn't know Mr. Rosenberg would be
23 signing on behalf of Mr. Brust, is that right?

24 A We were not informed that a power of
25 attorney would be used for the closing.

Janice D. Hayward, RMR
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1 Q When did you find out?

2 A When we received the documents back from
3 the closing attorney.

4 Q When would that have occurred? I believe
5 the instruction letter said within 30 days of the
6 closing.

7 A It would have been sooner than that, I
8 think, for documents like this. The recording
9 documents would have taken longer but typically we'd
10 have gotten these back in a few days, few business
11 days.

12 Q Well, at the -- where did the closing
13 occur?

14 A I believe it occurred here.

15 Q Mr. Finger's office?

16 A Yes.

17 Q Was anybody from the bank present at the
18 closing?

19 A No.

20 Q Who was present at the closing, to your
21 knowledge?

22 A To my knowledge, Mr. Finger,
23 Mr. Rosenberg. I'm not sure who else was here for
24 that.

25 Q Did Mr. Rosenberg ever call you and tell

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1 you that he would be signing the guaranty on
2 Mr. Brust's behalf?

3 A No.

4 Q Did Mr. Finger call you and inform you?

5 A No.

6 Q So you believe you found out that
7 Mr. Rosenberg signed the guaranty on Mr. Brust's
8 behalf within a few days of the closing based on
9 your receipt of this guaranty?

10 A Yes.

11 Q What did you do when you found out that
12 information?

13 A I got the power of attorney that was
14 prepared to validate his signature so we had that in
15 our file.

16 Q Do you remember seeing the power of
17 attorney?

18 A Yes.

19 Q So you remember specifically reviewing
20 this document and noticing that Mr. Rosenberg
21 signed?

22 A When I got the package back before we sent
23 the originals to Spartanburg, yes, I reviewed the
24 package.

25 Q Okay. And the package included the

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1 guaranty and the power of attorney?

2 A Yes.

3 Q Sure about that?

4 A To my knowledge it did.

5 Can we take a break?

6 Q Yeah. You can take a break.

7 (Recess.)

8

9 (Marked for identification was Defendants'

10 Exhibit 9.)

11 BY MR. GASKINS:

12 Q Mr. Wright, I believe you just testified
13 before the break that you received a package
14 including the guaranty signed by Mr. Rosenberg
15 purportedly on behalf of Mr. Brust as well as the
16 power of attorney, correct?

17 A Yes.

18 Q And did you review the power of attorney
19 to determine whether it authorized Mr. Rosenberg to
20 sign the guaranty?

21 A Yes, I would have looked at it.

22 Q And you don't remember it raising any red
23 flags to you?

24 A No.

25 Q What's the bank's normal practice with

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1 regards to using powers of attorney to sign
2 guaranties?

3 A It's not uncommon to have powers of
4 attorney used for closings, certainly not down here,
5 certainly not in this market. Well, based on my
6 experience in this market, they are very common.

7 Q So the bank had a practice of accepting
8 powers of attorney for commercial loans?

9 A It wasn't uncommon to have one done, to
10 receive a package back with a power of attorney.

11 Q Even for large loans over 2.5 million?

12 A I didn't do a whole lot over 2.5 million,
13 but it wasn't uncommon.

14 Q So this was a big loan for you?

15 A Yeah, it was a large loan for the bank,
16 for me.

17 Q And it was largely dependent on the
18 strength of the guarantors, right?

19 A Yes.

20 Q You didn't feel the need to take special
21 precaution to make sure all the i's were dotted and
22 t's were crossed to make sure you had a valid
23 guaranty since this loan was so guarantor dependent?

24 A I reviewed the power of attorney and was
25 comfortable with that document as it relates to the

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1 signature on the guaranty.

2 Q Who was this power of attorney presented
3 to you by?

4 A It came back with the loan package.

5 Q And that was sent by somebody in
6 Mr. Finger's office?

7 A I assume so.

8 Q Did you call Mr. Finger and ask did he
9 review this power of attorney to make sure it was
10 valid?

11 A No.

12 Q And you didn't require an opinion letter
13 to see if it was valid --

14 A No.

15 Q -- or enforceable? Is that a no?

16 A No.

17 Q Did you call Mr. Brust?

18 A No.

19 Q Why not?

20 A I didn't see the need to call him.

21 Q You didn't see the need to call him to
22 make sure that somebody hadn't guarantied a
23 \$2.6 million loan on his behalf?

24 A I had a commitment letter and a
25 conversation where he understood he was guarantying

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1 on the loan. I didn't feel the need to call him and
2 follow up with that.

3 Q You had one conversation?

4 A I had a signed commitment letter.

5 Q Which was -- strike that. Do you see
6 anything in here that says guaranty?

7 A I don't see guaranty mentioned
8 specifically other than execute any and all
9 documents.

10 Q Okay. You do see where it says specific,
11 right?

12 A I do.

13 Q You see where it says limited, right?

14 A I do.

15 Q Okay. And how do you interpret that
16 specific limited power of attorney? What does that
17 mean to you?

18 A It was specific to this individual
19 transaction and this loan.

20 Q But it was used to guaranty debts that
21 were not specific to this loan and transaction,
22 isn't that right?

23 A It included the loan that we're talking
24 about in this transaction.

25 Q But the guaranty is broader than this

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1 transaction, isn't it?

2 A If there are other debts, yes.

3 Q Okay. Do you see anything in here that
4 authorizes Mr. Rosenberg to sign a guaranty beyond
5 the scope of this transaction?

6 A No, it's specific to this transaction.

7 Q And that transaction was limited to
8 \$2.6 million, right?

9 A Yes.

10 Q And it says that in here, in the power of
11 attorney, right?

12 A Yes.

13 Q Do you see anything in here that
14 authorizes Mr. Rosenberg to sign an unlimited
15 guaranty on behalf of Mr. Brust?

16 A Not specifically. Doesn't mention
17 guaranty.

18 Q Do you know who drafted this power of
19 attorney?

20 A I believe Mr. Finger's office.

21 Q And why do you say that?

22 A Has Mr. Finger or Mr. Rosenberg as a power
23 of attorney.

24 Q So that's, it's based -- your opinion is
25 based solely on the inclusion of Mr. Finger and

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1 Mr. Rosenberg as the attorney in fact?

2 A Yes.

3 Q Give me one second. But you didn't call
4 Mr. Finger to see if he drafted it, did you?

5 A I did not.

6 (Marked for identification was Defendants'
7 Exhibit 10.)

8 BY MR. GASKINS:

9 Q Before we go to that document, let's turn
10 back to the previous Exhibit 9 which is the power of
11 attorney. This isn't the original power of
12 attorney, is it, used for this loan? This is a copy
13 of the original?

14 A I believe it's a copy of the original.

15 Q And what I mean is this wasn't pulled from
16 the bank's file, was it?

17 A I'm not sure.

18 Q Okay. Let's look at the bottom of it.
19 And you see where there's a web address down there?

20 A Um-hum, yes.

21 Q It says 1-23, 2013?

22 A Yes.

23 Q So this would not have been the power of
24 attorney that was kept in the file by the bank, is
25 that right?

Janice D. Hayward, RMR
843.478.6756

1 A I'm not sure.

2 Q Okay. Do you see where it says 1-23,
3 2013?

4 A I see that.

5 Q Doesn't that indicate to you that that's
6 the date that this power of attorney was printed out
7 from the Jasper County website?

8 A Yes.

9 Q And, Mr. Wright, you provided a copy of
10 the power of attorney attached to your affidavit
11 that you submitted awhile back in one of the
12 previous motions. Do you recall that?

13 A Yes.

14 Q Do you remember where you got that power
15 of attorney from? You got that from the Jasper
16 County register of deeds, is that right?

17 A This copy appears to have been printed off
18 there, from the Jasper County website.

19 Q Okay. So that wouldn't be, that wouldn't
20 have been in the bank's file as of --

21 A I don't know.

22 Q -- short --

23 A I don't know the answer to that.

24 Q I mean, it couldn't have been if it was
25 printed out on January 23rd, 2013.

Janice D. Hayward, RMR
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1 A This is a copy that was printed, looks
2 like it was printed from the website, so.

3 Q I understand. But what I'm asking is
4 that's not -- that didn't come from the bank's file,
5 original file of this loan, did it?

6 A It appears to be a copy from the Jasper
7 County website.

8 Q Okay. And Mr. Wright, you may not know
9 this, but I'll submit to you that the bank has
10 provided us with the original, the documents in the
11 file, and there is not a power of attorney in the
12 bank's file. Can you explain that?

13 MR. SILVER: Can I ask for some
14 clarification? Do you mean an original
15 power of attorney or just any?

16 BY MR. GASKINS:

17 Q An original or a copy.

18 A No, I don't know why it wasn't provided.

19 Q But we discussed earlier that the bank had
20 a policy and a requirement to maintain those
21 documents, correct?

22 A Yes.

23 Q So if it was provided to you, it should be
24 in that file, correct?

25 A Yes.

Janice D. Hayward, RMR
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1 Q All right. I'm handing you what's been
2 marked as Exhibit 10. What is this?

3 A It's a mortgage subordination agreement.

4 Q What does that mean?

5 A Appears to be a subordination of a
6 mortgage to the bank's mortgage that was done as
7 part of the closing.

8 Q And that's because some of the LLC members
9 had a mortgage on the same property, correct?

10 A That's correct.

11 Q And Mr. Brust was one of those LLC members
12 who had a mortgage on that same property, right?

13 A Yes.

14 Q And the bank required those members who
15 held a mortgage to execute this subordination
16 agreement so the bank's mortgage would be senior, is
17 that correct?

18 A That's correct.

19 Q Okay. I want you to turn to page 1293.
20 And this is the agreement signed by Mr. Brust,
21 correct?

22 A Yes.

23 Q And it appears he signed on his own behalf
24 and nobody else -- or he signed on his own behalf,
25 is that right?

1 A It appears so.

2 Q So my question is if he's signing this
3 subordination agreement, why do you need -- on his
4 own behalf, why did he need to execute a power of
5 attorney to have somebody else sign the guaranty? I
6 mean, you could get his signature.

7 A He didn't come to closing so I assumed
8 they --

9 Q Well, he didn't need to come to the
10 closing to sign this, did he?

11 A I don't know.

12 Q I mean, this was provided to him before
13 the closing, right?

14 A Appears so.

15 Q And the guaranty could have been provided
16 to him before the closing, right?

17 A It could have been.

18 Q But it wasn't, isn't that right?

19 A No, it was not.

20 Q No, it was not provided to him?

21 A No, it was not provided to him.

22 Q So you don't really have an explanation
23 about why he can sign this in advance but not the
24 guaranty if he was truly guarantying the loan?

25 A I don't know why.

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1 Q All right. I think the easiest way to do
2 this is just walk through the complaint since I
3 believe all of the different agreements are in
4 there.

5 (Marked for identification was Defendants'
6 Exhibit 11.)

7 BY MR. GASKINS:

8 Q All right. You've been handed what's been
9 marked as Exhibit 11 which is the complaint that has
10 been filed in this action by First South Bank, and I
11 believe you are familiar with this document, is that
12 right?

13 A Yes.

14 Q And I think the easiest way to go through
15 these different agreements is to walk through them
16 as they are in the complaint.

17 If you could turn to Exhibit A
18 and look at the first three pages, what is this?

19 A This is the note document for the loan to
20 Ecological, between Ecological and the bank.

21 Q Okay. And this is the original one that
22 was executed on or around February 2nd, 2006 at the
23 closing?

24 A Yes.

25 Q All right. Tell me what happened -- or

1 did Ecological pay the interest during the term of
2 this note?

3 A The interest was funded by the bank.

4 Q Okay. So it was just drawn down?

5 A Yes.

6 Q Okay. And then the agreement was set to
7 mature in February of 2008, right?

8 A Yes.

9 Q Okay. Did Ecological pay the principal
10 when it matured?

11 A No.

12 Q All right. What did they do?

13 A They requested that we extend the maturity
14 date to allow additional time for the property to
15 close, to be sold.

16 Q Okay. Was it under contract at that time?

17 A I believe it was.

18 Q And were you all willing to do that?

19 A Yes.

20 Q All right. Turn to the next page. And is
21 this the -- what is this?

22 A You said the next page. Are you talking
23 about the next note, or?

24 Q Yeah, the next note, after the first three
25 pages the first note.

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RECORD 0583

1 A This is a modification agreement to the
2 original note.

3 Q And why was it modified?

4 A We modified the maturity date to allow
5 more time for the property to sell.

6 Q Okay. And what was the new maturity date?

7 A April 30, 2008.

8 Q And April 30th came and went and it wasn't
9 repaid then either, was it?

10 A No.

11 Q Okay. With regard to this commercial debt
12 modification agreement that is dated 1-14, 2008, do
13 you see that? The one that we were just looking at,
14 do you see where it's dated 1-14, 2008?

15 A Yes.

16 Q Did you have any discussions with
17 Mr. Brust about this agreement?

18 A I don't remember having a specific
19 discussion with him.

20 Q Did you get any new guaranties for this
21 agreement?

22 A I don't believe so.

23 Q Why not?

24 A We don't always get new guaranties
25 whenever we renew a loan. It speaks to renewals and

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843.478.6756

1 extensions and other extensions of maturity date.

2 Q Does the bank have a policy regarding
3 whether it requires new guaranties for renewals,
4 extensions, modifications?

5 A We typically get them after five years.
6 I'm not aware that that's a policy. It's just
7 something that we generally do as a business
8 practice.

9 Q Okay. Since this was a renewal, an
10 extension, and the principal was still over 2.5, you
11 had to get approval for this, right?

12 A Yes.

13 Q Who did you get approval from?

14 A Mr. Lyerly, Mr. Callison, and Mr. Harper.

15 Q Did they ask for you to get new
16 guaranties?

17 A I don't remember them asking me to get new
18 guaranties.

19 Q And is it your opinion that Mr. Brust was,
20 even though there was a modification agreement in
21 place now, that Mr. Brust was still a guarantor?

22 A Yes.

23 Q All right. Turn to the next page. Do you
24 see the one I'm talking about?

25 A Yes.

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1 Q It's a three-page, looks to be a
2 three-page agreement, is that right?

3 A Yes.

4 Q Dated 5-27, 2008?

5 A Yes.

6 Q And what is this document?

7 A This is another renewal note.

8 Q Why was the loan renewed?

9 A The property had still not closed and a
10 request was made to extend the maturity date.

11 Q By who?

12 A Mr. Rosenberg.

13 Q Did you talk with Mr. Brust about this
14 agreement?

15 A I don't remember a specific conversation
16 with him about this.

17 Q What type of agreement is this? It's not
18 a renewal, or is it a renewal?

19 A It's a loan document like the first
20 document. It's just a short-term renewal. We
21 sometimes will use modifications or the note
22 document.

23 Q Is there any rhyme or reason for using the
24 modification agreement in the first instance and
25 this document in the second?

Janice D. Hayward, RMR
843.478.6756

1 A Sometimes we'll do a modification with the
2 first agreement, but there's no real rhyme or
3 reason.

4 Q Okay. And you said you didn't discuss
5 this renewal with Mr. Brust?

6 A No.

7 Q Okay. So you don't have any idea what his
8 position was regarding whether this renewal was a
9 good idea?

10 A He didn't contact me to let me know it
11 wasn't.

12 Q How do you know he knew it was being
13 renewed?

14 A I assume Mr. Rosenberg was having
15 conversations with his partners.

16 Q But you weren't having conversations with
17 Mr. Brust?

18 A I did not speak to Mr. Brust about this.

19 Q And you didn't get a new guaranty
20 agreement for this loan either, did you?

21 A No.

22 Q Did you have to get it approved?

23 A Yes.

24 Q And would you have gotten it approved by
25 the same people you just told me?

Janice D. Hayward, RMR
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1 A Yes.

2 Q And did they request that you get new
3 guaranties?

4 A No.

5 Q All right. Let's go to the next document
6 which is dated 8-26, 2008, I believe.

7 A Yes.

8 Q What is this document?

9 A It's another renewal, short-term renewal
10 of the note.

11 Q Tell me why this was entered into.

12 A Property was still under contract, was
13 still pending to close but had not closed yet.

14 Q Did you talk with Mr. Brust about this
15 agreement?

16 A No.

17 Q I'm assuming you did not get a new
18 guaranty agreement for this agreement from
19 Mr. Brust, did you?

20 A No.

21 Q Did you have to get approval for this
22 renewal?

23 A Yes.

24 Q And you would have gotten it from the same
25 people you just told me?

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1 A Yes.

2 Q And did they request or require that you
3 get new guaranties -- a new guaranty from Mr. Brust
4 for this agreement?

5 A No.

6 Q All right. Let's turn to the next
7 document which is three pages over dated 10-15,
8 2008. What is this document?

9 A This is a note that renews the loan to
10 Ecological.

11 Q Okay. And what were the terms of this
12 note?

13 A This term was extended for an additional
14 two-year period and was also placed on an amortizing
15 basis, meaning they were making principal and
16 interest payments.

17 Q Why did you change the terms and
18 conditions?

19 A We had reached the extent of our interest
20 only period.

21 Q And so you came up with whole new terms as
22 far as payments, is that right?

23 A Yes.

24 Q Did you talk to Mr. Brust about this
25 agreement?

Janice D. Hayward, RMR
843.478.6756

1 A I don't recall.

2 Q Do you think you did?

3 A I don't know.

4 Q Did you get a guaranty from him for this
5 agreement?

6 A No.

7 Q Did you have to get this approved?

8 A Yes.

9 Q And it was approved by the same
10 individuals you told me earlier?

11 A Yes.

12 Q Did they request that you get a
13 guaranty --

14 A No.

15 Q -- from Mr. Brust?

16 Okay. And what was the term of
17 this loan that was renewed on 10-15, 2008?

18 A It was renewed for a two-year period with
19 principal and interest payments monthly.

20 Q Okay. And did they make these payments?

21 A Yes.

22 Q And at this point in time all the money
23 that you had advanced had been drawn down, is that
24 right?

25 A That's correct.

1 Q So the funds were coming from either
2 Ecological Investments or their members, is that
3 right?

4 A Correct.

5 Q And other members besides Mr. Rosenberg
6 and Mr. Brust made payments on behalf of Ecological
7 Investments, is that correct?

8 A There were other members, yes.

9 Q Okay. Those other members that made
10 payments, you don't contend that they are guarantors
11 of this loan, do you?

12 A No.

13 Q All right. If you'd go to the next
14 document dated 10-15, 2008, which is the same date
15 as the last agreement, right?

16 A This is actually dated 1-21 of 2010.

17 Q Oh, that's the loan description. I see.
18 Okay. So the date is 1-21, 2010 which the previous
19 loan entered in on 10-15, 2008 had not matured yet
20 as of this date, right?

21 A That's correct.

22 Q Okay. Why did you enter into this debt
23 modification agreement?

24 A In addition to the principal and interest
25 payments that had been made, there had been two

Janice D. Hayward, RMR
843.478.6756

1 large principal reductions on the loan, and
2 Mr. Rosenberg requested that we place the loan back
3 on interest only for a short period of time until
4 the maturity date, original maturity date of that
5 renewal which was October of 2010.

6 Q All right. And you all were amenable to
7 that?

8 A Yes. Based on the significant principal
9 reduction, the bank was open to allowing it to go
10 back on interest only for a short period of time.

11 Q Tell me how the principal reductions were
12 made.

13 A There was a capital call by the LLC, and I
14 believe the pay down was approximately \$600,000.
15 And there was also an easement on the property that
16 was granted, and there was a monetary consideration
17 for that. And I believe that amount was around a
18 half a million dollars.

19 Q Okay. Where did that money go from the
20 easement?

21 A Some of the money went to pay down the
22 principal. Some went to -- I can't remember if we
23 paid some taxes out of that money. I'm not sure
24 where else it went.

25 Q Wasn't there another loan for 275,000?

Janice D. Hayward, RMR
843.478.6756

1 A There was.

2 Q Do you remember when that was entered
3 into?

4 A It was entered into originally within the
5 first year, I think, of the \$2.6 million loan. The
6 LLC was required to put some improvements to the
7 property such that the road and other utilities were
8 brought to the actual site of the property, and they
9 requested that we fund that from the \$2.6 million
10 loan.

11 Q You secured that with another mortgage,
12 right?

13 A We did eventually secure it with another
14 mortgage. That loan was actually paid off from some
15 of the proceeds with the half a million dollar
16 loan -- half a million dollar easement.

17 Q Did you talk with Mr. Brust about that
18 other \$275,000 loan?

19 A I either emailed him or spoke to him
20 because he did confirm -- the two seventy-five I did
21 not. Not the two seventy-five, I did not.

22 Q Do you know if he knew anything about it?

23 A I assume he did, John, Mr. Rosenberg
24 letting him know, but I don't know that for a fact.

25 Q You and he never discussed it, did you?

Janice D. Hayward, RMR
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1 A No.

2 Q Do you contend that he guarantied that
3 loan as well?

4 A I contend that he signed an unlimited
5 guaranty.

6 Q Well, that's not really the question I
7 asked. Do you believe that Mr. Brust guarantied the
8 \$275,000 loan to Ecological Investments as well?

9 A Yes.

10 Q Based on the guaranty agreement that was
11 signed by Mr. Rosenberg at the closing on
12 February 2nd, 2006?

13 A On Mr. Brust's behalf, yes, as attorney in
14 fact.

15 Q You didn't get a separate guaranty for
16 that loan, did you?

17 A No.

18 Q I believe you were telling me that you did
19 have some discussion with Mr. Brust about the pay
20 down from the easement, is that right?

21 A Yes.

22 Q Okay. Tell me about that.

23 A I had prepared a document that kind of
24 outlined where the dollars would go in terms of the
25 application of the proceeds from the easement. And

Janice D. Hayward, RMR
843.478.6756

1 Mr. Brust shot me an email and basically said he
2 agreed with the terms of how that money would be
3 applied.

4 Q How did you send that document to
5 Mr. Brust?

6 A I don't remember sending it to him
7 directly. I assume Mr. Rosenberg provided him with
8 that so that he could respond to the application.

9 Q Okay. So you don't know if he actually
10 ever saw the breakdown?

11 A I don't know that for a fact.

12 Q Did you call him and talk to him about it?

13 A I did not.

14 Q So you don't know what his understanding
15 was about how the proceeds from the sale of the
16 easement would be allocated?

17 A My understanding from him was he was
18 acceptable and agreeable to the document that I had
19 prepared based on his confirmation email to me.

20 Q How do you know he reviewed the document?

21 A I don't know that. I don't know why he
22 would confirm something that he didn't review
23 necessarily.

24 Q You don't know what Rosenberg told him, do
25 you?

Janice D. Hayward, RMR
843.478.6756

1 A I don't know what was provided.

2 Q So Rosenberg could have told him something
3 completely different than what you presented, isn't
4 that right?

5 A It's possible.

6 Q So you don't know whether Mr. Brust
7 understood what he was agreeing to or not, do you?

8 A I believe that he did based on the email
9 that he sent to me.

10 Q Okay. What did that email say?

11 A It said he agreed with the application of
12 the funds. Essentially -- I don't have the document
13 in front of me, but essentially he agreed with how
14 those funds were going to be disbursed toward the
15 payment of the loans.

16 Q But you never provided him with that
17 information, did you?

18 A I don't remember providing him with that.

19 Q And he didn't incorporate that breakdown
20 in his confirmation email, did he?

21 A He didn't give a breakdown, no. He just
22 said he agreed with the --

23 Q So you don't know what he was agreeing to?

24 A I believe he was agreeing to the document
25 that I provided John.

Janice D. Hayward, RMR
843.478.6756

1 Q He was agreeing to whatever Mr. Rosenberg
2 communicated to him, is that right?

3 A I assume so.

4 Q And you don't know what Mr. Rosenberg
5 communicated?

6 A I do not.

7 Q I'm not sure if I've already asked it, but
8 to be clear, would this January 21st, 2010
9 commercial debt modification agreement -- you didn't
10 get a new guaranty from Mr. Brust for this one, did
11 you.

12 A No.

13 Q Did you have to get this modification
14 agreement approved?

15 A Yes.

16 Q And did the individuals you sought
17 approval from request that you get a guaranty from
18 Mr. Brust?

19 A No.

20 Q And this agreement put the maturity date
21 out to -- kept the maturity date the same, is that
22 right?

23 A It did keep the maturity date to the
24 October 2010 maturity date that was set forth back
25 in 2008.

Janice D. Hayward, RMR
843.478.6756

1 Q Okay, which would have been October 14th,
2 2010?

3 A That's right.

4 Q Turn the page. And just to be clear, all
5 the agreements that we reviewed, Mr. Brust didn't
6 sign any of them, did he?

7 A No.

8 Q Only Mr. Rosenberg, right?

9 A Yes.

10 Q All right. The next document is dated
11 11-30, 2010 which is after the maturity date of the
12 previous agreement, correct?

13 A Yes.

14 Q Okay. Tell me about this one.

15 A This note was done, we took the remaining
16 balance which at the time was 1.7 million and put it
17 back on an amortizing basis, agreed to renew it, and
18 put it back on a two-year principal and interest
19 payment which matured on November 30th of 2012.

20 Q Why did you enter into this agreement?

21 A We had allowed the interest only period
22 for a few months in the previous modification and
23 made the agreement with the borrower that we would
24 renew it on an amortizing basis so that the
25 principal was being reduced.

Janice D. Hayward, RMR
843.478.6756

1 Q And then this would be a fairly large
2 balloon payment due on November 30th, 2012?

3 A Yes.

4 Q 1.615 million?

5 A That's correct.

6 Q All right. And this is the last agreement
7 that you have with Ecological Investments, is that
8 right?

9 A This is the last note, I believe, that was
10 signed.

11 Q Did you discuss this with Mr. Brust?

12 A I don't recall.

13 Q Did you get a new guaranty from Mr. Brust?

14 A Did not.

15 Q So how many renewals, extensions,
16 modifications did we just go through?

17 A I'm not sure, five or six.

18 Q Five or six. And you never got a new
19 guaranty from Mr. Brust on any of them, did you?

20 A I did not.

21 Q And nobody that you report to requested
22 that you get a guaranty from Mr. Brust, did they?

23 A No.

24 Q But they approved all these renewals,
25 extensions, modifications, correct?

Janice D. Hayward, RMR
843.478.6756

1 A Yes.

2 Q All right. And the maturity date of that
3 last agreement, I think we said was November 2012,
4 right?

5 A I believe that's right.

6 Q And did you have any indication that
7 Ecological Investments could not or would not pay
8 the amounts due under the loan prior to the maturity
9 date?

10 A There had been some payment issues prior
11 to that.

12 Q Explain that to me.

13 A Just having to call and request that
14 payment be made, that payments were becoming late,
15 and that became an issue toward the end.

16 Q Who would you call?

17 A John Rosenberg.

18 Q Did you ever call Mr. Brust?

19 A I did not.

20 Q Is it fair to say during the course of
21 this relationship between Ecological Investments and
22 First South Bank that your primary contact was
23 Rosenberg?

24 A Yes.

25 Q And that you rarely had discussions with

Janice D. Hayward, RMR
843.478.6756

1 Mr. Brust?

2 A Yes.

3 Q You didn't feel you had a duty or
4 obligation to consult with Mr. Brust since you
5 contend he's a guarantor on these loans?

6 A I would send letters to him asking for
7 financial information and would inquire occasionally
8 as to how he was doing and different things like
9 that, but.

10 Q Was he responsive?

11 A Somewhat.

12 Q Did you ever have trouble getting
13 information from him?

14 A I wouldn't say I had trouble. I would
15 have to request some additional information.
16 Sometimes it was very synopsized and I needed more
17 detail.

18 Q Did he ever raise any objections to
19 providing information?

20 A No.

21 Q Did he ever indicate he was unwilling to
22 pay?

23 A No.

24 Q What happened in 2012 as the note became
25 due? Was it paid off?

Janice D. Hayward, RMR
843.478.6756

1 A No.

2 Q Did you renew it?

3 A No.

4 Q Why not?

5 A We had reached essentially an impasse with
6 the borrower in terms of making any additional
7 payments.

8 Q What do you mean by that?

9 A They essentially stopped making payments
10 on the loan.

11 Q And they weren't willing to make my
12 further payments, is that what you mean?

13 A I was not made aware that they were
14 willing to make additional payments.

15 Q Did you ever present them with the option
16 of renewing the loan?

17 A I believe we talked about some short-term
18 modifications and extensions of the credit, and I
19 don't believe those were acceptable to the LLC.

20 (Marked for identification was Defendants'
21 Exhibit 12.)

22 BY MR. GASKINS:

23 Q You've been handed what's been marked as
24 Exhibit 12 which appears to be a string of emails.
25 Can you identify the individuals on this email

Janice D. Hayward, RMR
843.478.6756

1 string?

2 A Barry Slider who is our chief executive
3 officer; Frank Callison; Allen Billing; myself, and
4 Mr. Lyerly.

5 Q Who's Allen Billing?

6 A To clarify, Mr. Callison became the chief
7 credit officer of the bank upon Mr. Harper's
8 retirement. Mr. Billing was instated as the senior
9 credit officer for the bank replacing Mr. Callison.

10 Q Okay. Let's turn -- what are these emails
11 referring to?

12 A This is an email just outlining some
13 potential renewal options for the LLC subject to
14 them agreeing to our proposal. I shared this with
15 the approvers of the loan request who had been
16 involved in the loan request as a talking document.

17 Q And I don't really understand the gap here
18 between 1160 and 1161 but it appears to be something
19 missing.

20 But anyway, if you look on the
21 second page, 1161, there are some bullet points.
22 What are those bullet points?

23 A That is just a possible structure that we
24 could consider in terms of renewing the loan to the
25 LLC that I was proposing to the approvers on the

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843.478.6756

1 credit.

2 Q Did they agree with this approach?

3 A They were in agreement with me presenting
4 this and moving forward with the borrower as a
5 possible structure for renewal.

6 Q If you look down, I believe it is the
7 sixth bullet point, it says personal guarantors
8 Brust and Rosenberg to sign new personal guaranties.
9 Why was this part of the proposed structure?

10 A I just kind of bullet pointed what a
11 traditional credit memo looks like. As I mentioned
12 before, we typically like to get, in renewal, new
13 guaranties after five years as a practice and just
14 felt like this was an opportunity to do that.

15 Q So you think that was the motivating
16 factor because you hadn't had one in over five
17 years?

18 A Yeah. This was my recommendation that as
19 part of that we needed to consider new guaranties.

20 Q It was not a concern that the old
21 guaranties that you had were no longer valid?

22 A No. No.

23 Q Okay. All right. I'm going to try to
24 move quickly through this before we slow down again.

25 MR. GASKINS: Do you all want to go

Janice D. Hayward, RMR
843.478.6756

1 ahead and eat?

2 MR. SILVER: How much further do you
3 think we have with Patrick?

4 MR. GASKINS: Thirty minutes to an
5 hour.

6 MR. SILVER: I guess we should go
7 ahead and eat. We can do that quickly.
8 (Lunch recess.)

9 (Marked for identification was Defendants'
10 Exhibit 13.)

11 BY MR. GASKINS:

12 Q I may jump around from time to time. I
13 apologize for that.

14 You've been handed what's been
15 marked as Exhibit 13. What is this document?

16 A This is a loan closing checklist that the
17 loan assistant uses when they send a package up to
18 our operations area in Spartanburg.

19 Q Who fills this out?

20 A Miss Ethington would be the person to
21 complete this.

22 Q Did you review it before it was sent up?

23 A I typically do not review these, so I
24 don't think I reviewed this.

25 Q Okay. And what is the purpose?

Janice D. Hayward, RMR
843.478.6756

1 A She'll attach this to the top of the
2 package of information that she's sending up by the
3 courier service with the documents that are
4 referenced and checked on here just to give the --
5 it helps her identify aspects of loans that are
6 required for being submitted up to Spartanburg, and
7 it also helps the group in Spartanburg understand
8 what she's sending, so.

9 Q Okay. If you look under unsecured and all
10 loans, do you see that section in the left-hand
11 column?

12 A Yeah.

13 Q The second bullet point says for each
14 guarantor listed, must have guaranty agreement, and
15 it's checked. Am I correct in assuming that that is
16 referring to the original guaranty agreement that
17 was signed on February 2nd, 2006?

18 A Yes.

19 Q So this doesn't reflect a new guaranty?

20 A No.

21 Q Looking at Exhibit 13, do you know what
22 loan, or which version or extension or renewal this
23 would have been completed for? I see a date, 11-30,
24 2010. This appears to be the last one?

25 A I would assume that's correct.

Janice D. Hayward, RMR
843.478.6756

1 (Marked for identification was Defendants'
2 Exhibit 14.)

3 BY MR. GASKINS:

4 Q All right. You've been handed what has
5 been marked as Exhibit 14 which is a similar
6 checklist, is that right?

7 A Yes.

8 Q And this is just a different version of
9 the same or of a similar checklist that we went
10 through in Exhibit 13?

11 A Yes.

12 Q And it's used for the same purposes that
13 we just discussed?

14 A Yes.

15 Q Okay. And if we go down to loan
16 documents, unsecured all loans, do you see that
17 section on the left-hand column?

18 A Yes.

19 Q Says guaranty, and it's checked with an F.
20 Does F mean file?

21 A I believe that means file.

22 Q And that reflects the original guaranty
23 signed on February 2nd, 2006?

24 A Yes.

25 Q Okay. And not a new guaranty, right?

Janice D. Hayward, RMR
843.478.6756

1 A No.

2 Q Okay. And it has the loan number at the
3 top. Do you know which renewal or extension this
4 one is for? It says renewal, but I don't have a
5 date.

6 A I don't, no. I do not know.

7 Q All right. We were just at the guaranty.
8 And it says, I think one, two, three, four, five,
9 six rows down, borrower guarantor closing
10 certificate. What is that?

11 A I'm not exactly sure. It may refer to a
12 document that would come as a part of closing that
13 would have occurred in an attorney's office or
14 documents that might have been prepared.

15 Q But you're not sure?

16 A I'm not positive.

17 Q Okay. All right. If we go down to the
18 next section, real estate loans, and if you go to
19 the very bottom of that column and go three up, it
20 says recorded power of attorney, if applicable.
21 That's not checked, is it?

22 A No.

23 Q All right.

24 (Marked for identification was Defendants'
25 Exhibit 15.)

Janice D. Hayward, RMR
843.478.6756

1 BY MR. GASKINS:

2 Q I've handed you what's been marked as
3 Exhibit 15. This is the same checklist form that we
4 just reviewed as Exhibit 14, is that right?

5 A Yes.

6 Q This was probably done for a different
7 renewal than the one we just reviewed. Do you think
8 that's fair, based on the difference in the checks?

9 A I believe so.

10 Q And again, guaranty has an F in it, and
11 that would indicate file, is that right?

12 A I believe so.

13 Q And not a separate or new guaranty?

14 A No.

15 Q And at the very bottom of that row for
16 recorded power of attorney, that's not checked
17 either, is it?

18 A No.

19 (Marked for identification was Defendants'
20 Exhibit 16.)

21 BY MR. GASKINS:

22 Q You've been handed Exhibit 16. This is
23 another version of the same checklist, is that
24 right?

25 A Yes.

Janice D. Hayward, RMR
843.478.6756

1 Q Do you know what loan this was for?

2 A I'm not sure. It says renewal. I assume
3 it was for the \$2.6 million loan.

4 Q But you don't know when?

5 A I don't know when.

6 Q Okay. And again, guaranty, says F, which
7 means file, is that right?

8 A Yes.

9 Q Reflecting the February 2nd, 2006
10 guaranty?

11 A Yes.

12 Q And not a new guaranty, is that right?

13 A Correct.

14 Q Again, go down to the bottom, recorded
15 power of attorney, that's not checked either?

16 A No.

17 (Marked for identification was Defendants'
18 Exhibit 17.)

19 BY MR. GASKINS:

20 Q You've been handed what's been marked as
21 Exhibit 17. This is another checklist. Do you know
22 which loan or renewal or extension this one is for?

23 A I'm not positive. It appears to be the
24 original note, the 2.6 million.

25 Q Okay. And when would you have -- when

Janice D. Hayward, RMR
843.478.6756

1 would this have been completed?

2 A It would have been completed as part of a
3 renewal. I don't see renewal marked on here. I'm
4 not sure. I'm not sure.

5 Q Okay.

6 (Marked for identification was Defendants'
7 Exhibit 18.)

8 BY MR. GASKINS:

9 Q This appears to be some emails between
10 you, Rosenberg and Mr. Brust dated January 21st,
11 2009, is that correct?

12 A I believe it's between John and me.

13 Q And if you look at the top, Mr. Rosenberg
14 sent it to Mr. Brust.

15 A Okay.

16 Q Where he copied, do you see that?

17 A I see that.

18 Q I believe this is what we were discussing
19 a little earlier regarding the allocation of some of
20 the proceeds from the sale of the easement. Do you
21 agree with that?

22 A It may very well be. I'd need to see my
23 original document for the date, but I believe that
24 to be the case.

25 Q Okay. And he's seeking -- I guess you

Janice D. Hayward, RMR
843.478.6756

1 request Phil Brust email me with his okay in
2 releasing the EI funds to you, is that right?

3 A Yes.

4 Q Okay. This doesn't say anything about
5 using the proceeds to pay off the other mortgage?

6 A This is a different -- I'm sorry, this is
7 a different matter. This involved a payment that I
8 believe John made on behalf of the LLC.

9 Q Okay.

10 A I don't believe this is referring to
11 the --

12 Q This is something different?

13 A It is something different.

14 Q Okay. Well, you sure about that? And let
15 me show you why I think it is. I'm not trying to
16 trick you.

17 (Marked for identification was Defendants'
18 Exhibit 19.)

19 BY MR. GASKINS:

20 Q You've been handed what's been marked as
21 Exhibit 19 which is also dated January 21st.

22 A Okay. You're correct. Again, I wasn't
23 sure based on what I read in this email that it
24 referred to that, but I think the dates do line up.

25 Q Okay. So the -- and this is probably the

Janice D. Hayward, RMR
843.478.6756

1 email that you were referring to earlier where
2 Mr. Brust okayed it?

3 A Yes.

4 Q Okay. And this only okays the
5 reimbursement -- this only discusses the
6 reimbursement of Mr. Rosenberg, correct?

7 A What Mr. Brust is agreeing to is the
8 \$518,000 distribution of funds from the easement
9 that I had presented to John and asked him to get
10 Mr. Brust's okay with that.

11 Q How do you know that?

12 A Well, the 518,000 was the amount from the
13 easement, approximate amount.

14 Q Couldn't he be referring just to the total
15 amount and that the financial transaction that is
16 being referred to in the previous emails?

17 A I believe it's the, his agreement with how
18 we were going to disburse the five hundred and
19 eighteen from the easement.

20 Q What is that based on?

21 A Well, based on the amount is consistent
22 with what I believe and remember to be the amount of
23 the easement proceeds.

24 Q Yeah, he's saying from that money, he's
25 okay with it being used to repay Mr. Rosenberg

Janice D. Hayward, RMR
843.478.6756

1 approximately 22,000, right?

2 A I'm not sure if that was part of my
3 original letter or not to John.

4 Q Okay. But it wasn't part of the emails in
5 Exhibit 18 that were sent on the same day, right?

6 A I believe the one at the bottom is
7 referring to something different.

8 Q The one at the bottom is referring to
9 something different than what?

10 A Well, I think it's -- I'm not sure if it's
11 referring to the 518 -- the \$518,000 disbursement of
12 funds from the easement or not.

13 Q What else would it be referring to?

14 A I'm not sure that these two emails are --

15 Q I mean, money just didn't show up in the
16 EI account very often, did it?

17 A It would come in for payments from time to
18 time.

19 Q Five hundred and eighteen thousand?

20 A Not 518,000 although they did make a
21 \$600,000 principal reduction so it wasn't completely
22 unaccustomed, but certainly not normal.

23 Q I mean, there were really only two times
24 where something like that happened, right?

25 A Right.

1 Q In any case, Mr. Brust doesn't identify
2 any specific allocation, is that correct?

3 A He -- in my opinion, he is affirming the
4 transaction that I discussed with John for the
5 disbursement of the easement funds.

6 Q But that's just based on your speculation,
7 isn't that right?

8 A That's based on my memory of what
9 transpired around this time.

10 Q Okay. Tell me about that then. I mean,
11 we went through this earlier. We can go through it
12 again, but you don't know -- you don't remember
13 having any conversations with Mr. Brust about the
14 allocation, do you?

15 A I'm giving you my opinion. I'm telling
16 you what I remember it to be.

17 Q I understand that. And I just want to get
18 the basis of that opinion.

19 A I presented the letter for the
20 disbursement to John, and I asked John with this
21 email to have Mr. Brust confirm that he was okay
22 with the application of those funds.

23 I don't know what John discussed
24 with him. I don't have record of what John
25 presented to him.

Janice D. Hayward, RMR
843.478.6756

1 Q Well, let's go back to your email on
2 Exhibit 18 and read out what you wrote.

3 A I basically am telling John I am okay with
4 the fact that he paid the 23,000 out of his own
5 funds that could be funded from Ecological. And I'm
6 also asking him if he would please present the EI
7 funds, both the EI funds -- it's two separate, it's
8 two separate items.

9 Q What is two separate items?

10 A I am answering John's question and telling
11 him I'm okay with how we do those funds from
12 Ecological to him, that he pay for the two loans.

13 Q Right. And then you request that you have
14 Phil Brust email me with his okay in releasing the
15 EI funds to you based on what is below in the other
16 email?

17 A That's correct.

18 Q There's no other allocation discussed in
19 these emails, is there?

20 A Not in this email.

21 Q And you don't know if Phil Brust was ever
22 informed of how those funds were going to be
23 allocated beyond what was put in that email,
24 correct?

25 A That's correct.

Janice D. Hayward, RMR
843.478.6756

1 Q I have several emails here, and I don't
2 think it's necessary that we go through all of them
3 but they're all pertaining to an FDIC audit and
4 their particular focus on this loan. Tell me about
5 that.

6 A Well, this loan is, as all our loans, many
7 of our loans are reviewed by the FDIC when they come
8 in for annual audits, and this loan was pulled and
9 reviewed by the FDIC. So in anticipation of those
10 reviews we do our best to get the documentation and
11 the file in as good a shape as we possibly can.

12 Q And this was an annual audit? This wasn't
13 any --

14 A I'm not sure if they looked at it every
15 year or not. Typically the FDIC comes once a year.

16 Q They weren't in there for any particular
17 reason?

18 A I'm not sure if that was just their normal
19 visit or if it was something else.

20 Q How long does a normal annual FDIC audit
21 last?

22 A Two to three weeks.

23 Q Why did they flag this Ecological
24 Investments loan?

25 A There were some issues with our financial

Janice D. Hayward, RMR
843.478.6756

1 statement documentation, if I remember.

2 Q And what were those issues?

3 A Just having current financial information
4 in the file showing that the, you know, the
5 individual guarantor was -- his financial situation
6 was what it was, is still as strong as we had
7 indicated it to be in the last review.

8 Q Is that it?

9 A Was that it for -- I don't understand your
10 question.

11 Q I mean, was that their only issue?

12 MR. SILVER: Can he see the document
13 so maybe he could respond to it?

14 MR. GASKINS: I mean, he can when I
15 show it to him, but I'm asking him right
16 now.

17 MR. SILVER: It's mere conjecture of
18 what it says unless you let him look at
19 it.

20 MR. GASKINS: It's not mere
21 conjecture. He was the one dealing with
22 the FDIC. So if you have an objection,
23 state your objection and let me ask my
24 questions.

25 A I did not deal directly with the FDIC. I

1 was not in the meeting with the FDIC. We get a
2 report of loans that they're going to look at and
3 then I was asked to go in anticipation of that
4 review and get the file documentation in line.

5 BY MR. GASKINS:

6 Q Okay. So you never had any dealings with
7 the FDIC?

8 A I did not deal directly with them, but we
9 were dealing with them in Spartanburg. So the bank
10 was dealing with them, and I was responsible for
11 getting the file in as good a shape as possible.

12 Q What problems did, I guess, the
13 individuals who were dealing with the FDIC relay to
14 you about this loan?

15 A Just the fact that we needed financial,
16 updated financial information to have in our file,
17 you know, showing the financial wherewithal of the
18 guarantors.

19 (Marked for identification was Defendants'
20 Exhibit 20.)

21 BY MR. GASKINS:

22 Q You've been handed what's been marked as
23 Exhibit 20. Tell me what this email is about.

24 A This is a request to Mr. Rosenberg to
25 assist in getting in the updated financial

Janice D. Hayward, RMR
843.478.6756

1 information on the guarantors of Ecological.

2 Q And that lays out the concerns the FDIC
3 had with the loan?

4 A This lays out the general concern that we
5 found from them in terms of analyzing files and
6 reviewing information, making sure that we had
7 current financial statements as well as updated
8 current liquidity verification.

9 Q Did the FDIC have any issues with you all
10 extending the loans at any time?

11 A Not to my knowledge.

12 (Marked for identification was Defendants'
13 Exhibit 21.)

14 BY MR. GASKINS:

15 Q You've been handed what's been marked as
16 Exhibit 21 which is an email from you to John
17 Rosenberg on January 19th, 2010?

18 A Um-hum.

19 Q This says, I spent an hour with the FDIC
20 yesterday afternoon discussing Ecological and the
21 current situation. Now, you just told me that you
22 didn't deal with the FDIC, but this email says
23 differently, doesn't it?

24 A I was on a phone call when that credit was
25 being discussed.

Janice D. Hayward, RMR
843.478.6756

1 Q Okay. But you dealt directly with them?

2 A I was part of the bank team that was
3 meeting with them on this particular credit. I did
4 not personally engage with them in person.

5 Q It says they were critical of our decision
6 to put this back on interest only. So they did have
7 some issues with --

8 A They didn't necessarily like it, but they
9 didn't cause us to downgrade the credit.

10 Q But they did have some issues with it,
11 right?

12 A (No audible response.)

13 (Marked for identification was Defendants'
14 Exhibit 22.)

15 BY MR. GASKINS:

16 Q You've been handed what's been marked as
17 Exhibit 22 which is a string of emails between you
18 and John Rosenberg in late September 2010, is that
19 correct?

20 A Yes.

21 Q And this is regarding Ecological
22 Investments' attempt to refinance the loan with
23 BB&T, is that right?

24 A That's correct.

25 Q And they were dealing with somebody named

Janice D. Hayward, RMR
843.478.6756

1 David Hamilton over at BB&T?

2 A I believe that's right.

3 Q And they wanted you to send some financial
4 information to him?

5 A They did.

6 Q Okay. And is that financial information,
7 is that confidential information?

8 A Yes, it is confidential.

9 Q Okay. Who can you disclose that
10 information to?

11 A Typically within the bank. We keep that
12 within the bank. I was doing this to help them move
13 that process along and their interest in trying to
14 move the loan.

15 Q And the email that you sent him reflects
16 that you shared this information, this confidential
17 information with somebody else without his
18 permission, is that right?

19 A I did provide a financial statement to
20 Mr. Hamilton.

21 Q And you didn't have Mr. Brust's
22 permission, did you?

23 A I did not.

24 (Marked for identification was Defendants'
25 Exhibit 23.)

Janice D. Hayward, RMR
843.478.6756

1 BY MR. GASKINS:

2 Q I've handed you what's been marked as
3 Exhibit 23, which is, appears to be a series of
4 emails between you and Mr. Rosenberg in early
5 October, late September, 2012. Do you agree with
6 that?

7 A Yes.

8 Q Okay. Take a minute to review it. It
9 does cover a couple pages.

10 A (Witness complied.) Okay.

11 Q All right. This is regarding the first --
12 there is -- it starts with an email from Lauren
13 Millovitsch to you on September 27th, 2005, is that
14 right?

15 If you look at page 1026 at the
16 bottom you can see.

17 A Yes.

18 Q It says she is providing you with Phil's
19 power of attorney, correct?

20 A Yes.

21 Q That's not the power of attorney that
22 we're talking about in reference to the guaranty, is
23 it?

24 A No.

25 Q That's the one that, the power of attorney

Janice D. Hayward, RMR
843.478.6756

1 he gave to his wife to handle his affairs, correct?

2 A That's correct.

3 Q Did you request that?

4 A We had a conversation. She had apprised
5 me of what had happened to Mr. Brust's health, and
6 that came up during the course of the conversation.
7 And I can't remember if I asked her or if she
8 offered to send it, but there wasn't a -- it wasn't
9 contentious at all. She just explained what had
10 happened.

11 Q Okay. Turn to the previous page, 1025,
12 starting about a third of the page down, the message
13 from you to Rosenberg on October 8th at 2:16. Do
14 you see that?

15 A Um-hum, yes.

16 Q And you're talking about speaking with
17 Mr. Brust's attorney, Lauren Millovitsch. And I
18 apologize if I'm butchering that name. And you tell
19 Rosenberg, I also would suggest you obtain a copy of
20 the power of attorney that you used to sign for Phil
21 on his guaranty.

22 And you're referring to the
23 power of attorney that we were discussing earlier,
24 correct?

25 A Yes.

Janice D. Hayward, RMR
843.478.6756

1 Q You're referring to Exhibit 9 in this
2 email, or what's marked as Exhibit 9?

3 A Yes.

4 Q Why were you telling Rosenberg to obtain a
5 copy of the power of attorney? Is it because you
6 didn't have it?

7 A I don't think so. I don't -- we had
8 spoken on the phone and I -- I don't believe I'm
9 asking for it or suggesting they do that for a copy
10 for me.

11 Q Okay.

12 A I believe that attorney -- it wasn't
13 actually Lauren. They had turned it over to someone
14 else at this time.

15 Q And I was about to correct myself. I
16 believe that's Charlton Hunley. Does that sound
17 right?

18 A Yes.

19 Q Okay. Says, he is asking questions I do
20 not know the answers to.

21 A Yes.

22 Q He was inquiring about original purchase,
23 how the amount went from a purchase price of three
24 thirty to a refi loan amount of over two million.

25 What questions was he asking

Janice D. Hayward, RMR
843.478.6756

1 that you didn't have the answers to?

2 A There are more detail questions around
3 what I knew about the original Butterfly Kingdom and
4 how much I knew about that whole transaction and how
5 large a total debt request that was going to be when
6 the whole project came to fruition, and just some
7 questions I didn't have the answer to, I didn't know
8 the answer to.

9 Q Okay. Let's turn to the previous page,
10 1024. Rosenberg responded saying, you must have
11 that as part of the loan documentation signed at the
12 time. That indicates to me that you didn't have it.
13 Do you agree with that?

14 A I'm not sure.

15 Q Let's go to the top. Says, I did locate
16 the POA for Phil relative to the closing of the loan
17 with us. Where did you locate it?

18 A I assume our Spartanburg folks obtained it
19 from our file there.

20 Q You don't remember?

21 A I don't remember.

22 Q Seeing as that was October 9th, 2012, it
23 wouldn't have been this one, Exhibit 9, that has the
24 2013 date on it, would it?

25 A I don't know. I'm not sure.

Janice D. Hayward, RMR
843.478.6756

1 Q I mean, if this one was printed after you
2 sent this email, that's not the same one, is it?

3 A I'm not sure.

4 Q Can you explain to me how you obtained a
5 document that wasn't in existence? Is what I'm
6 saying making sense? This one was printed out on
7 January 23rd, 2013.

8 A I understand. I believe this was printed
9 off from the Jasper County website which would have
10 been on the website since it was recorded. And I'm
11 telling you I don't know what John is referring to
12 there in his email.

13 Q But you don't know where you got the POA?

14 A I can't remember. I can't remember.

15 Q Okay. All right. I think we're going to
16 wrap up soon. If you could turn back to Exhibit 2,
17 and I asked you about this document earlier and you
18 agreed that these appear to be the bank's policies
19 and procedures that were in effect in early 2006?

20 A I believe so.

21 Q Turn to tab four.

22 MR. SILVER: First South Bank number
23 on it?

24 MR. GASKINS: 1725.

25 BY MR. GASKINS:

Janice D. Hayward, RMR
843.478.6756

1 Q This refers to credit approval summary.
2 What is this?

3 A It's just the title we give for our loan
4 request package that we prepare when we are looking
5 at either a renewal of a loan or a new loan.

6 Q How is this different from the credit
7 narrative that we reviewed earlier?

8 A There was a cover form that was kind of a
9 one-page bullet point of some of the salient points
10 of the loan, and that would have been on top of the,
11 or would have preceded the credit memo that we
12 looked at earlier.

13 Q Do you know if a credit approval summary
14 was ever created for this loan in 2006?

15 A I'm not sure.

16 Q But if there was one, it would be in the
17 bank's loan file, right?

18 A Yes, it should be.

19 Q And this would be a document that's -- the
20 bank would want to keep, and subject to the
21 retention requirements we discussed earlier,
22 correct?

23 A Correct.

24 Q If there isn't one in there, it indicates
25 that one may not have been performed or either it's

Janice D. Hayward, RMR
843.478.6756

1 been lost or destroyed. Would you agree with that?

2 A I don't remember if we prepared a separate
3 one for that -- this loan or not.

4 Q Why wouldn't you have? It says for every
5 commercial loan a file was to contain a completed
6 credit approval summary signed by the loan officer.

7 A I don't know.

8 Q So you should have?

9 A I didn't prepare one in this situation. I
10 submitted a credit memo as my approval documents.

11 Q But the policy required that you complete
12 and sign one, correct?

13 A Yes.

14 Q Okay. All right. Turn to tab five
15 beginning at 1727. This is the loan administration
16 and loan review policy that was in effect in 2006.
17 Do you agree with that?

18 A Yes.

19 Q Okay. This talks about loan grading. Was
20 this loan ever graded when it was originated in
21 2006?

22 A I believe it was graded a four or a three.
23 I can't remember.

24 Q What are you basing that on?

25 A Just --

Janice D. Hayward, RMR
843.478.6756

1 Q Your memory?

2 A My memory and what I remember about the
3 credit and the strengths and weaknesses.

4 Q Turn to page 1732 which is part of that
5 same tab. If you look at Section 2A which is at the
6 top, talks about the initial loan documentation
7 review. In parentheses it says, the loan officer is
8 responsible for all documentation on his or her
9 loans. Would that have been you?

10 A Yes.

11 Q On this loan?

12 A Yes.

13 Q All right. Turn to tab six. This is the
14 bank's policy regarding financial statements that
15 was in place in 2006, is that correct?

16 A Yes.

17 MR. SILVER: What's the page number?

18 MR. GASKINS: I'm sorry, I'm looking
19 now at 1735.

20 BY MR. GASKINS:

21 Q If you turn to page 1737, if you look to
22 the bottom it says new business customers.
23 Ecological Investments was a new business customer,
24 isn't that right?

25 A That's correct.

Janice D. Hayward, RMR
843.478.6756

1 Q It says, for new clients loan officers are
2 requested to obtain statements for at least the
3 latest three years and if possible the latest five
4 years.

5 You did not get that information
6 from Ecological Investments, did you?

7 A I'm not sure if I obtained all that
8 information or not.

9 Q It's not reflected in your credit
10 narrative, is it?

11 A It wasn't in my narrative, no.

12 Q That only mentions the current financial
13 statements for Brust and Rosenberg?

14 A Yes. It also had the tax return for
15 Ecological for 2004.

16 Q But not for the latest three years, right?

17 A It did not refer to that in that memo.

18 Q Okay. Turn to the next page, 1738,
19 section ten. Bank's policy says that it is highly
20 preferred to have business and large personal
21 borrower financials prepared by certified public
22 accounting firms. Do you see that?

23 A Um-hum, I do.

24 Q And that was the bank's policy, right?

25 A Yes.

Janice D. Hayward, RMR
843.478.6756

1 Q Okay. And did any of the financials you
2 reviewed, were they prepared by a certified public
3 accounting firm?

4 A The tax returns were prepared by their
5 accountants.

6 Q How about the personal financial
7 statements of Mr. Brust and Mr. Rosenberg?

8 A Personal financial statements were
9 prepared by them individually.

10 Q All right. Let's turn to tab seven, page
11 1741. This is the bank's policy on repayment plans,
12 isn't that right?

13 A Yes.

14 Q And that is the one that was in effect in
15 2006?

16 A Yes.

17 Q Section three talks about plans to avoid.
18 Says there are many general types of loan repayment
19 plans to avoid. Common sense and First South Bank
20 policy include the following, second bullet point,
21 when repayment is dependent upon some future event
22 or circumstance beyond the direct control of the
23 borrower. This loan would fall into that category,
24 wouldn't it?

25 A Yes.

Janice D. Hayward, RMR
843.478.6756

1 Q Okay. Let's turn to tab nine which is the
2 bank's policy on borrowing authorization that was in
3 place.

4 MR. SILVER: What page?

5 MR. GASKINS: 1753.

6 BY MR. GASKINS:

7 Q And isn't this the bank's policy for
8 borrowing authorization that was in place in 2006?

9 A Yes.

10 Q And this section governs who has authority
11 to sign notes and related documents on behalf of
12 others?

13 A Yes.

14 Q And wouldn't you agree that if
15 Mr. Rosenberg was acting on behalf of Mr. Brust
16 through a power of attorney, he was acting as Mr.
17 Brust's fiduciary?

18 MR. SILVER: I think that might be a
19 legal opinion you're asking him. He can
20 go ahead and answer, but I believe that's
21 a legal question.

22 A I believe under the first sentence that it
23 would be, yes.

24 BY MR. GASKINS:

25 Q Okay. So under -- and I'm not asking you

Janice D. Hayward, RMR
843.478.6756

1 to give a legal opinion. But based on the bank's
2 policy, Mr. Rosenberg would qualify as a fiduciary
3 if he was acting pursuant to a power of attorney.
4 You agree with that?

5 A Yes.

6 Q Okay. And you see that last sentence says
7 consultation with bank counsel is advised. And that
8 surrounds dealing with fiduciaries. That was the
9 bank's policy, right?

10 A Yes.

11 Q You didn't consult with bank counsel about
12 Mr. Rosenberg acting in a fiduciary capacity and
13 signing the guaranty, did you?

14 A I did not.

15 Q All right. Let's turn to tab ten. All
16 right. This is the bank's policy regarding co-maker
17 of guarantor and endorser which was in effect in
18 2006, is that correct?

19 A Yes.

20 MR. SILVER: Can you give me the page
21 number?

22 MR. GASKINS: I'm sorry, 1759.

23 MR. SILVER: Thank you.

24 BY MR. GASKINS:

25 Q Can you read section two aloud for me?

Janice D. Hayward, RMR
843.478.6756

1 A The loan officer should be confident the
2 primary borrower has a reasonable source of
3 repayment and in all other respects stands
4 completely behind the obligation before considering
5 co-obligors. The officer must then discuss the
6 nature of the guaranty/endorsement with the
7 prospective third party, clearly explaining the
8 responsibility being incurred for repaying the loan.
9 Each is to be given a copy of the note.

10 Q Okay. Did you -- beyond the one time at
11 the beginning, did you ever discuss with Mr. Brust
12 the guaranty requirement and explain his
13 responsibilities?

14 A Not outside of our initial conversation.

15 Q And you never did review the guaranty
16 agreement with him, did you?

17 A I did not.

18 Q And you never gave him a copy of the
19 guaranty agreement, did you?

20 A I don't believe we did.

21 Q All right. Let's turn to section four.
22 Can you read that aloud?

23 A When the additional obligor is not signing
24 in a loan officer's presence, the signature should
25 be guarantied by a bank or other reputable witness.

Janice D. Hayward, RMR
843.478.6756

1 Q All right. In this case, the obligors are
2 Mr. Rosenberg and Mr. Brust, correct?

3 A The guarantors are, yes.

4 Q Or at least that's the contention made by
5 First South Bank.

6 A Yes.

7 Q These signatures, Mr. Rosenberg did not
8 sign his guaranty in your presence, did he?

9 A I don't remember if he signed in front of
10 me or not.

11 Q If he signed it at the loan closing he
12 didn't sign in the --

13 A The guaranty, the guaranty, you're right.
14 I'm sorry. The guaranty he did not sign in front of
15 me.

16 Q And Mr. Brust didn't sign in front of you,
17 did he?

18 A No.

19 Q And he didn't sign the power of attorney
20 in front of you, did he?

21 A No.

22 Q Okay. What did you do to guaranty that it
23 was their signature as required by this policy?

24 A Nothing more than what was presented in
25 the document itself.

Janice D. Hayward, RMR
843.478.6756

1 Q Okay. So you just reviewed the documents
2 that were given?

3 A Reviewed the document.

4 Q You didn't follow up with Mr. Finger to
5 verify their signatures?

6 A No.

7 Q You didn't follow up with any other
8 reputable witness to determine if it was indeed
9 their signatures, did you?

10 A No.

11 Q And that's a violation of the bank's
12 policy, isn't it?

13 A These are guidelines, and I did not follow
14 that particular guideline in this circumstance.

15 Q Okay. All right. Let's turn to section
16 five, changes of terms. Please read that aloud for
17 me.

18 A It is the policy of First South Bank to
19 obtain the signatures of all obligors on renewal
20 notes before the existing note is released. The
21 agreement of all parties is to be obtained prior to
22 any extension, change in terms, release,
23 substitution of collateral, et cetera. Failure to
24 do so could release obligors from their liability to
25 First South Bank.

Janice D. Hayward, RMR
843.478.6756

1 Q So the way I read this, this requires new
2 guaranty agreements for all parties prior to the
3 bank granting the borrower any extension, change in
4 terms, release, or substitution of collateral, is
5 that right?

6 A Yes.

7 Q And that was not followed with regards to
8 the several extensions and renewals and
9 modifications of this loan, was it?

10 A No.

11 Q All right. Let's turn to the second page,
12 1760, and go to section 8A, after the first
13 paragraph. It reads, it is recommended that these
14 forms be updated every three to four years and
15 whenever any major management or ownership change
16 occurs, and it's talking about personal guaranty
17 agreements. Do you agree with that?

18 A Yes.

19 Q Okay. And that wasn't -- the bank did not
20 follow this policy with regards to the loan in
21 question, did it?

22 A It's a recommendation. Again, it's a
23 guideline.

24 Q They didn't follow that recommendation,
25 did they?

Janice D. Hayward, RMR
843.478.6756

1 A We did not follow it in this situation.

2 Q All right, sir. Let's turn to section 11,
3 page 1763. And isn't this the bank's policy
4 regarding unsecured loans that was in effect in
5 2006?

6 A Yes.

7 Q And if you look at section 2E it says,
8 credit reports on guarantors are recommended. You
9 didn't get credit reports on these guarantors, did
10 you?

11 A Yes, I did.

12 Q You did?

13 A Yes.

14 Q Okay. If you did, would those records be
15 in the loan file?

16 A I would assume so.

17 Q All right. Turn to page 13 -- or tab 13,
18 page 1769. And this is the bank's policy on term
19 loans, is that correct?

20 A Yes.

21 Q And would the loan that's subject to this
22 litigation be considered a term loan?

23 A It was at the time of the last renewal.

24 Q Okay. How about at the beginning?

25 A It was not a term loan at the beginning.

Janice D. Hayward, RMR
843.478.6756

1 Q What's a term loan?

2 A Term loan is typically when you extend it
3 for sometimes up to five, seven years on an
4 amortizing basis. There's principal.

5 Traditionally, it speaks to
6 principal and interest payments being made on the
7 note, not interest only payments.

8 Q Let's look at the first bullet point under
9 section one, and read the definition of term loan
10 and see if that changes your opinion.

11 A For the purposes of this manual, term loan
12 refers to any loan with a maturity greater than one
13 year. These are normally amortized on a monthly or
14 payment basis and usually have cash flow as the
15 repayment source.

16 Q Okay. The loan, when it was originated,
17 had a maturity date greater than one year, correct?

18 A Yes, it did.

19 Q So it would fall into the category of a
20 term loan under this policy, is that right?

21 A Well, again, the short-term note or
22 short-term policy was two years interest only.

23 Q I'm asking about this policy. Does the
24 loan in question meet this definition?

25 A It does in this definition, yes.

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843.478.6756

1 Q Okay. All right. Let's turn to section
2 2B. It says repayment should normally be based on
3 regular amortization. We should usually avoid plans
4 involving a moratorium on principal, or balloons,
5 except for special situations featuring appropriate
6 collateral and borrower strength.

7 This loan in question didn't
8 comply with that recommendation or policy, did it?

9 A Not under this definition.

10 Q All right. Turn to tab 22. Actually,
11 never mind. We don't need to turn there.

12 I don't think you were involved
13 in the production of these policies, but you have
14 been designated by the bank to answer questions
15 regarding the responses to requests to produce. Do
16 you know why some of the tabs and policies have not
17 been provided?

18 A I do not.

19 Q Okay.

20 MR. GASKINS: I think I'm finished.

21 Give me one minute to review.

22 (Marked for identification was Defendants'
23 Exhibit 24.)

24 BY MR. GASKINS:

25 Q You've been handed what's been marked as

1 Exhibit 24 which are plaintiff's responses to
2 defendant Brust's first set of interrogatories.

3 And the answer to question one
4 or interrogatory one, which requests that plaintiff
5 identify every person who has assisted in the
6 preparation of responses to these interrogatories
7 and defendant Brust's first set of requests for
8 production, and the answer by the bank is Patrick
9 Wright, which is you.

10 Did you, in fact, participate in
11 the preparation of these responses?

12 A Yes.

13 Q Have you reviewed them?

14 A I believe -- yes.

15 Q And are you aware of anything in here that
16 is inaccurate, mistaken, or needs to be revised?

17 A Not to my knowledge.

18 Q That's all I have for now.

19 EXAMINATION

20 BY MR. SILVER:

21 Q Patrick, I thank you for your time today.
22 I know it's been very trying and long for you
23 especially since you had to drive all the way back
24 from Tennessee for this.

25 In Exhibit Number 2, which is

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1 the big loan manual here or loan policy, can you go
2 to First South Bank loan policy? It's First South
3 Bank 1708, and go down to the bottom paragraph and
4 read the first sentence.

5 A The loan policy at First South Bank shall
6 guide and direct all officers and personnel in the
7 preferred manner under which the bank's objectives
8 are to be achieved by establishing a consistent yet
9 flexible guide for loan officers and a written
10 standard providing for proper control and review of
11 the loan portfolio.

12 Q So this is a flexible guide, is that what
13 it says?

14 A Yes.

15 Q Go to page 1712 that's marked on the
16 bottom right. Up at the very top where it says role
17 of loan officers, can you read section 5A?

18 A Because no single set of guidelines or
19 policies can be all inclusive, the importance of the
20 human element in lending remains paramount. There
21 is no substitute for sound reasoning, good judgment,
22 the loan officer experience. The bank will make
23 every effort to promote these qualities in its
24 lending personnel.

25 Q What's the second paragraph say?

Janice D. Hayward, RMR
843.478.6756

1 A All officers must recognize also that
2 flexibility is needed to further the bank's
3 interest.

4 Q So I think part of your testimony earlier
5 was that these were guidelines. These were not hard
6 and fast rules?

7 A They're guidelines, yes.

8 Q Okay. Let's see here, let's go to Exhibit
9 Number 4, the commitment letter. Go to the top of
10 page two where it says guarantor. Please read what
11 it says there.

12 A Payment of the loan shall be
13 unconditionally guaranteed, jointly and severally,
14 by John E. Rosenberg and Philip J. Brust,
15 hereinafter the guarantors.

16 Q Does it say unconditionally?

17 A Yes.

18 Q Does it limit it?

19 A No.

20 Q Unconditionally, correct?

21 A Yes.

22 Q First South Bank made the loan, correct,
23 to Ecological Investments?

24 A Yes.

25 Q And the documents from February 2nd, 2006

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843.478.6756

1 are the loan documents --

2 A Yes.

3 Q -- that we're here about today.

4 The bank loaned \$2.6 million to
5 Ecological, correct?

6 A That's correct.

7 Q Pursuant to this loan commitment?

8 A Yes.

9 Q Did you get a mortgage on the real
10 property, this 82.68 acres?

11 A Yes.

12 Q Who was your primary contact for
13 Ecological Investments?

14 A John Rosenberg.

15 Q Did most of the conversations go through
16 him?

17 A Yes.

18 Q Did you talk to on a regular basis any of
19 the other investors in the property?

20 A No.

21 Q Okay. I believe your testimony from
22 earlier was that you did talk to Mr. Brust before
23 the closing about his personal guaranty?

24 A Yes.

25 Q And that you needed his financials?

Janice D. Hayward, RMR
843.478.6756

1 A Yes.

2 Q And he provided those?

3 A Yes.

4 Q I think your testimony was you did not
5 attend the closing, correct?

6 A That's correct.

7 Q And I think your testimony also was that
8 you were not aware that Mr. Brust was not at the
9 closing?

10 A That's correct.

11 Q But you were advised after the closing
12 that he had executed a specific limited power of
13 attorney, which is Exhibit Number 9, correct?

14 A Yes.

15 Q Okay. And you were provided the personal
16 guaranty which is exhibit, Defendants' Exhibit
17 Number 8, correct?

18 A Yes.

19 Q And who is that signed by?

20 A Philip J. Brust by John Rosenberg,
21 attorney in fact.

22 Q Do you know whether Mr. Rosenberg
23 contacted Mr. Brust about the execution of this
24 document --

25 A I don't know.

Janice D. Hayward, RMR
843.478.6756

1 Q -- prior to the closing?

2 A I don't know.

3 Q Did the bank rely on this personal
4 guaranty?

5 A Yes.

6 Q Okay. And the reliance was based upon the
7 specific limited power of attorney signed by
8 Mr. Brust in favor of Mr. Rosenberg, correct?

9 MR. GASKINS: Object to form.

10 Go ahead and answer.

11 A It was signed by Mr. Rosenberg on behalf
12 of Mr. Brust.

13 BY MR. SILVER:

14 Q Pursuant to the --

15 A Pursuant to the specific power of
16 attorney.

17 Q And in the specific limited power of
18 attorney, even though you weren't aware of it, what
19 does the last sentence say about what documents were
20 to be executed by it or pursuant to it or approved?

21 A To execute any such other documents as may
22 be necessary to close the loan with First South Bank
23 in the original principal sum of 2,600,000.

24 Q And the loan was made in the sum of
25 2,600,000?

Janice D. Hayward, RMR
843.478.6756

1 A Yes.

2 Q The bank advanced those funds?

3 A Yes.

4 Q Do you have any reason to believe that the
5 commitment letter which bears the signature of
6 Mr. Brust is not his signature?

7 A No.

8 Q Any time up to the date of this deposition
9 were you ever contacted by Mr. Brust and advised
10 that that was not his signature?

11 A No.

12 (Marked for identification was Plaintiff's
13 Exhibit 1.)

14 MR. SILVER: I want to go off the
15 record just for a second.

16 (The deposition went off the record.)

17 MR. SILVER: Can I go on the record
18 and just say we talked and it's okay to
19 submit this as is with the social security
20 number on it?

21 MR. GASKINS: Yes.

22 BY MR. SILVER:

23 Q Patrick, this is Exhibit Number 1,
24 plaintiff's. Are you familiar with these documents?

25 A Yes.

Janice D. Hayward, RMR
843.478.6756

RECORD 0648

1 Q And there's more than one document,
2 correct?

3 A Yes.

4 Q Okay. And what are these documents?

5 A These are copies of personal financial
6 statements for Mr. Brust.

7 Q Okay. Well, let's go down. Tell me about
8 the first one. What is the date of it?

9 A It's dated December 21st, 2005.

10 Q So that would have been prior to the first
11 closing?

12 A Yes.

13 Q The loan of \$2.6 million?

14 A Yes.

15 Q And this was provided to you by Mr. Brust?

16 A Yes.

17 Q And to the best of your knowledge, is that
18 his signature thereon, on the fourth page, First
19 South Bank page 244?

20 A To my knowledge that is his signature.

21 Q How about the next document?

22 A It's a personal -- a copy of a personal
23 financial statement from Mr. Brust dated April 30th,
24 2007.

25 Q Is that also signed by Mr. Brust on page,

Janice D. Hayward, RMR
843.478.6756

1 First South Bank, 264?

2 A I believe that to be his signature.

3 Q And what is the date next to his
4 signature?

5 A 5-23 of '07.

6 Q Okay. What is the next document that's --
7 it looks like it was mailed to you or addressed to
8 you.

9 A This was a personal financial statement, a
10 listing of his assets that he sent to me in May of
11 2008.

12 Q Okay. Do you have any reason to believe
13 that's not Mr. Brust's signature thereon?

14 A No.

15 Q What about page -- First South Bank page
16 275, Bates stamped 275, handwritten?

17 A That's a statement of net worth from
18 Mr. Brust dated September 1 of 2009.

19 Q And this came from Mr. Brust?

20 A I believe this came from Mr. Brust.

21 Q Do you have any reason to believe it
22 didn't come from Mr. Brust?

23 A No.

24 Q What's the next document which is Bates
25 stamped 276?

Janice D. Hayward, RMR
843.478.6756

1 A It's a personal financial statement from
2 Mr. Brust dated August 30th of 2009.

3 Q On page 280, Bates stamped 280, whose
4 signature is that?

5 A That appears to be Mr. Brust's signature.

6 Q And also has your signature down below it
7 as having received it, correct?

8 A Yes.

9 Q Any reason to doubt that's Mr. Brust's
10 signature there?

11 A No.

12 Q What about the next document, Bates
13 stamped page 370?

14 A It's a personal financial statement of
15 Mr. Brust dated April, or a copy of, dated April 30,
16 2010.

17 Q Okay. On page, Bates stamped page 373,
18 who is it signed by?

19 A It is signed by Mr. Brust and his spouse,
20 Mrs. Seely.

21 Q Okay. Did you request these documents?

22 A Yes.

23 Q Why did you request these documents?

24 A As part of our ongoing underwriting of the
25 credit, we try to maintain personal financial

Janice D. Hayward, RMR
843.478.6756

1 information on our guarantors on an annual basis.

2 Q Other than Mr. Brust and Mr. Rosenberg,
3 did you request this information from any of the
4 other investors --

5 A No.

6 Q -- in Ecological Investments?

7 A No.

8 Q Why not?

9 A These were the only two guarantors on the
10 loan, and they were the only ones that were liable
11 to the bank as part of their guaranty requiring that
12 we get financial statements.

13 Q From the date of the closing till the
14 institution of the lawsuit by First South Bank, were
15 you ever contacted by Mr. Brust about I'm not a
16 guarantor on this loan?

17 A No.

18 Q Any handwritten letters?

19 A No.

20 Q Any emails?

21 A No.

22 Q Any conversations, telephone?

23 A No.

24 Q Any face-to-face?

25 A No.

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1 MR. GASKINS: Jeff, before we move on
2 to another document, I just would like to
3 put on the record that if you do submit
4 Plaintiff's Exhibit 1 with any filings to
5 the court, that at that point you would
6 redact any personally identified
7 information.

8 MR. SILVER: I will be glad to as
9 long as you help remind me.

10 MR. GASKINS: Yes, I will.

11 MR. SILVER: Do you think it would be
12 better just to go ahead and do it now? I
13 mean, we can keep our copies.

14 MR. GASKINS: Yeah, if we have the
15 ability.

16 (Social Security Number redacted.)

17 BY MR. SILVER:

18 Q Patrick, one of the questions that's in
19 the Exhibit A is what are the damages claimed by --
20 when I say Exhibit A, from Exhibit 1 of the
21 defendant, the Exhibit A on there, Number 19 says
22 damages claimed by First South Bank. Requested was
23 a payoff letter from the bank.

24 (Marked for identification was Plaintiff's
25 Exhibit 2.)

Janice D. Hayward, RMR
843.478.6756

1 BY MR. SILVER:

2 Q Does this appear to be a payoff letter on
3 the Ecological loan?

4 A Yes.

5 Q And can you tell me when it's dated?

6 A The payoff is dated as of 5-23, 2014.

7 Q And is that day?

8 A Yes.

9 Q Can you tell me what the total payoff is?

10 A The total payoff as of today is
11 \$1,772,886.12.

12 Q And is there a per diem?

13 A The per diem is \$234.50.

14 Q At any time would you have refused to
15 discuss with Mr. Brust the status of this loan to
16 Ecological?

17 A No.

18 Q Did he ever contact you?

19 A No.

20 Q Did he ever ask what the status of the
21 loan was?

22 A No.

23 Q Email, letter, conversation, face-to-face?

24 A Not as to the status of the loan, no.

25 Q Okay. But up through the, at a minimum,

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1 the provision of the last financial statement, I
2 mean up through -- back that up a little bit.

3 Up through, it looks like
4 April 30th of 2010, he was still providing financial
5 statements?

6 A Yes.

7 Q Other than his being a personal guarantor
8 was there any other reason for him to provide the
9 bank that information?

10 A No.

11 Q Was there any reason for the bank to
12 request that information other than he was a
13 personal guarantor?

14 A No.

15 Q Did he ever question the fact that Mr.
16 Rosenberg signed the guaranty on his behalf pursuant
17 to the power of attorney?

18 A No.

19 MR. GASKINS: Object to form.

20 BY MR. SILVER:

21 Q I'm going to refer you to Defendants'
22 Exhibit Number 8 which is the personal guaranty.
23 Would you read -- it's number two here, up
24 through -- I don't want you to have to read any more
25 than you have to.

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1 Well, why don't you go ahead and
2 read the whole thing, all of paragraph number two,
3 if you would, out loud.

4 A This is an absolute unconditional and
5 continuing guaranty of payment of the indebtedness
6 and shall continue to be in force and be binding
7 upon the undersigned whether or not all indebtedness
8 is paid in full until this guaranty is revoked by
9 written notice actually received by the lender, and
10 such revocation shall not be effective as to --
11 sorry.

12 Such revocation shall not be
13 effective as to indebtedness existing or committed
14 for at the time of actual receipt of such notice by
15 the lender or as to any renewals, extensions, and
16 refinancings thereof.

17 If there be more than one
18 undersigned, such revocation shall be effective only
19 as to the one so revoking. The death or
20 incompetence of the undersigned shall not revoke
21 this guaranty except upon actual receipt of written
22 notice thereof by lender and then only as to the
23 decedent or the incompetent and only prospectively
24 as to future transactions as herein set forth.

25 Q Okay. Once again I'll ask, did you

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843.478.6756

1 receive any rejections, revocations from Mr. Brust
2 of his obligations under this personal guaranty?

3 A No.

4 Q Okay. I have no further questions.

5 EXAMINATION

6 BY MR. GASKINS:

7 Q Won't be long. You were just reading from
8 the guaranty in paragraph two. You don't know if
9 Mr. Brust ever read that language, do you?

10 A I don't know.

11 Q You never presented it to him?

12 A No.

13 Q You never read it to him?

14 A No.

15 Q So you don't have any idea whether
16 Mr. Brust has ever seen this document or not?

17 A No.

18 Q So he wouldn't know what to revoke even if
19 he wanted to, would he?

20 A I don't know.

21 MR. GASKINS: That's all I have.

22 MR. SILVER: Okay. You can have a
23 big sigh of relief now.

24 (The deposition was concluded at
25 2:59 p.m.)

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) : CERTIFICATE

3 I, Janice D. Hayward, Registered Merit
4 Reporter and Notary Public, certify that I was
5 authorized to and did stenographically report the
6 foregoing deposition, and that the transcript is
7 a true record of the testimony given by the witness.

8 I further certify that the witness was
9 duly sworn and cautioned by me to tell the truth,
10 the whole truth and nothing but the truth. I
11 certify that the same was reduced to typewritten
12 form from my original stenograph notes by
13 computer-aided transcription.

14 I further certify that I am not of
15 counsel or kin to any of the parties to this cause
16 of action, nor am I interested in any manner in
17 its outcome.

18 IN WITNESS WHEREOF I have hereunto set
19 my hand and seal this the 27th day of May, 2014.

20

21

22

23

24

25

Janice D. Hayward, RMR
Notary Public, South Carolina
My Comm. Expires 10-10-22

Janice D. Hayward, RMR
843.478.6756

RECORD 0658

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2013-CP-07-00610
	)	
FIRST SOUTH BANK,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT PHILIP J. BRUST'S
vs.	)	FIRST SET OF INTERROGATORIES
	)	TO PLAINTIFF
JOHN E. ROSENBERG and PHILIP J.	)	
BRUST,	)	
	)	
Defendants.	)	

TO: JEFFREY L. SILVER, ESQUIRE, Attorney for Plaintiff:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendant Philip J. Brust ("Defendant Brust") requires Plaintiff First South Bank ("Plaintiff") to answer each of the interrogatories set forth below in writing and under oath within thirty (30) days after service. Further, Defendant Brust requests that such answers be given in accordance with the definitions and instructions set out below.

DEFINITIONS AND INSTRUCTIONS

1. "Plaintiff" or "you" shall mean Plaintiff First South Bank and shall include its respective representatives, directors, officers, employees, agents, and others acting on its behalf.
2. References to a party shall include such party's respective representatives, agents, attorneys, and others acting on its behalf.
3. "Document" refers to all items subject to discovery under Rule 34 of the South Carolina Rules of Civil Procedure, including but not limited to any written or recorded material of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise; notations of any sort of conversations, telephone calls, meetings, or other communications; all graphic or oral records or

representations of any kind; and mechanical or electronic records or representations of any kind including tapes, cassettes, disks, records, electronic mail messages, and electronic files stored on hard drives or other computer storage.

4. "Loan" shall mean, collectively, the Universal Note and Security Agreement executed and delivered by Ecological Investments, LLC to you on or about February 2, 2006; the Commercial Debt Modification Agreement dated January 14, 2008 and January 21, 2010; the Renewal Universal Note and Security Agreement dated May 27, 2008, August 26, 2008, October 15, 2008, and November 30, 2010; and all other loans, extensions, renewals, and/or loan modifications related to such notes, agreements, and/or modifications, including the loan to Ecological Investments, LLC in the amount of or about Two Hundred Seventy-Five Thousand and 00/100 Dollars (\$275,000.00) made in or around January 2009.

5. "Identify" shall mean:

a. In the case of a person, to state the person's full name, present or last-known home and business address, and present or last-known employer and job title;

b. In the case of a business concern, to state its name, its present or last-known address, and the nature of such business concern (*e.g.*, partnership, corporation, etc.);

c. In the case of a document, to state its date, its author, its recipient, or the person for whom it was prepared, the type of document (*e.g.*, letter, memorandum, chart, or other category), its present location or custodian, a summary of its contents, and any other information necessary to render the document distinguishable from all others and subject to ready location. In lieu of identifying a document, a copy of the document may be supplied.

d. In the case of a communication or act, to identify the person(s) present when the communication or act occurred, the date and location of such communication or act,

the substance of such communication or act, and all documents which record, refer to, or otherwise concern such communication or act.

5. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of their scope. The use of the singular form of any word includes the plural and vice versa.

6. If an interrogatory definition or instruction is objected to in whole or in part, specify all grounds on which objection rests. Respond to all portions of each such interrogatory to which no objection is asserted. In addition, state whether any responsive information has been omitted from an interrogatory response and whether and in what way the search for responsive information has been delimited or circumscribed on the basis of any such objection.

INTERROGATORIES

1. Identify every person who has assisted in the preparation of responses to these Interrogatories and Defendant Brust's First Set of Requests for Production.

2. Identify the full name, address, job title and telephone number of each person known to you or your counsel to have knowledge of any of the facts, events, circumstances, claims, or allegations surrounding this lawsuit and indicate whether or not written or recorded statements have been taken from each person and, if so, indicate who has possession of such statements and, if not, set forth a specific summary sufficient to inform Defendant Brust of the important facts known to or observed by each person.

3. Set forth a list of all records, statements, photographs, sketches, reports, drawings, maps, models, exhibits, or other documents or tangible objects, whether in written, electronic, or computerized form, in your possession or control and/or the possession or control of your

counsel that relate to your claims in this case and/or that you may seek to introduce, whether as evidence or otherwise, at any deposition, hearing, or trial of this action.

4. Set forth a list of all your personnel, employees or agents involved in any way with the Loan, including the name, address, and telephone number of each individual involved. For each employee or agent listed, please describe in detail the purpose of the employee's or agent's involvement and each decision made by the employee or agent with regard to the Loan.

5. List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case, and for each please state:

- a. the field in which you claim he/she is an expert;
- b. the subject matter on which the expert is expected to testify;
- c. the substance of the facts and opinions to which the expert is expected to testify;
- d. a summary of the grounds for each opinion; and
- e. identify all articles or publications written by the expert, including name and date of publication.

6. Describe with specificity your corporate structure.

7. Explain and describe in full and complete detail the type of damages you claim to be entitled to recover from the named Defendants. This response should include, but is not limited to, the outstanding principal amount on the Loan, an accounting of all payments made on the Loan, an accounting of any and all fees charged as to the Loan, an accounting of all penalties charged as to the Loan and an accounting of all interest charged on the Loan. With regard to each interest charge, state the percentage rate, the nature of the interest rate (such as stated rate, default rate, etc.) for each interest charge, the time period covered by the interest charge, the principal balance or balances used in computing the interest charge, and the calculation of the interest charge.

8. Identify all collateral that secures the Loan, including the current value of the collateral.

9. Set forth a detailed narrative of the history of the contribution of funds to, and the ownership of, the Loan and all documents, guaranties, and instruments related thereto. This narrative should include, but not be limited to, any contributions of Loan funds from another lender, as well as any sales, assignments, syndications, or other transfers of any interest or participation in the Loan or any document, guaranty, or instrument related thereto. If any other lender has contributed funds for the Loan, or any part of, or participation in, the Loan or any document, guaranty, or instrument related thereto has been sold, assigned, syndicated, or transferred in any way, identify all transactions related to such contribution, sale, assignment, syndication, or transfer in accordance with the above definitions.

10. Identify all communications between Defendant Brust and you and any of your employees or agents regarding the Loan, Ecological Investments, LLC, the Butterfly Kingdom, Ecological Education Center, Inc., and Butterfly Kingdom Emporium, LLC.

11. Describe in detail all efforts by you to perform due diligence, research, and investigation regarding the Loan, collateral securing the Loan, Ecological Investments, LLC, and any guarantors of the Loan.

12. Identify all communications between Defendant John Rosenberg and you and any of your employees regarding the Loan, Ecological Investments, LLC, the Butterfly Kingdom, Ecological Education Center, Inc., and Butterfly Kingdom Emporium, LLC.

13. Identify all communications between any other person, including any appraisers, and you and any of your employees or agents regarding the Loan, collateral securing the Loan, Ecological Investments, LLC, and any guarantors of the Loan.

14. Explain specifically each reason you made the Loan to Ecological Investments, LLC, including the rationale, basis, and any documents relied upon for each decision to make, renew, modify, or extend the Loan, including those renewal, modifications, and/or extensions effected on January 14, 2008; May 27, 2008; August 26, 2008; October 15, 2008; January 21, 2010; and November 30, 2010, and the loan in January 2009 in the amount of or about Two Hundred Seventy-Five Thousand and 0/100 Dollars (\$275,000.00).

15. Identify all transactions and/or dealings between you and Defendant Rosenberg and any entity in which he has a financial or ownership interest or affiliation, including but not limited to Ecological Education Center, Inc., Butterly Kingdom Emporium, LLC, Efficient Energy Advisors, LLC, and AirPro Cooling & Heating, LLC, regardless of whether such transactions and/or dealings were of a personal nature or related to Ecological Investments, LLC. In answering this interrogatory, include the identity of the persons involved in the transaction, the date of the transaction, the nature of the transaction, and whether the transaction or the obligations thereunder are currently effective.

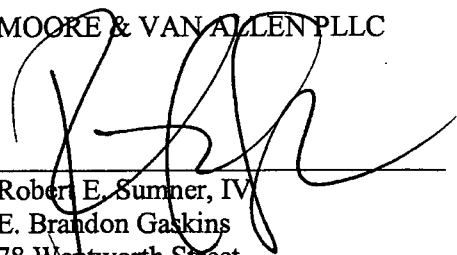
16. Describe in detail your knowledge regarding the proposed development or sale of all or portion of the property acquired by Ecological Investments, LLC in Jasper County, South Carolina, including but not limited to the development of the Butterfly Kingdom; the sale of such property to Quad Development, LLC; the sale of timber from the property; or the leasing or sale of rights to the property for advertising, cellular tower, or other commercial uses.

17. To the extent that documents that are responsive to Defendant Brust's First Set of Requests for Production of Documents are or once were in existence but are not in your possession or control, identify those documents. In the events that emails or other electronic documents have been destroyed, please include the date of destruction, a description of the

subject matter of any destroyed documents and a description of any document retention/destruction policies maintained by you for the applicable timeframe.

MOORE & VAN ALLEN PLLC

By:



Robert E. Sumner, IV
E. Brandon Gaskins
78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
Telephone (843) 579-7000
Facsimile (843) 579-7099
robertsumner@mvalaw.com
brandongaskins@mvalaw.com

ATTORNEYS FOR DEFENDANT
PHILIP J. BRUST

CHARLESTON, SC

October ^{9th}₁, 2013

CHARLESTON\547884v1

RECORD 0665

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2013-CP-07-00610
	)	
FIRST SOUTH BANK,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT PHILIP J. BRUST'S
vs.	)	FIRST SET OF REQUESTS FOR
	)	PRODUCTION TO PLAINTIFF
JOHN E. ROSENBERG and PHILIP J.	)	
BRUST,	)	
	)	
Defendants.	)	

TO: JEFFREY L. SILVER, ESQUIRE, Attorney for Plaintiff:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Defendant Philip J. Brust ("Defendant Brust"), requires Plaintiff First South Bank ("Plaintiff") to produce and/or make available for inspection, review, and/or copying at the offices of Moore & Van Allen, PLLC, located at 78 Wentworth Street, Charleston, South Carolina 29401, within thirty (30) days after the service, those documents described herein that are in possession, custody, and/or control of Plaintiff or its counsel.

GENERAL INSTRUCTIONS AND DEFINITIONS

(a) These Requests are continuing in character and require you to supplement your responses if you obtain further or different material within the scope of these Requests.

(b) "Persons" shall mean any natural persons, proprietorships, partnerships, firms, corporations, joint ventures, independent establishments, government agencies, corporations, or any of their divisions or subsidiaries, and any other group or combination acting as an entity.

(c) "Document" shall mean and include the original, each nonidentical copy (whether different from the original by means of notes made on such copy or otherwise) and if the original is not in existence or subject to your control, each copy of any handwritten, typewritten, printed,

recorded, transcribed, punched, taped, photocopied, photo static, "telexed," filmed, microfilmed, electronically or otherwise prepared or stored matter, however produced or reproduced, which is in your possession, custody, or control, including but not limited to all letters, correspondence, memoranda, records, telegrams, telexes, cables, e-mails, memoranda or minutes of meetings or conversations (in person or telephonic), reports, notes, legal documents, and writings of every description.

(d) "Communication" means any transmission, conveyance, or exchange of information whether by written, oral, or other means.

(e) "Loan" shall mean, collectively, the Universal Note and Security Agreement executed and delivered by Ecological Investments, LLC to you on or about February 2, 2006; the Commercial Debt Modification Agreement dated January 14, 2008 and January 21, 2010; the Renewal Universal Note and Security Agreement dated May 27, 2008, August 26, 2008, October 15, 2008, and November 30, 2010; and all other loans, extensions, renewals, and/or loan modifications related to such notes, agreements, and/or modifications, including the loan to Ecological Investments, LLC in the amount of or about Two Hundred Seventy-Five Thousand and 00/100 Dollars (\$275,000.00) made in or around January 2009.

(f) Unless otherwise indicated, these Requests refer to the time, place, and circumstances of the allegations contained in the pleadings.

(g) If you refuse to provide any of the requested material on the grounds that it contains communications or documents protected by the attorney-client or work product privilege, identify and list specifically each communication or document embodying the allegedly privileged information and provide sufficient information about the content of the communication or document to permit objective verification of the claim of privilege, including

but not limited to the identity of the persons who produced, sent, or received the documents and the identity of the person in possession of the document at the time of the Request.

(h) Whenever appropriate in these Requests, the singular form shall be interpreted as plural and vice versa, the male gender shall be interpreted as the male, female, or neutral gender, and “and” or “or” shall be construed either disjunctively or conjunctively to bring within the scope of these Requests any information that might otherwise be construed to be outside their scope.

(i) If a Request is objected to in part, a complete Response to all portions of that Request not objected to should be provided.

(j) Where materials responsive to these Requests have previously been produced in this litigation, please specifically so state and provide the date on which such materials were previously produced.

DOCUMENTS REQUESTED

1. All documents reviewed, referenced, consulted, or otherwise used in responding to the Defendant Brust’s First Set of Interrogatories to Plaintiff.

2. All documents that support or concern your claim for damages.

3. All documents that concern, show, reflect, or otherwise evidence any contributions to the Loan from other lenders, or any sales, assignments, syndications, or other transfers of any interest or participation in the Loan or any document, guaranty, or instrument related thereto.

4. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to real estate or commercial loan underwriting.

5. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to real estate or commercial loan closing standards or requirements.

6. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to powers of attorney.

7. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to loan commitment letters.

8. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to the personal guaranty of loans to an entity.

9. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to document retention and/or destruction.

10. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to commercial loan modifications, extensions, renewals, and/or loss mitigation.

11. All records of any loan write-downs or write-offs established by you for any anticipated loss from the Loan.

12. All documents that concern, show, reflect, or otherwise evidence the value of any collateral that secures the Loan.

13. All documents that concern, show, reflect, or otherwise evidence any mortgage on, or any security interest in, any collateral that secures the Loan.

14. All documents that concern, show, reflect, or otherwise evidence the net worth, assets, liabilities, finances, or financial condition of any person or entity that you contend is liable for the Loan, including without limitation, Defendants Brust and Rosenberg.

15. All documents that concern, show, reflect, or otherwise evidence any communications (written, oral, electronic, or otherwise) between you or your employees, agents, officers, representatives, or anyone acting on your behalf and any person or entity (or any employee, agent, officer, or representative thereof) that you contend is liable for the Loan, including without limitation, Defendants Brust and Rosenberg.

16. All documents that concern, show, reflect, or otherwise evidence any communications (written, oral, electronic, or otherwise) between or among your employees, agents, officers, representatives, or anyone acting on your behalf relating to the Loan or Ecological Investments, LLC.

17. All documents that concern, show, reflect, or otherwise evidence any communications (written, oral, electronic, or otherwise) sent or received by you or your employees, agents, officers, representatives, or anyone acting on your behalf and any other person relating to the Loan or Ecological Investments, LLC.

18. All documents that concern, show, reflect, or otherwise evidence your intent to lend money to Ecological Investments, LLC or to require any person to personally guarantee any loan made by you to Ecological Investments.

19. All documents that concern, show, reflect, or otherwise evidence Ecological Investment's intent to borrow money from you or any person's intent to guaranty any loan made by you to Ecological Investments.

20. All documents relating to the Loan, including without limitation, the loan file, emails, correspondence, financial statements, bank statements, closing documents, appraisals, property records, notices, loan officer notes and/or comments, internal memoranda, and personal financial statements and tax returns of guarantors.

21. A complete and itemized statement from the date of the origination of the Loan to the present of all payments, fees, penalties, interest, or other charges received by you for the Loan.

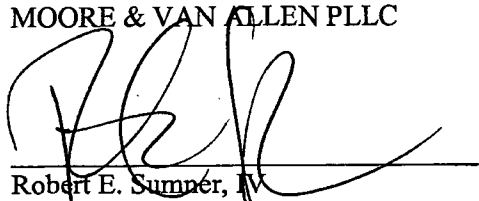
22. All collection notes, reports, memos, statements, entries, data records, computer records, daily records, calendar reports, default reports, collection contacts, collection reports, or other documents generated in connection with the Loan.

23. All documents relating to all accounts that Ecological Investments, LLC currently has or previously had with you, including but without limitation, bank statements, account balances, transaction logs, invoices, receipts, checks, deposit slips, and ledgers.

24. All documents relating to any business transactions or dealings between you and Defendant Rosenberg and any entity in which he has a financial or ownership interest or affiliation, including but not limited to Ecological Investments, LLC, Ecological Education Center, Inc., Butterly Kingdom Emporium, LLC, Efficient Energy Advisors, LLC, and AirPro Cooling & Heating, LLC, including any correspondence, emails, bank statements, loan applications, contracts, agreements, promissory notes, guaranties, and mortgages.

MOORE & VAN ALLEN PLLC

By:



Robert E. Sumner, IV
E. Brandon Gaskins
78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
Telephone (843) 579-7000
Facsimile (843) 579-7099
brandongaskins@mvalaw.com
robertsumner@mvalaw.com

CHARLESTON\547880v3

RECORD 0671

ATTORNEYS FOR DEFENDANT
PHILIP J. BRUST

CHARLESTON, SC

October 9th, 2013

CHARLESTON\547880v3

RECORD 0672

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
C/A NO.: 2013-ES-07-0610

FIRST SOUTH BANK,

Plaintiffs,

vs.

John E. Rosenberg and Philip J. Brust,

Defendant.

**PLAINTIFF'S FIRST SET OF
REQUESTS TO ADMIT TO
DEFENDANT PHILIP J. BRUST**

**TO: Robert E. Sumner, IV, Moore and Van Allen PLLC
E. Brandon Gaskins, Moore and Van Allen PLLC
Attorneys for Defendant Philip J. Brust**

YOU ARE HEREBY served the following written requests for admissions to be answered separately and in writing within thirty (30) days from the date of service hereof, pursuant to and in accordance with the provisions of Rule 36 of the South Carolina Rules of Civil Procedure.

REQUESTS TO ADMIT

1. On or around January 9, 2006, Defendant Philip J. Brust ("Brust") received a letter from Plaintiff wherein Brust, Ecological Investments, LLC ("Ecological"), and Defendant John E. Rosenberg ("Rosenberg") were informed of the terms and conditions, under which Plaintiff would provide a loan to Ecological in the amount of \$2,600,000.00 ("Commitment Letter"). A copy of the Commitment Letter is attached hereto as **Exhibit A**.

2. The Commitment Letter informed Brust that the loan to Ecological was conditioned upon his execution of an Unlimited Guaranty.

3. Brust signed the Commitment Letter acknowledging his agreement and acceptance of the terms and conditions contained therein.

4. On January 25, 2006, Brust executed a Specific Limited Power of Attorney ("Power of Attorney") that was filed on February 6, 2006, in the Office of the Register of Deeds for Jasper

County in Book 339 at Page 218. A copy of the Power of Attorney is attached hereto as **Exhibit B**.

5. Under the Power of Attorney, Brust appointed Rosenberg as his true and lawful attorney, to appear for him, and in his name, place and stead execute any and all documents, and perform any lawful act or execute or amend any document, instrument or thing, including, but not limited to, the power to execute any document, instrument, contract, Note, Mortgage, agreement, assignment, affidavit, disclosure, etc. and to pay sums on his account, or to execute any such other documents as may be necessary for Ecological to close the loan with Plaintiff in the original principal sum of \$2,600,000.00 (See **Exhibit B**).

6. The Power of Attorney also states that any act or deed lawfully performed by Rosenberg on Brust's behalf pursuant to the Power of Attorney and within the limits contained therein, shall be binding upon Brust, his heirs, legal and personal representatives and assigns. (See **Exhibit B**).

7. On or about February 2, 2006, Ecological, made, executed, and delivered to Plaintiff a Universal Note and Security Agreement in the original principal sum of Two Million Six Hundred Thousand and 00/100 (\$2,600,000.00) Dollars, which was subsequently renewed and/or modified by those certain Commercial Debt Modification Agreements dated January 14, 2008, and January 21, 2010 and those Renewal Universal Note and Security Agreements dated May 27, 2008, August 26, 2008, October 15, 2008, and November 30, 2010 (collectively "Note"). A true and correct copy of the Note is attached hereto as **Exhibit C**.

8. On or about February 2, 2006, Rosenberg, on Brust's behalf and direction pursuant to the Power of Attorney, executed and delivered to Plaintiff an Unlimited Guaranty ("Guaranty"). A true and correct copy of the Unlimited Guaranty is attached hereto as **Exhibit D**.

9. Pursuant to the Guaranty, Brust absolutely and unconditionally agreed to provide to Plaintiff the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations of Ecological. (See **Exhibit D**).

10. As an additional term thereof Brust agreed that the Guaranty shall be a continuing guaranty of payment of the indebtedness of Ecological and shall continue to be in force and be binding upon Brust, whether or not all indebtedness is paid in full, until the Guaranty is revoked by written notice actually received by Plaintiff, and that such revocation shall not be effective as to indebtedness existing or committed to at the time of actual receipt of such notice to Plaintiff, or as to any renewals, extensions, or refinancing thereof. (See **Exhibit D**).

11. Prior to the maturity of the Note, at Plaintiff's, and in connection with the Guaranty, Brust provided Plaintiff his personal financial information for the years 2005, 2007, 2008, 2009, and 2010.

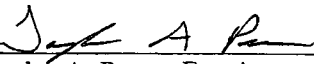
12. Prior to the maturity of the Note, Brust made no communication, written or otherwise, with Plaintiff regarding Rosenberg's lack of authority, actual, apparent, or otherwise, to execute the Guaranty on his behalf.

13. Prior to the maturity of the Note, Brust made no communication, written or otherwise, regarding the revocation of the Guaranty.

14. The Note matured on November 30, 2012, Plaintiff made demand upon Ecological for payment of all sums due under same, and Ecological has failed to make the required payment.

15. Plaintiff has made demand upon Brust for payment of sums due under the Guaranty, Brust has failed to pay all sums due under same, and, as a result, Brust is in default.

TYLER, CASSELL, JACKSON, PEACE
& SILVER, LLC

By: 
Taylor A. Peace, Esquire
Jeffrey L. Silver, Esquire
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 252-7689
ATTORNEYS FOR PLAINTIFF

Oct. 2, 2013
Columbia, South Carolina



January 9, 2006

Mr. John E. Rosenberg
Mr. Philip J. Brust
Ecological Investments, LLC
Hilton Head Island, South Carolina

Dear Mr. Rosenberg and Mr. Brust:

First South Bank (hereinafter referred to as "Bank"), is pleased to commit to Ecological Investments, LLC (hereinafter referred to as the "Borrower") a loan commitment (hereinafter referred to as the "Loan"), subject to the following terms and conditions:

Borrower: Ecological Investments, LLC

Principal Amount: Up to \$2,600,000. This is a revolving commitment. Principal may be advanced, re-paid, and re-advanced, until the maturity date stated below, provided that (a) aggregate outstandings at any one time do not exceed the principal amount stated above, (b) Borrower has complied with advance procedures of any loan agreement or other loan document, and (c) no event of default exists

Purpose: Proceeds shall be used as follows: (1) refinance existing debt of approximately \$2,200,000; (2) provide additional funds for interest payments over the 24-month term of the Loan of up to \$350,000; and (3) fund up to \$50,000 in expenses such as property taxes and other nominal expenses.

Fee, Rate and Terms:

Borrower may choose one of the following two interest rate options:

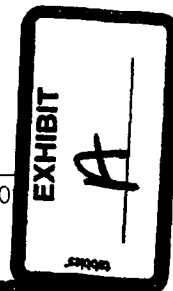
1. The interest rate shall be fixed at 7.00% for the term of the Loan, and interest will accrue and will be due and payable on any outstanding principal balance and be due and payable on a monthly basis.
2. Interest will accrue and will be due and payable on any outstanding principal balance at the Prime Rate (as published in the Wall Street Journal), as that rate may change from time to time with said changes being made as and when the Prime Rate changes, and with all accrued but unpaid interest being due and payable on a monthly basis.

The legal maturity shall be twenty-four (24) months from the date of closing, at which time all outstanding principal plus any accrued but unpaid interest, fees, and other charges, shall be due and payable.

A one-time origination fee of \$5,000 shall be payable upon the closing of the Loan.

Primary Collateral: The Loan shall be secured by a title insured, first mortgage security interest in the real property known as 82.68 acres located near Exit 8 on Interstate 95 and U.S. Highway 278 in Jasper County, South Carolina, also known as the Butterfly Kingdom PUD, all of which shall be more fully described in collateral documents between Bank and Borrower. The Loan shall be further secured by an assignment of leases, rents and profits.

P. O. Box 6508 ■ Hilton Head Island, South Carolina 29938 ■ (843) 706-3900 ■ Fax (843) 706-3900



The Bank's lien shall be primary and ahead of the lien held by the members of the LLC, which lien shall not be more than \$350,000 during the term of this Loan

Guarantor: Payment of the Loan shall be unconditionally guaranteed, jointly and severally, by John E. Rosenberg and Philip J. Brust, hereinafter the "Guarantors."

Insurance: Borrower shall provide to Bank satisfactory evidence of insurance coverage on all collateral pledged, to Bank's satisfaction and with Bank named mortgagee or loss payee, which may include but not be limited to requirements for casualty, flood, liability, business interruption, and title insurance, throughout the life of the Loan.

Appraisals: Bank shall order and pay for appraisals on all collateral pledged prior to closing of the Loan, and may order and pay for any reappraisals it deems necessary throughout the life of the Loan, and Borrower agrees to prepay Bank or to reimburse Bank for any such payments at closing or within 20 (twenty) days of written notice by Bank. This commitment is contingent upon receipt of an appraisal ordered by, addressed to and satisfactory to the Bank indicating an "as-is" market value of the collateral property of no less than \$4,200,000.

Environmental Compliance: The Borrower warrants and represents, to the best of its knowledge, that no portion of the Collateral is contaminated with hazardous or toxic materials or has ever been used as a disposal site for the same. Upon request by Bank, Borrower shall complete an environmental questionnaire provided by Bank, and/or obtain from a firm approved by Bank an environmental site assessment. Bank reserves the right to cancel this commitment if not satisfied in its sole discretion with the environmental condition of the property.

Deposit Relationship: Borrower and Guarantors agree to maintain a primary deposit relationship with Bank throughout the life of the Loan.

Conditions Precedent to Closing: Receipt and satisfactory review of current personal financial statements, copies of recent statements of Guarantors' liquid investment accounts, and Federal Tax Returns for the Guarantors listed above as well as the 2004 federal tax return or other satisfactory financial information on the Borrower.

Financial Information and Requirements: Borrower and Guarantors agree, as a condition of the Loan and until the Loan has been fully repaid, to:

1. Furnish to Bank copies of signed Federal tax returns of Borrower within 30 days of filing.
2. Furnish to Bank annually personal balance sheet and income information, on Bank's standard personal financial statement form completed in its entirety, and complete personal income tax returns, on the Guarantors.

Prepayment: Borrower may prepay all or any portion of the Loan at any time.

Assignability: Borrower cannot assign the commitment without Bank's prior written approval, nor shall any third party rely hereon or be deemed a party beneficial hereby.

Material Adverse Change: This commitment is conditioned upon there having occurred no act, omission or undertaking which would, singly or in aggregate, have a materially adverse effect upon the business, assets, liabilities, financial condition, results of operations or business prospects of the Borrowers, or of any guarantor, or of any collateral, or upon the ability of the Borrower to perform any material obligations arising under the Loan Documents.

Further, this commitment is contingent upon receipt and verification of certain financial statement and income information on the Guarantors in form and content satisfactory to the Bank.

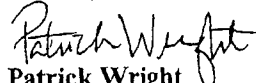
Closing Requirements: Closing requirements for a loan of this nature shall apply, to be determined at the discretion of Bank and its counsel, and can be furnished to you or your attorney upon acceptance of this commitment. All fees and expenses of Bank in connection with the negotiation and closing of the Loan, including but not limited to attorney fees, appraisal fees, environmental assessment fees, and other direct fees shall be paid by Borrower. In connection with the closing, Borrower's counsel shall provide an opinion letter to Bank as to the validity and enforceability of the Loan documents and such other matters as Bank may reasonably require.

You may indicate your acceptance of the terms and conditions offered by signing below and returning the original copy of this letter to Bank. If not accepted by January 12, 2006, and if a resulting loan is not closed by January 31, 2006, then this commitment will expire and neither Bank nor Borrower will be obligated hereunder.

Should you accept this commitment, then it is hereby agreed between Bank and Borrower that it shall survive the closing, that it shall become an integral part of the Loan documents, and that its terms, conditions, and agreements shall become terms, conditions, and agreements of the Loan. Should there be any inconsistencies between any term of the Note, security documents, or Loan Agreement and any term of this commitment letter, then the term of the Note, security documents, or Loan Agreement shall prevail; remaining terms, conditions, and agreements shall not be affected.

It is a pleasure to extend this financing offer. We look forward to hearing from you and having the opportunity to continue to provide you with the financial services of First South Bank.

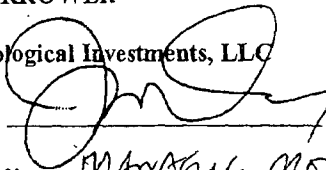
Sincerely,


Patrick Wright
Senior Vice President

Accepted and Agreed to:

BORROWER

Ecological Investments, LLC

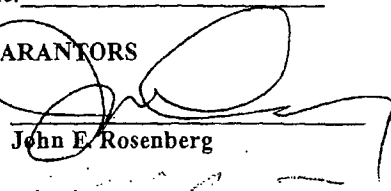
By: 

Title: MARGARET MONAHAN

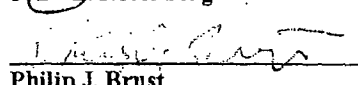
Attested: _____

Title: _____

GUARANTORS

By: 

John E. Rosenberg

By: 

Philip J. Brust

Finger, Fraser & Andrew P.A.
Attorney at Law
P.O. Box 24005
Hilton Head Island, S.C. 29925-4005

I Certify this to be a True and
Correct Copy of the Original
Julian [Signature]
Notary Public of South Carolina
My Commission Expires: 9/29/12

STATE OF SOUTH CAROLINA)
) SPECIFIC LIMITED POWER OF ATTORNEY
~~ATTORNEY~~
COUNTY OF JASPER)

KNOW ALL MEN BY THESE PRESENTS, that I, Philip J. Brust of Cornelius, NC do hereby make, constitute and appoint Terry A. Finger or John E. Rosenberg, of Hilton Head Island, South Carolina, as my true and lawful attorney, to appear for me, and in my name, place and stead, to execute any and all documents, and to perform any lawful act or to execute or amend any document, instrument, or thing, which may be involved in the financing of real property located in the State and County aforesaid, known as 82.68 acres, Sgt. Jasper State Park, Jasper County, South Carolina, including, but not necessarily limited to, the power to execute as my act and deed any document, instrument, contract, Note, Mortgage, agreement, assignment, affidavit, disclosure, etc. and to pay sums on my account, or to execute any such other documents as may be necessary to close the loan with First South Bank in the original principal sum of \$2,600,000.00.

I hereby vest my Attorney in Fact with all authority needed and necessary to accomplish the above-captioned purpose, with full power of substitution, as fully as if I might do the same in my own capacity at any time subsequent to the date hereof and prior to my revocation.

I hereby declare that any act or deed lawfully performed by my Attorney in Fact pursuant to the within Specific Limited Power of Attorney shall be binding upon me and my heirs, legal and personal representatives and assigns.

I hereby indemnify and hold my Attorney in Fact harmless against any and all claims, damages, suits or injury whatsoever, including reasonable attorneys fees, arising out of his exercise of the within granted powers.

IN WITNESS WHEREOF, I have hereunto set my hands and seal to the within Specific Limited Power of Attorney this 25 day of January, 2006.

IN THE PRESENCE OF:

2) Barbara W. Hooper
(witness)

1) Philip J. Brust
Philip J. Brust

3) Sherry Coyle
(notary)

EXHIBIT

B

STATE OF NORTH CAROLINA

County of Mecklenburg PROBATE

PERSONALLY appeared before me 4) BARBARA W HOOPER, who
on oath, says that s/he saw the within named Philip J. Brust, sign the within Power of
Attorney, and as his free act and deed deliver the same, and that s/he with 5)
SHERRY COOGLE witnessed the execution thereof.

6) [Signature]
Non-notary witness

SWORN to before me this 25
day of January, 2006.

7) [Signature] (SEAL)
Notary Public for North Carolina
My Commission Expires: 11/23/07



ECOLOGICAL INVESTMENTS, LLC 119 BULL POINT DRIVE SEABROOK, SC 29940	FIRST SOUTH BANK - BLUFFTON 7 ARLEY WAY, SUITE 100 BLUFFTON, SC 29910	Loan Number <u>8033303</u> Date <u>02-02-2006</u> Maturity Date <u>02-02-2008</u> Loan Amount \$ <u>2,600,000.00</u> Renewal Of _____
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of TWO MILLION SIX HUNDRED THOUSAND AND NO/100 Dollars \$ 2,600,000.00

☐ **Single Advance:** I will receive all of this principal sum on _____. No additional advances are contemplated under this note.

☒ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☒ **Open End Credit:** You and I agree that I may borrow up to the maximum principal sum more than one time. This feature is subject to all other conditions and expires on 02-02-2008.

☐ **Closed End Credit:** You and I agree that I may borrow (subject to all other conditions) up to the maximum principal sum only one time.

INTEREST: I agree to pay interest on the outstanding principal balance from 02-02-2006 at the rate of 7.000% per year until 02-02-2008.

☐ **Variable Rate:** This rate may then change as stated below.

☐ **Index Rate:** The future rate will be _____ the following index rate: _____

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ **Frequency and Timing:** The rate on this note may change as often as _____. A change in the interest rate will take effect _____.

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %. The rate may not change more than _____ % each _____.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below.

☐ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☒ at a rate equal to 10%.

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 4.000% OF THE LATE AMOUNT WITH A MIN OF \$10.00.

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: LOAN FEE \$5,000.00.

PAYMENTS: I agree to pay this note as follows:

MONTHLY PAYMENTS OF ACCRUED INTEREST CALCULATED ON THE AMOUNT OF CREDIT OUTSTANDING BEGINNING ON 03-04-2006 AND PRINCIPAL DUE ON 02-02-2008.

PURPOSE: The purpose of this loan is TO PAYOFF EXISTING DEBT WITH ADDITIONAL FUNDS FOR INTEREST CARRY OVER 24 MONTHS AND OTHER NOMINAL PROP

SECURITY: You have certain rights that may affect my property as explained on page 2. In addition to these rights, this agreement is separately secured by a ☐ preexisting ☐ contemporaneous agreement described as _____.

ADDITIONAL TERMS: _____

 (page 1 of 3)



SECURITY

SECURITY INTEREST: I give you a security interest in all of the Property described below that I own or have sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

- ☐ **Accounts and Other Rights to Payment:** All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which I have by law or agreement against any account debtor or obligor.
- ☐ **Inventory:** All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.
- ☐ **Equipment:** All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule I give to you, but such a list is not necessary to create a valid security interest in all of my equipment.
- ☐ **Instruments and Chattel Paper:** All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- ☐ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.
- ☐ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- ☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.
- ☐ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- ☐ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- ☐ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- ☒ **Specific Property Description:** The Property includes, but is not limited by, the following:

FREM ON 82.68 +/- ACRES IN JASPER COUNTY, SC; PARCEL 042-00-05-042 ALSO KNOWN AS THE BUTTERFLY KINGDOM PUD LOCATED AT THE END OF RED DAM ROAD IN HARDEEVILLE, SC.

ASSIGNMENT OF LEASES, RENTS AND PROFITS

If applicable, enter real estate description and record owner information: _____

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ _____ purpose.
Borrower/Owner State of organization/registration (if applicable) SC

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY - This agreement secures this note and any other debt I have with you, now or later. However, it will not secure other debts if you fail with respect to such other debts, to make any required disclosure about this security agreement or if you fail to give any required notice of the right of rescission. If property described in this agreement is located in another state, this agreement may also, in some circumstances, be governed by the law of the state in which the Property is located.

NAME AND LOCATION - My name indicated on page 1 is my exact legal name. If I am an individual, my address is my principal residence. If I am not an individual, my address is the location of my chief executive offices or sole place of business. If I am an entity organized and registered under state law, my address is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the Property, or to the extent this is a purchase money security interest I will acquire ownership of the Property with the proceeds of the loan. I will defend it against any other claim. Your claim to the Property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position. I will not use the Property for a purpose that will violate any laws or subject the Property to forfeiture or seizure.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, which deals with the Property.

I will keep the Property in my possession and will keep it in good repair and use it only for the purposes described on page 1 of this agreement. I will not change this specified use without your express written permission. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

I will keep the Property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the Property is to be used in another state, I will give you a list of those states. I will not try to sell the Property unless it is inventory or I receive your written permission to do so. If I sell the Property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debt(s) if the debtor is not a natural person and without your prior written consent: (1) a beneficial interest in the debtor is sold or transferred, or (2) there is a change in either the identity or number of members of a partnership, or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the Property as they become due. You have the right of reasonable access in order to inspect the Property. I will immediately inform you of any loss or damage to the Property.

If I fail to perform any of my duties under this security agreement, or any mortgage, deed of trust, lien or other security interest, you may without notice to me perform the duties or cause them to be performed. Your right to perform for me shall not create an obligation to perform and

your failure to perform will not preclude you from exercising any of your other rights under the law or this security agreement.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan, and (b) payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancing of such loan.

PAYMENTS BY LENDER - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat those payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate payment of the amount advanced.

INSURANCE - I agree to buy insurance on the Property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from this agreement. If I fail to buy or maintain the insurance (or fail to name you as loss payee) you may purchase it yourself.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them to you at your request. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so. You may exercise my rights with respect to obligations of any account debtors, or other persons obligated on the Property, to pay or perform, and you may enforce any security interest that secures such obligations.

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box.

Date _____

Signed _____

(page 2 of 3)

If this agreement covers inventory, I will not dispose of it except in my ordinary course of business at the fair market value for the Property, or at a minimum price established between you and me.

If this agreement covers farm products I will provide you, at your request, a written list of the buyers, commission merchants or selling agents to or through whom I may sell my farm products. In addition to those parties named on this written list, I authorize you to notify at your sole discretion any additional parties regarding your security interest in my farm products. I remain subject to all applicable penalties for selling my farm products in violation of my agreement with you and the Food Security Act. In this paragraph the terms farm products, buyers, commission merchants and selling agents have the meanings given to them in the Federal Food Security Act of 1985.

If this agreement covers chattel paper or instruments, either as original collateral or proceeds of the Property, I will note your interest on the face of the chattel paper or instruments.

REMEDIES - I will be in default on this security agreement if I am in default on any note this agreement secures or if I fail to keep any promise contained in the terms of this agreement. If I default, you have all of the rights and remedies provided in the note and under the Uniform Commercial Code. You may require me to make the secured property available to you at a place which is reasonably convenient. You may take possession of the secured property and sell it as provided by law. The proceeds will be applied first to your expenses and then to the debt. I agree that 10 days written notice sent to my last known address by first class mail will be reasonable notice under the Uniform Commercial Code. My current address is on page 1.

PERFECTION OF SECURITY INTEREST - I authorize you to file a financing statement covering the Property. I will comply with, facilitate, and otherwise assist you in connection with obtaining possession of or control over the Property for purposes of perfecting your security interest under the Uniform Commercial Code.

ADDITIONAL TERMS OF THE NOTE

DEFINITIONS - As used on pages 1 and 2, "Q" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the lender and its successors and assigns.

APPLICABLE LAW - The law of the state of South Carolina in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

PAYMENTS - Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full. Unless, when I make the prepayment, you and I agree in writing to the contrary.

INTEREST - Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal sum outstanding at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to in this note (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE - The index will serve only as a device for setting the interest rate on this note. You do not guarantee by selecting this index, or the margin, that the interest rate on this note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers.

POST MATURITY RATE - For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS - If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph on page 2.

MULTIPLE ADVANCE LOANS - If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

SET-OFF - I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGES 1 AND 2). I have received a copy on today's date.

ECOLOGICAL INVESTMENTS, LLC

JOHN E. ROSENBERG, MANAGER/MEMBER

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right to set-off.

SECURITY - References to agreements securing this loan on page 1 shall not be considered an exclusive list of all such agreements. Other agreements you and I have executed or execute in the future which are not referenced on page 1 may secure this loan.

DEFAULT - I will be in default if any one or more of the following occur:

- (1) I fail to make a payment on time or in the amount due;
- (2) I fail to keep the Property insured, if required;
- (3) I fail to pay, or keep any promise, on any debt or agreement I have with you;
- (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings;
- (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due);
- (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided;
- (7) I do or fail to do something which causes you to believe you will have difficulty collecting the amount I owe you;
- (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority;
- (9) I change my name or assume an additional name without first notifying you before making such a change;
- (10) I fail to plant, cultivate and harvest crops in due season;
- (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES - If I am in default on this note you have, but are not limited to, the following remedies:

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued unpaid charges).
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- (4) You may refuse to make advances to me or allow purchases on credit by me.
- (5) You may use any remedy you have under state or federal law.
- (6) You may make use of any remedy given to you in any agreement securing this note.

By selecting any one or more of these remedies you do not give up your right to use later any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to consider later the event a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES - I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER - I give up my rights to require you to do certain things. I will not require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT - I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. Of course, you are entitled to only one payment in full. I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

FINANCIAL INFORMATION - I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a preforeclosure hearing prior to seizure of any personal property which may secure this transaction.

SIGNATURE FOR LENDER: PATRICK WRIGHT, SENIOR VICE PRESIDENT, AREA EXECUTIVE

BORROWER NAME AND ADDRESS

ECOLOGICAL INVESTMENTS, LLC
119 BULL POINT DRIVE
SEABROOK, SC 29940

LENDER NAME AND ADDRESS

FIRST SOUTH BANK - BLUFFTON
7 ARLEY WAY, SUITE 100
BLUFFTON, SC 29910

LOAN DESCRIPTION

Number 8033303

Amount \$ 2,600,000.00

Date 02-02-2006

☐ Refer to the attached Signature Addendum, incorporated herein, for additional Borrowers and their signatures.

COMMERCIAL DEBT MODIFICATION AGREEMENT

DATE AND PARTIES. The date of this Debt Modification Agreement (Modification) is 01-14-2006
DEFINITIONS. As used in this Modification, the terms have the following meanings:

Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Modification, individually and together with their heirs, executors, administrators, successors, and assigns. "You" and "your" refer to the Lender, with its participants or syndicators, successors and assigns, or any person or entity that acquires an interest in this Modification or Prior Obligation.

Prior Obligation. "Prior Obligation" refers to my previous agreement governing my promise to pay you money, including any loan agreement, note, or document that evidences my indebtedness, and any extensions, renewals, modifications, and substitutions.

BACKGROUND. You and I have entered into a Prior Obligation which is evidenced by PROMISSORY NOTE

dated 02-02-2006 ☐ in the original principal amount of / ☒ with a maximum possible principal amount of \$ 2,600,000.00

☐ payable on demand, / ☐ payable on demand but if no demand is made, by the maturity date of _____, / ☒ with a maturity date of 02-02-2008.

As of the date of this Modification, the ☐ amount remaining due is / ☒ correct amount outstanding on the Prior Obligation is \$ 2,600,000.00

principal (Principal) plus \$ 20,727.77 accrued interest, for a total of \$ 2,620,727.77

MODIFICATION. For value received, you and I agree to modify the Prior Obligation as follows.

☐ INTEREST RATE MODIFICATION.

☐ INTEREST RATE.

Maximum Interest Amount. Any amount assessed or collected as interest will be limited to the maximum lawful amount of interest allowed by state or federal law. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid principal balance. Any remainder will be refunded to the

☐ Post-Maturity/Default Interest Rate.

☐ Compounding. This Modification provides for the compounding of interest.

☒ PAYMENT MODIFICATION.

MODIFYING MATURITY DATE TO APRIL 30, 2008 THE PAYMENT SHALL BE AS FOLLOWS; 3 INTEREST ONLY PAYMENTS ON THE OUTSTANDING PRINCIPAL BALANCE BEGINNING 1/31/2008. THE 4TH AND FINAL PAYMENT CONSISTING OF ANY AND ALL REMAINING PRINCIPAL AND ACCRUED INTEREST WILL BE DUE AT MATURITY ON APRIL 30, 2008.

☐ DRAW PERIOD MODIFICATION.

☐ FEES AND CHARGES MODIFICATION.

ADDITIONAL TERMS

CONTINUATION OF TERMS. Except as specifically amended in this Modification, all terms of the Prior Obligation remain in effect.

INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Modification.

NOTICE TO BORROWER. THIS IS A DEMAND NOTE AND SO MAY BE COLLECTED BY THE LENDER AT ANY TIME. A NEW NOTE MUTUALLY AGREED UPON AND SUBSEQUENTLY ISSUED MAY CARRY A HIGHER OR LOWER RATE OF INTEREST.

ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THE CREDIT AGREEMENT. TO PROTECT YOU (BORROWER/DEBTOR) AND US (LENDER/SECURED PARTY) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT. BY SIGNING THIS MODIFICATION, THE PARTIES AFFIRM THAT NO UNWRITTEN ORAL AGREEMENT EXISTS BETWEEN THEM.

SIGNATURES. By signing under seal, Borrower agrees to the terms contained in this Note. Borrower also acknowledges receipt of a copy of this Note.

BORROWER:

ECOLOGICAL INVESTMENTS, LLC

Entity Name

Signature JOHN E. ROSENBERG, MANAGER/MEMBER Date 1/18/06 (Seal)

Signature _____ Date _____ (Seal)

LENDER:

FIRST SOUTH BANK - BLUFFTON

Entity Name

Signature Patrick Wright Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

RECORD 0685

ECOLOGICAL INVESTMENTS, LLC 119 BULL POINT DRIVE SEABROOK, SC 29940	FIRST SOUTH BANK - BLUFFTON 7 ARLEY WAY, SUITE 100 BLUFFTON, SC 29910	Loan Number <u>8033303</u> Date <u>05-27-2008</u> Maturity Date <u>08-02-2008</u> Loan Amount \$ <u>2,600,000.00</u> Renewal Of <u>8033303</u>
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of TWO MILLION SIX HUNDRED THOUSAND AND NO/100 Dollars \$ 2,600,000.00

☒ Single Advance: I will receive all of this principal sum on 05-27-2008. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____

I will receive the amount of \$ _____ and future principal advances are contemplated
 Conditions: The conditions for future advances are _____

☐ Open End Credit: You and I agree that I may borrow up to the maximum principal sum more than one time. This feature is subject to all other conditions and expires on _____

☐ Closed End Credit: You and I agree that I may borrow (subject to all other conditions) up to the maximum principal sum only one time.

INTEREST: I agree to pay interest on the outstanding principal balance from 05-27-2008 at the rate of 7.000% per year until 08-02-2008

☐ Variable Rate: This rate may then change as stated below.

☐ Index Rate: The future rate will be _____ the following index rate: _____

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ Frequency and Timing: The rate on this note may change as often as _____
 A change in the interest rate will take effect: _____

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %
 The rate may not change more than _____ % each _____

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐ _____

ACCRUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☐ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☒ at a rate equal to 10%

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 4.000% OF THE LATE AMOUNT WITH A MIN OF \$10.00

☒ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: RENEWAL FEE \$1,250.00

PAYMENTS: I agree to pay this note as follows:

2 MONTHLY INTEREST PAYMENTS OF \$15166.67 BEGINNING 06-26-2008 AND 1 PAYMENT OF \$2,603,538.89 ON 08-02-2008.

PURPOSE: The purpose of this loan is SHORT TERM RENEWAL TO ALLOW BORROWER TIME TO SEEK AND CLOSE ON OTHER FINANCING

SECURITY: You have certain rights that may affect my property as explained on page 2. In addition to these rights, this agreement is separately secured by a ☐ preexisting ☐ contemporaneous agreement described as _____

ADDITIONAL TERMS:

SECURITY

SECURITY INTEREST: I give you a security interest in the Property described below that I own or have sufficient rights such to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

- ☐ Accounts and Other Rights to Payment: All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which I have by law or agreement against any account debtor or obligor.
- ☐ Inventory: All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.
- ☐ Equipment: All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule I give to you, but such a list is not necessary to create a valid security interest in all of my equipment.
- ☐ Instruments and Chattel Paper: All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- ☐ General Intangibles: All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.
- ☐ Documents: All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- ☐ Farm Products and Supplies: All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.
- ☐ Government Payments and Programs: All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- ☐ Investment Property: All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- ☐ Deposit Accounts: All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.

☒ Specific Property Description: The Property includes, but is not limited by, the following:

FROM ON 82.68 +/- ACRES IN JASPER COUNTY, SC; PARCEL 042-00-05-042 ALSO KNOWN AS THE BUTTERFLY KINGDOM PUO LOCATED AT THE END OF RED DAM ROAD IN HARDEEVILLE, SC. AS FURTHER DESCRIBED IN A CERTAIN MORTGAGE DATED 02/02/2006 AND RECORDED 02/05/2006 IN VOLUME 401 PAGES 20-24 IN JASPER COUNTY, SOUTH CAROLINA.

ASSIGNMENT OF LEASES, RENTS AND PROFITS DATED 02/02/2006

If applicable, enter real estate description and record owner information:

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ purpose.
Borrower/Owner State of organization/registration (if applicable) SC

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY - This agreement secures this note and any other debt I have with you, now or later. However, it will not secure other debts if you fail with respect to such other debts, to make any required disclosure about this security agreement or if you fail to give any required notice of the right of rescission. If property described in this agreement is located in another state, this agreement may also, in some circumstances, be governed by the law of the state in which the Property is located.

NAME AND LOCATION - My name indicated on page 1 is my exact legal name. If I am an individual, my address is my principal residence. If I am not an individual, my address is the location of my chief executive offices or sole place of business. If I am an entity organized and registered under state law, my address is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the Property, or to the extent this is a purchase money security interest I will acquire ownership at the Property with the proceeds of the loan. I will defend it against any other claim. Your claim to the Property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position. I will not use the Property for a purpose that will violate any laws or subject the Property to forfeiture or seizure.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, which deals with the Property.

I will keep the Property in my possession and will keep it in good repair and use it only for the purposes described on page 1 of this agreement. I will not change this specified use without your express written permission. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

I will keep the Property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the Property is to be used in another state, I will give you a list of those states. I will not try to sell the Property unless it is inventory or I receive your written permission to do so. If I sell the Property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debt(s) if the debtor is not a natural person and without your prior written consent; (1) a beneficial interest in the debtor is sold or transferred; or (2) there is a change in either the identity or number of members of a partnership; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the Property as they become due. You have the right of reasonable access in order to inspect the Property. I will immediately inform you of any loss or damage to the Property.

If I fail to perform any of my duties under this security agreement, or any mortgage, deed of trust, lien or other security interest, you may without notice to me perform the duties or cause them to be performed. Your right to perform for me shall not create an obligation to perform and

your failure to perform will not preclude you from exercising any of your other rights under the law or this security agreement.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan, and (b) payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancing of such loan.

PAYMENTS BY LENDER - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat those payments as advances and add them to the unpaid principal under the note secured by this agreement, or you may demand immediate payment of the amount advanced.

INSURANCE - I agree to buy insurance on the Property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from this agreement. If I fail to buy or maintain the insurance (or fail to name you as loss payee) you may purchase it yourself.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them to you at your request. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so. You may exercise my rights with respect to obligations of any account debtors, or other persons obligated on the Property, to pay or perform, and you may enforce any security interest that secures such obligations.

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box.

Date _____

Signed _____

Page 2 of 3

If this agreement covers inventory, I will not dispose of except in my ordinary course of business at the fair market value for the property, or at a minimum price established between you and me.

If this agreement covers farm products I will provide you, at your request, a written list of the buyers, commission merchants or selling agents to or through whom I may sell my farm products. In addition to those parties named on this written list, I authorize you to notify at your sole discretion any additional parties regarding your security interest in my farm products. I remain subject to all applicable penalties for selling my farm products in violation of my agreement with you and the Food Security Act. In this paragraph the terms farm products, buyers, commission merchants and selling agents have the meanings given to them in the Federal Food Security Act of 1985.

If this agreement covers chattel paper or instruments, either as original collateral or proceeds of the Property, I will note your interest on the face of the chattel paper or instruments.

REMEDIES - I will be in default on this security agreement if I am in default on any note this agreement secures or if I fail to keep any promise contained in the terms of this agreement. If I default, you have all of the rights and remedies provided in the note and under the Uniform Commercial Code. You may require me to make the secured property available to you at a place which is reasonably convenient. You may take possession of the secured property and sell it as provided by law. The proceeds will be applied first to your expenses and then to the debt. I agree that 10 days written notice sent to my last known address by first class mail will be reasonable notice under the Uniform Commercial Code. My current address is on page 1.

PERFECTION OF SECURITY INTEREST - I authorize you to file a financing statement covering the Property. I will comply with, facilitate, and otherwise assist you in connection with obtaining possession of or control over the Property for purposes of perfecting your security interest under the Uniform Commercial Code.

ADDITIONAL TERMS OF THE NOTE

DEFINITIONS - As used on pages 1 and 2, "I" means the terms that apply to this loan. "I", "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW - The law of the state of South Carolina in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

PAYMENTS - Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST - Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal sum outstanding at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to in this note (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE - The index will serve only as a device for setting the interest rate on this note. You do not guarantee by selecting this index, or the margin, that the interest rate on this note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers.

POST MATURITY RATE - For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS - If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph on page 2.

MULTIPLE ADVANCE LOANS - If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

SET-OFF - I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGES 1 AND 2). I have received a copy on today's date.
ECOLOGICAL INVESTMENTS, LLC

JOHN E. ROSENBERG, MANAGER/AMEMBER

SIGNATURE FOR LENDER: PATRICK WRIGHT, SENIOR VICE PRESIDENT, AREA EXECUTIVE

If my right to receive money from you is also on _____ by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right to set-off.

SECURITY - References to agreements securing this loan on page 1 shall not be considered an exclusive list of all such agreements. Other agreements you and I have executed or execute in the future which are not referenced on page 1 may secure this loan.

DEFAULT - I will be in default if any one or more of the following occur:

- (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the Property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES - If I am in default on this note you have, but are not limited to, the following remedies:

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued unpaid charges).
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- (4) You may refuse to make advances to me or allow purchases on credit by me.
- (5) You may use any remedy you have under state or federal law.
- (6) You may make use of any remedy given to you in any agreement securing this note.

By selecting any one or more of these remedies you do not give up your right to use later any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to consider later the event a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES - I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER - I give up my rights to require you to do certain things. I will not require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT - I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. Of course, you are entitled to only one payment in full. I agree that you may, at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

FINANCIAL INFORMATION - I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a pre-seizure hearing prior to seizure of any personal property which may secure this transaction.

ECOLOGICAL INVESTMENTS, LLC 118 BULL POINT DRIVE SEABROOK, SC 29940	FIRST FIDELITY BANK - BLUFFTON 7 ARLEY WAY, SUITE 100 BLUFFTON, SC 29910	Loan Number <u>8033302</u> Date <u>08-26-2008</u> Maturity Date <u>09-26-2008</u> Loan Amount \$ <u>2,600,000.00</u> Renewal CI <u>8033303</u>
BORROWER'S NAME AND ADDRESS	LENDER'S NAME AND ADDRESS	
"I" includes each borrower above, jointly and severally.	"You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of TWO MILLION SIX HUNDRED THOUSAND AND NO/100 Dollars \$ 2,600,000.00

☒ Single Advance: I will receive all of this principal sum on 08-26-2008. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.
 Conditions: The conditions for future advances are _____

☐ Open End Credit: You and I agree that I may borrow up to the maximum principal sum more than one time. This feature is subject to all other conditions and expires on _____

☐ Closed End Credit: You and I agree that I may borrow (subject to all other conditions) up to the maximum principal sum only one time.

INTEREST: I agree to pay interest on the outstanding principal balance from 08-26-2008 at the rate of 7.600% per year until 09-26-2008.

☐ Variable Rate: This rate may then change as stated below.

☐ Index Rate: The future rate will be _____ the following index rate: _____

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ Frequency and Timing: The rate on this note may change as often as _____
 A change in the interest rate will take effect _____

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ % each.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐ _____

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☐ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☒ at a rate equal to 10%

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 4.000% OF THE LATE AMOUNT WITH A MIN. OF \$10.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

1 PAYMENT OF \$2,615,672.22 ON 09-26-2008.

PURPOSE: The purpose of this loan is SHORT TERM RENEWAL TO ALLOW CUSTOMER TIME TO CLOSE ON NEW LOAN

SECURITY: You have certain rights that may affect my property as explained on page 2. In addition to those rights, this agreement is separately secured by a ☐ preexisting ☐ contemporaneous agreement described as _____

ADDITIONAL TERMS:

SECURITY

SECURITY INTEREST: I give you a security interest in all the Property described below that I own or have sufficient rights in to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property, any original evidence of title or ownership, and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

- ☐ **Accounts and Other Rights to Payment:** All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which I have by law or agreement against any account debtor or obligor.
- ☐ **Inventory:** All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.
- ☐ **Equipment:** All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts and tools. The Property includes any equipment described in a list or schedule I give to you, but such a list is not necessary to create a valid security interest in all of my equipment.
- ☐ **Instruments and Chattel Paper:** All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- ☐ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.
- ☐ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- ☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.
- ☐ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- ☐ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- ☐ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- ☒ **Specific Property Description:** The Property includes, but is not limited by, the following:

FREM ON 82.68 +/- ACRES IN JASPER COUNTY, SC, PARCEL 042-00-05-042 ALSO KNOWN AS THE BUTTERFLY KINGDOM PUD LOCATED AT THE END OF RED DAM ROAD IN HARDEEVILLE, SC, AS FURTHER DESCRIBED IN A CERTAIN MORTGAGE DATED 02/02/2006 AND RECORDED 02/06/2006 IN VOLUME 4D1 DN PAGES 20-24 IN JASPER COUNTY, SC

ASSIGNMENT OF LEASES, RENTS AND PROFITS DATED 02/02/2006

If applicable, enter real estate description and record owner information:

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ purpose
Borrower/Owner State of organization/registration (if applicable) SC

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY - This agreement secures this note and any other debt I have with you, now or later. However, it will not secure other debts if you fail with respect to such other debts, to make any required disclosure about this security agreement or if you fail to give any required notice of the right of rescission. If property described in this agreement is located in another state, this agreement may also, in some circumstances, be governed by the law of the state in which the Property is located.

NAME AND LOCATION - My name indicated on page 1 is my exact legal name. If I am an individual, my address is my principal residence. If I am not an individual, my address is the location of my chief executive offices or sole place of business. If I am an entity organized and registered under state law, my address is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the Property, or to the extent this is a purchase money security interest, I will acquire ownership of the Property with the proceeds of the loan. I will defend it against any other claim. Your claim to the Property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position. I will not use the Property for a purpose that will violate any laws or subject the Property to forfeiture or seizure.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, which deals with the Property.

I will keep the Property in my possession and will keep it in good repair and use it only for the purposes described on page 1 of this agreement. I will not change this specified use without your express written permission. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

I will keep the Property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the Property is to be used in another state, I will give you a list of those states. I will not try to sell the Property unless it is inventory or I receive your written permission to do so. If I sell the Property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debt(s) if the debtor is not a natural person and without your prior written consent: (1) a beneficial interest in the debtor is sold or transferred, or (2) there is a change in either the identity or number of members of a partnership, or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the Property as they become due. You have the right of reasonable access in order to inspect the Property. I will immediately inform you of any loss or damage to the Property.

If I fail to perform any of my duties under this security agreement, or any mortgage, deed of trust, lien or other security interest, you may without notice to me perform the duties or cause them to be performed. Your right to perform for me shall not create an obligation to perform and

your failure to perform will not preclude you from exercising any of your other rights under the law or this security agreement.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan, and (b) payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancing of such loan.

PAYMENTS BY LENDER - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat those payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate payment of the amount advanced.

INSURANCE - I agree to buy insurance on the Property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from this agreement. If I fail to buy or maintain the insurance (or fail to name you as loss payee) you may purchase it yourself.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them to you at your request. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so. You may exercise my rights with respect to obligations of any account debtors, or other persons obligated on the Property, to pay or perform, and you may enforce any security interest that secures such obligations.

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box.

Date _____
Signed _____

(page 2 of 3)

If this agreement covers inventory, I will not dispose of except in my ordinary course of business at the fair market value for the Property, or at a minimum price established between you and me.

If this agreement covers farm products, I will provide you, at your request, a written list of the buyers, commission merchants or selling agents to or through whom I may sell my farm products. In addition to those parties named on this written list, I authorize you to notify at your sole discretion any additional parties regarding your security interest in my farm products. I remain subject to all applicable penalties for selling my farm products in violation of my agreement with you and the Food Security Act. In this paragraph the terms farm products, buyers, commission merchants and selling agents have the meanings given to them in the Federal Food Security Act of 1985.

If this agreement covers chattel paper or instruments, either as original collateral or proceeds of the Property, I will note your interest on the face of the chattel paper or instruments.

REMEDIES - I will be in default on this security agreement if I am in default on any note this agreement secures or if I fail to keep any promise contained in the terms of this agreement. If I default, you have all of the rights and remedies provided in the note and under the Uniform Commercial Code. You may require me to note the secured property available to you at a place which is reasonably convenient. You may take possession of the secured property and sell it as provided by law. The proceeds will be applied first to your expenses and then to the debt. I agree that 10 days written notice sent to my last known address by first class mail will be reasonable notice under the Uniform Commercial Code. My current address is on page 1.

PERFECTION OF SECURITY INTEREST - I authorize you to file a financing statement covering the Property. I will comply with, facilitate, and otherwise assist you in connection with obtaining possession of or control over the Property for purposes of perfecting your security interest under the Uniform Commercial Code.

ADDITIONAL TERMS OF THE NOTE

DEFINITIONS - As used on pages 1 and 2, "I" means the terms that apply to this loan. "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW - The law of the state of South Carolina in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

PAYMENTS - Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST - Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to accrue interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal sum outstanding at that time.

Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to in this note (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE - The index will serve only as a device for setting the interest rate on this note. You do not guarantee by selecting this index, or the margin, that the interest rate on this note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers.

POST MATURITY RATE - For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS - If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph on page 2.

MULTIPLE ADVANCE LOANS - If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

SET-OFF - I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

If my right to receive money from you is also a by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right to set-off.

SECURITY - References to agreements securing this loan on page 1 shall not be considered an exclusive list of all such agreements. Other agreements you and I have executed or execute in the future which are not referenced on page 1 may secure this loan.

DEFAULT - I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the Property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart C, Exhibit M.

REMEDIES - If I am in default on this note you have, but are not limited to, the following remedies:

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued unpaid charges).
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- (4) You may refuse to make advances to me or allow purchases on credit by me.
- (5) You may use any remedy you have under state or federal law.
- (6) You may make use of any remedy given to you in any agreement securing this note.

By selecting any one or more of these remedies you do not give up your right to use later any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to consider later the event a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES - I agree to pay all costs of collection, repossession or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER - I give up my rights to require you to do certain things. I will not require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT - I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of now credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. Of course, you are entitled to only one payment in full. I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

FINANCIAL INFORMATION - I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a pre-seizure hearing prior to seizure of any personal property which may secure this transaction.

SIGNATURES - I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGES 1 AND 2). I have received a copy on today's date.

ECOLOGICAL INVESTMENTS, LLC

JOHN E. ROSENBERG, MANAGER/MEMBER

SIGNATURE FOR LENDER, PATRICK WRIGHT, SENIOR VICE PRESIDENT, AREA EXECUTIVE

EXP-10 1984, 1991 Bankers Systems, Inc., St. Cloud MN Form UNS-1A2-SC 7/8/2001

Page 3 of 3

RECORD 0691

ECOLOGICAL INVESTMENTS, LLC 115 BULL POINT DRIVE SEABROOK, SC 29940	FIRST SOUTH BANK - BLUFFTON 7 ARLEY WAY, SUITE 100 BLUFFTON, SC 29910	Loan Number <u>8033303</u> Date <u>10-15-2008</u> Maturity Date <u>10-14-2010</u> Loan Amount \$ <u>2,600,000.00</u> Renewal Of <u>8033303</u>
BORROWER'S NAME AND ADDRESS	LENDER'S NAME AND ADDRESS	
"I" includes each borrower above, jointly and severally.	"You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of TWO MILLION SIX HUNDRED THOUSAND AND NO/100 Dollars \$ 2,600,000.00

☒ Single Advance: I will receive all of this principal sum on 10-15-2008. No additional advances are contemplated under this note.
☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.
 Conditions: The conditions for future advances are _____

☐ Open End Credit: You and I agree that I may borrow up to the maximum principal sum more than one time. This feature is subject to all other conditions and expires on _____.
☐ Closed End Credit: You and I agree that I may borrow (subject to all other conditions) up to the maximum principal sum only one time.
 INTEREST: I agree to pay interest on the outstanding principal balance from 10-15-2008 at the rate of 6.000% per year until 10-16-2008.

☒ Variable Rate: This rate may then change as stated below.
☒ Index Rate: The future rate will be 1.000 PERCENT ABOVE the following index rate: THE HIGHEST PRIME RATE PUBLISHED IN MONEY SECTION OF THE WALL STREET JOURNAL.

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.
☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 10-15-2008.
 A change in the interest rate will take effect ON THE SAME DAY.
☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %. The rate may not change more than _____ % each _____.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:
☒ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCRAUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:
☐ on the same fixed or variable rate basis in effect before maturity (as indicated above).
☒ at a rate equal to 10%.

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 4.000% OF THE LATE AMOUNT WITH A MIN OF \$10.00.

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

23 MONTHLY PAYMENTS OF \$22,058.30 BEGINNING 11-14-2008 AND 1 BALLOON PAYMENT OF \$2,395,605.78 ON 10-14-2010. THIS IS A VARIABLE RATE LOAN AND THE PAYMENT AMOUNTS MAY CHANGE AFTER THE 1ST PAYMENT AND EVERY PAYMENT THEREAFTER. THE FINAL PAYMENT MAY ALSO CHANGE.

PURPOSE: The purpose of this loan is TERM OUT EXISTING LOAN.

SECURITY: You have certain rights that may affect my property as explained on page 2. In addition to these rights, this agreement is separately secured by a ☐ preexisting ☐ contemporaneous agreement described as _____.

ADDITIONAL TERMS: _____

SECURITY

SECURITY INTEREST: I give you a security interest in all of the Property described below that I own or have sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accretions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

- ☐ **Accounts and Other Rights to Payment:** All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which I have by law or agreement against any account debtor or obligor.
- ☐ **Inventory:** All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.
- ☐ **Equipment:** All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule I give to you, but such a list is not necessary to create a valid security interest in all of my equipment.
- ☐ **Instruments and Chattel Paper:** All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- ☐ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.
- ☐ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- ☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their products, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.
- ☐ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- ☐ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- ☐ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.

☒ **Specific Property Description:** The Property includes, but is not limited by, the following:

FREM ON 82.58 +/- ACRES IN JASPER COUNTY, SC; PARCEL 042-00-05-042 ALSO KNOWN AS THE BUTTERFLY KINGDOM PUD LOCATED AT THE END OF RED DAM ROAD IN HARDEEVILLE, SC. AS FURTHER DESCRIBED IN A CERTAIN MORTGAGE DATED 02/02/2006 AND RECORDED 02/06/2006 IN VOLUME 401 ON PAGES 20-24 IN JASPER COUNTY, SC

ASSIGNMENT OF LEASES, RENTS AND PROFITS DATED 02/02/2006 and Recorded 2/6/06 in Vol 20 Pg 110 Jasper County, SC.

If applicable, enter real estate description and record owner information.

JER by
SMP

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ _____ purpose.
Borrower/Owner State of organization/registration (if applicable) SC

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY - This agreement secures this note and any other debt I have with you, now or later. However, it will not secure other debts if you fail with respect to such other debts, to make any required disclosure about this security agreement or if you fail to give any required notice of the right of rescission. If property described in this agreement is located in another state, this agreement may also, in some circumstances, be governed by the law of the state in which the Property is located.

NAME AND LOCATION - My name indicated on page 1 is my exact legal name. If I am an individual, my address is my principal residence. If I am not an individual, my address is the location of my chief executive offices or sole place of business. If I am an entity organized and registered under state law, my address is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the Property, or to the extent this is a purchase money security interest I will acquire ownership of the Property with the proceeds of the loan. I will defend it against any other claim. Your claim to the Property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position. I will not use the Property for a purpose that will violate any laws or subject the Property to forfeiture or seizure.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, which deals with the Property.

I will keep the Property in my possession and will keep it in good repair and use it only for the purpose(s) described on page 1 of this agreement. I will not change this specified use without your express written permission. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

I will keep the Property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the Property is to be used in another state, I will give you a list of those states. I will not try to sell the Property unless it is inventory or I receive your written permission to do so. If I sell the Property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debts if the debtor is not a natural person and without your prior written consent; (1) a beneficial interest in the debtor is sold or transferred, or (2) there is a change in either the identity or number of members of a partnership, or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the Property as they become due. You have the right of reasonable access in order to inspect the Property. I will immediately inform you of any loss or damage to the Property.

If I fail to perform any of my duties under this security agreement, or any mortgage, deed of trust, lien or other security interest, you may without notice to me perform the duties or cause them to be performed. Your right to perform for me shall not create an obligation to perform and

your failure to perform will not preclude you from exercising any of your other rights under the law of this security agreement.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan, and (b) payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancing of such loan.

PAYMENTS BY LENDER - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat those payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate payment of the amount advanced.

INSURANCE - I agree to buy insurance on the Property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from this agreement. If I fail to buy or maintain the insurance for full to name you as loss payee you may purchase it yourself.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them to you or your request. If you ask me to pay you the full price on any returned items or items retained by myself, I will do so. You may exercise my rights with respect to obligations of any account debtor, or other persons obligated on the Property, to pay or perform, and you may enforce any security interest that secures such obligations.

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box.

Date _____

Signed _____

(page 2 of 3)

SECURITY

SECURITY INTEREST: I give you a security interest in a _____ the Property described below that I own or have sufficient rights _____ which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership, and all obligations that support the payment or performance of the Property; "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

- ☐ **Accounts and Other Rights to Payment:** All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which I have by law or agreement against any account debtor or obligor.
- ☐ **Inventory:** All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.
- ☐ **Equipment:** All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule I give to you, but such a list is not necessary to create a valid security interest in all of my equipment.
- ☐ **Instruments and Chattel Paper:** All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- ☐ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.
- ☐ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- ☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements: all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.
- ☐ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- ☐ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- ☐ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- ☒ **Specific Property Description:** The Property includes, but is not limited by, the following:
 FROM ON 82.68 +/- ACRES IN JASPER COUNTY, SC; PARCEL 042-00-05-042 ALSO KNOWN AS THE BUTTERFLY KINGDOM PUD LOCATED AT THE END OF RED DAM ROAD IN HARDEEVILLE, SC, AS FURTHER DESCRIBED IN A CERTAIN MORTGAGE DATED 02/02/2006 AND RECORDED 02/06/2006 IN VOLUME 401 ON PAGES 20-24 IN JASPER COUNTY, SC

ASSIGNMENT OF LEASES, RENTS AND PROFITS DATED 02/02/2006

If applicable, enter real estate description and record owner information: _____

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ _____ purpose.
 Borrower/Owner State of organization/registration (if applicable) SC

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY - This agreement secures this note and any other debt I have with you, now or later. However, it will not secure other debts if you fail with respect to such other debts, to make any required disclosure about this security agreement or if you fail to give any required notice of the right of rescission. If property described in this agreement is located in another state, this agreement may also, in some circumstances, be governed by the law of this state in which the Property is located.

NAME AND LOCATION - My name indicated on page 1 is my exact legal name. If I am an individual, my address is my principal residence. If I am not an individual, my address is the location of my chief executive offices or sole place of business. If I am an entity organized and registered under state law, my address is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the Property, or to the extent this is a purchase money security interest I will acquire ownership of the Property with the proceeds of the loan. I will defend it against any other claim. You claim to the Property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position. I will not use the Property for a purpose that will violate any laws or subject the Property to forfeiture or seizure.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, which deals with the Property.

I will keep the Property in my possession and will keep it in good repair and use it only for the purposes described on page 1 of this agreement. I will not change this specified use without your express written permission. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

I will keep the Property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the Property is to be used in another state, I will give you a list of those states. I will not try to sell the Property unless it is inventory or I receive your written permission to do so. If I sell the Property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debt(s) if the debtor is not a natural person and without your prior written consent: (1) a beneficial interest in the debtor is sold or transferred, or (2) there is a change in either the identity or number of members of a partnership, or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the Property as they become due. You have the right of reasonable access in order to inspect the Property. I will immediately inform you of any loss or damage to the Property.

If I fail to perform any of my duties under this security agreement, or any mortgage, deed of trust, lien or other security interest, you may without notice to me perform the duties or cause them to be performed. Your right to perform for me shall not create an obligation to perform and

your failure to perform will not preclude you from exercising any of your other rights under the law or this security agreement.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan, and (b) payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancing of such loan.

PAYMENTS BY LENDER - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat those payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate payment of the amount advanced.

INSURANCE - I agree to buy insurance on the Property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from this agreement. If I fail to buy or maintain the insurance (or fail to name you as loss payee) you may purchase it yourself.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them to you at your request. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so. You may exercise my rights with respect to obligations of any account debtors, or other persons obligated on the Property, to pay or perform, and you may enforce any security interest that secures such obligations.

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box.

Date _____
 Signed _____

(page 2 of 3)

If this agreement covers inventory, I will not dispose of _____ except in my ordinary course of business at the fair market value for the Property, or at a minimum price established between you and me.

If this agreement covers farm products I will provide you, at your request, a written list of the buyers, commission merchants or selling agents to or through whom I may sell my farm products. In addition to those parties named on this written list, I authorize you to notify at your sole discretion any additional parties regarding your security interest in my farm products. I remain subject to all applicable penalties for selling my farm products in violation of my agreement with you and the Food Security Act. In this paragraph the terms farm products, buyers, commission merchants and selling agents have the meanings given to them in the Federal Food Security Act of 1985.

If this agreement covers chattel paper or instruments, either as original collateral or proceeds of the Property, I will note your interest on the face of the chattel paper or instruments.

REMEDIES - I will be in default on this security agreement if I am in default on any note this agreement secures or if I fail to keep any promise contained in the terms of this agreement. If I default, you have all of the rights and remedies provided in the note and under the Uniform Commercial Code. You may require me to make the secured property available to you at a place which is reasonably convenient. You may take possession of the secured property and sell it as provided by law. The proceeds will be applied first to your expenses and then to the debt. I agree that 10 days written notice sent to my last known address by first class mail will be reasonable notice under the Uniform Commercial Code. My current address is on page 1.

PERFECTION OF SECURITY INTEREST - I authorize you to file a financing statement covering the Property. I will comply with, facilitate, and otherwise assist you in connection with obtaining possession of or control over the Property for purposes of perfecting your security interest under the Uniform Commercial Code.

ADDITIONAL TERMS OF THE NOTE

DEFINITIONS - As used on pages 1 and 2, "I" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW - The law of the state of South Carolina in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

PAYMENTS - Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST - Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal sum outstanding at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to in this note (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE - The index will serve only as a device for setting the interest rate on this note. You do not guarantee by selecting this index, or the margin, that the interest rate on this note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers.

POST MATURITY RATE - For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS - If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph on page 2.

MULTIPLE ADVANCE LOANS - If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

SET-OFF - I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

If my right to receive money from you is also owed by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right to set-off.

SECURITY - References to agreements securing this loan on page 1 shall not be considered an exclusive list of all such agreements. Other agreements you and I have executed or execute in the future which are not referenced on page 1 may secure this loan.

DEFAULT - I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the Property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES - If I am in default on this note you have, but are not limited to, the following remedies:

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued unpaid charges).
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- (4) You may refuse to make advances to me or allow purchases on credit by me.
- (5) You may use any remedy you have under state or federal law.
- (6) You may make use of any remedy given to you in any agreement securing this note.

By selecting any one or more of these remedies you do not give up your right to use later any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to consider later the event a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES - I agree to pay all costs of collection, replating or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER - I give up my rights to require you to do certain things. I will not require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT - I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

FINANCIAL INFORMATION - I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a proslature hearing prior to seizure of any personal property which may secure this transaction.

SIGNATURES - I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGES 1 AND 2). I have received a copy on today's date.

ECOLOGICAL INVESTMENTS, LLC

JOHN E. ROSENBERG, MANAGER/MEMBER

SIGNATURE FOR LENDER: PATRICK WRIGHT, SENIOR VICE PRESIDENT, AREA EXECUTIVE

BORROWER NAME AND ADDRESS

ECOLOGICAL INVESTMENTS, LLC
119 BULL POINT DRIVE
SEABROOK, SC 29940

LENDER NAME AND ADDRESS

FIRST SOUTH BANK - BLUFFTON
7 ARLEY WAY, SUITE 100
BLUFFTON, SC 29910

LOAN DESCRIPTION:

Number 8033303

Amount \$ 2,600,000.00

Date 10-15-2008

☐ Refer to the attached Signature Addendum, incorporated herein, for additional Borrowers and their signatures.

COMMERCIAL DEBT MODIFICATION AGREEMENT

DATE AND PARTIES: The date of this Debt Modification Agreement (Modification) is 01-21-2010

DEFINITIONS: As used in this Modification, the terms have the following meanings:

Pronouns: The pronouns "I," "me," and "my" refer to each Borrower signing this Modification, individually and together with their heirs, executors, administrators, successors, and assigns. "You" and "your" refer to the Lender, with its participants or syndicators, successors and assigns, or any person or entity that acquires an interest in this Modification or Prior Obligation.

Prior Obligation: "Prior Obligation" refers to my previous agreement governing my promise to pay you money, including any loan agreement, note, or document that evidences my indebtedness, and any extensions, renewals, modifications, and substitutions.

BACKGROUND: You and I have entered into a Prior Obligation which is evidenced by PROMISSORY NOTE

dated 10-15-2008 ☒ in the original principal amount of / ☐ with a maximum possible principal amount of \$ 2,600,000.00

☐ payable on demand, / ☐ payable on demand but if no demand is made, by the maturity date of 10-14-2010 / ☒ with a maturity date of 10-14-2010

As of the date of this Modification, the ☒ amount remaining due is / ☐ current amount outstanding on the Prior Obligation is \$ 1,824,560.54

principal (Principal) plus \$ 1,516.84 accrued interest, for a total of \$ 1,826,077.48

MODIFICATION: For value received, you and I agree to modify the Prior Obligation as follows.

☐ INTEREST RATE MODIFICATION.

☐ INTEREST RATE.

Maximum Interest Amount: Any amount assessed or collected as interest will be limited to the maximum lawful amount of interest allowed by state or federal law. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid principal balance. Any remainder will be refunded to me.

☐ Post-Maturity/Default Interest Rate.

☐ Compounding: This Modification provides for the compounding of interest.

☒ PAYMENT MODIFICATION.

AS OF 1/21/2010 WE ARE MODIFYING THE MONTHLY PAYMENTS TO INTEREST ONLY. THERE WILL BE 8 MONTHLY INTEREST ONLY PAYMENTS BEGINNING ON 2/14/2010 AND 1 PAYMENT OF 1,831,022.53 DUE ON 10/14/2010. THIS IS A VARIABLE RATE LOAN AND THE PAYMENT AMOUNTS MAY CHANGE. THE FINAL PAYMENT MAY ALSO CHANGE.

☐ DRAW PERIOD MODIFICATION.

☐ FEES AND CHARGES MODIFICATION.

ADDITIONAL TERMS.

CONTINUATION OF TERMS: Except as specifically amended in this Modification, all terms of the Prior Obligation remain in effect.

INTERPRETATION: Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Modification.

VT only ☐ NOTICE TO BORROWER: THIS IS A DEMAND NOTE AND SO MAY BE COLLECTED BY THE LENDER AT ANY TIME. A NEW NOTE MUTUALLY AGREED UPON AND SUBSEQUENTLY ISSUED MAY CARRY A HIGHER OR LOWER RATE OF INTEREST.

☒ ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THE CREDIT AGREEMENT. TO PROTECT YOU (BORROWER/DEBTOR) AND US (LENDER/SECURED PARTY) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT. BY SIGNING THIS MODIFICATION, THE PARTIES AFFIRM THAT NO UNWRITTEN ORAL AGREEMENT EXISTS BETWEEN THEM.

SIGNATURES: By signing under seal, Borrower agrees to the terms contained in this Note. Borrower also acknowledges receipt of a copy of this Note.

BORROWER:

ECOLOGICAL INVESTMENTS, LLC

Entity Name

Signature JOHNE ROSENBERG, MANAGER/MEMBER Date 1/21/2010 (Seal)

Signature _____ Date _____ (Seal)

LENDER:

FIRST SOUTH BANK - BLUFFTON

Entity Name

Signature Patrick Wright Date _____ (Seal)

Signature PATRICK WRIGHT, SENIOR VICE PRESIDENT, AREA EXECUTIVE Date _____ (Seal)

COMMERCIAL DEBT MODIFICATION AGREEMENT

EXPRESS © 1998, 2001 Bankers Systems, Inc., St. Cloud, MN Form COMM-DMOD 7/1/2004

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

Signature _____ Date _____ (Seal)

NOT TO BE USED FOR LOANS SUBJECT TO CONSUMER LENDING LAWS
(page 1 of 1)

RECORD 0696

ECOLOGICAL INVESTMENTS, LLC 119 BULL POINT DRIVE SEABROOK, SC 29940	FRS. SOUTH BANK - BLUFFTON 7 ARLEY WAY, SUITE 100 BLUFFTON, SC 29910	Loan Number <u>8033303</u> Date <u>11-30-2010</u> Maturity Date <u>11-30-2012</u> Loan Amount \$ <u>1,700,000.00</u> Renewal Of <u>8033303</u>
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of ONE MILLION SEVEN HUNDRED THOUSAND AND NO/100 Dollars \$ 1,700,000.00

☒ Single Advance: I will receive all of this principal sum on 11-30-2010. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ Open End Credit. You and I agree that I may borrow up to the maximum principal sum more than one time. This feature is subject to all other conditions and expires on _____.

☐ Closed End Credit. You and I agree that I may borrow (subject to all other conditions) up to the maximum principal sum only one time.

INTEREST: I agree to pay interest on the outstanding principal balance from 11-30-2010 at the rate of 5.250% per year until 11-30-2012.

☐ Variable Rate: This rate may then change as stated below.

☐ Index Rate: The future rate will be _____ the following index rate: _____

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ Frequency and Timing: The rate on this note may change as often as _____
A change in the interest rate will take effect _____.

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐ _____

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☐ on the same fixed or variable rate basis in effect before maturity (as indicated above)

☒ at a rate equal to 10%

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 4.000% OF THE LATE AMOUNT WITH A MIN. OF \$10.00

☐ ADDITIONAL CHARGES. In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS. I agree to pay this note as follows.

23 MONTHLY INTEREST PAYMENTS RANGING FROM \$7052.50 TO \$7667.33 BEGINNING 12-30-2010 AND 23 MONTHLY PRINCIPAL PAYMENTS OF \$4,000.00 BEGINNING 12-30-2010 AND 1 PAYMENT OF \$1,615,269.50 ON 11-30-2012.

PURPOSE: The purpose of this loan is RENEWAL OF EXISTING LOAN FOR AN ADDITIONAL 24 MONTHS

SECURITY: You have certain rights that may affect my property as explained on page 2. In addition to these rights, this agreement is separately secured by a ☐ preexisting ☐ contemporaneous agreement described as _____

ADDITIONAL TERMS.

SECURITY

SECURITY INTEREST: I give you a security interest in the Property described below that I own or have sufficient right, which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

- ☐ **Accounts and Other Rights to Payment:** All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which I have by law or agreement against any account debtor or obligor.
- ☐ **Inventory:** All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.
- ☐ **Equipment:** All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule I give to you, but such a list is not necessary to create a valid security interest in all of my equipment.
- ☐ **Instruments and Chattel Paper:** All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- ☐ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.
- ☐ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- ☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.
- ☐ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- ☐ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- ☐ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- ☒ **Specific Property Description:** The Property includes, but is not limited by, the following:

FROM ON 82.68 +/- ACRES IN JASPER COUNTY, SC; PARCEL 042-00-06-042 ALSO KNOWN AS THE BUTTERFLY KINGDOM PUD LOCATED AT THE END OF RED DAM ROAD IN HARDEEVILLE, SC. AS FURTHER DESCRIBED IN A CERTAIN MORTGAGE DATED 02/02/2006 AND RECORDED 02/06/2006 IN VOLUME 401 ON PAGES 20 24 IN JASPER COUNTY, SC

ASSIGNMENT OF LEASES, RENTS AND PROFITS DATED 02/02/2006 AND RECORDED 02/06/2006 IN VOLUME 20 ON PAGES 110 113 IN JASPER COUNTY, SC

If applicable, enter real estate description and record owner information:

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ purpose.
Borrower/Owner State of organization/registration (if applicable) SC

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY - This agreement secures this note and any other debt I have with you, now or later. However, it will not secure other debts if you fail with respect to such other debts, to make any required disclosure about this security agreement or if you fail to give any required notice of the right of rescission. If property described in this agreement is located in another state, this agreement may also, in some circumstances, be governed by the law of the state in which the Property is located.

NAME AND LOCATION - My name indicated on page 1 is my exact legal name. If I am an individual, my address is my principal residence. If I am not an individual, my address is the location of my chief executive offices or sole place of business. If I am an entity organized and registered under state law, my address is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the Property, or to the extent this is a purchase money security interest I will acquire ownership of the Property with the proceeds of the loan. I will defend it against any other claim. Your claim to the Property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position. I will not use the Property for a purpose that will violate any laws or subject the Property to foreclosure or seizure.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, which deals with the Property.

I will keep the Property in my possession and will keep it in good repair and use it only for the purpose(s) described on page 1 of this agreement. I will not change this specified use without your express written permission. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

I will keep the Property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the Property is to be used in another state, I will give you a list of those states. I will not try to sell the Property unless it is inventory or I receive your written permission to do so. If I sell the Property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debt(s) if the debtor is not a natural person and without your prior written consent: (1) a beneficial interest in the debtor is sold or transferred, or (2) there is a change in either the identity or number of members of a partnership, or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the Property as they become due. You have the right of reasonable access in order to inspect the Property. I will immediately inform you of any loss or damage to the Property.

If I fail to perform any of my duties under this security agreement, or any mortgage, deed of trust, lien or other security interest, you may, without notice to me perform the duties or cause them to be performed. Your right to perform for me shall not create an obligation to perform and

your failure to perform will not preclude you from exercising any of your other rights under the law or this security agreement.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan, and (b) payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancing of such loan.

PAYMENTS BY LENDER - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat those payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate payment of the amount advanced.

INSURANCE - I agree to buy insurance on the Property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from this agreement. If I fail to buy or maintain the insurance (or fail to name you as loss payee) you may purchase it yourself.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them to you at your request. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so. You may exercise my rights with respect to obligations of any account debtors, or other persons obligated on the Property, to pay or perform, and you may enforce any security interest that secures such obligations.

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box

Signed _____ Date _____

[Signature] Page 2 of 3

If this agreement covers inventory, I will not dispose except in my ordinary course of business at the fair market value for the Property, or at a minimum price established between you and me.

If this agreement covers farm products I will provide you, at your request, a written list of the buyers, commission merchants or selling agents to or through whom I may sell my farm products. In addition to those parties named on this written list, I authorize you to notify at your sole discretion any additional parties regarding your security interest in my farm products. I remain subject to all applicable penalties for selling my farm products in violation of my agreement with you and the Food Security Act. In this paragraph the terms farm products, buyers, commission merchants and selling agents have the meanings given to them in the Federal Food Security Act of 1985.

If this agreement covers chattel paper or instruments, either as original collateral or proceeds of the Property, I will note your interest on the face of the chattel paper or instruments.

REMEDIES - I will be in default on this security agreement if I am in default on any note this agreement secures or if I fail to keep any promise contained in the terms of this agreement. If I default, you have all of the rights and remedies provided in the note and under the Uniform Commercial Code. You may require me to make the secured property available to you at a place which is reasonably convenient. You may take possession of the secured property and sell it as provided by law. The proceeds will be applied first to your expenses and then to the debt. I agree that 10 days written notice sent to my last known address by first class mail will be reasonable notice under the Uniform Commercial Code. My current address is on page 1.

PERFECTION OF SECURITY INTEREST - I authorize you to file a financing statement covering the Property. I will comply with, facilitate, and otherwise assist you in connection with obtaining possession of or control over the Property for purposes of perfecting your security interest under the Uniform Commercial Code.

ADDITIONAL TERMS OF THE NOTE

DEFINITIONS - As used on pages 1 and 2, "I," "me" or "my" means the terms that apply to this loan. "It," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorser, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW - The law of the state of South Carolina in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

PAYMENTS - Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST - Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal sum outstanding at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to in this note (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE - The index will serve only as a device for setting the interest rate on this note. You do not guarantee by selecting this index, or the margin, that the interest rate on this note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers.

POST MATURITY RATE - For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS - If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph on page 2.

MULTIPLE ADVANCE LOANS - If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

SET-OFF - I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date of, which you properly accelerate under this note.

If my right to receive money from you is also held by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right to set-off.

SECURITY - References to agreements securing this loan on page 1 shall not be considered an exclusive list of all such agreements. Other agreements you and I have executed or execute in the future which are not referenced on page 1 may secure this loan.

DEFAULT - I will be in default if any one or more of the following occur:

- (1) I fail to make a payment on time or in the amount due;
- (2) I fail to keep the Property insured, if required;
- (3) I fail to pay, or keep any promise, on any debt or agreement I have with you;
- (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings;
- (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due);
- (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided;
- (7) I do or fail to do something which causes you to believe you will have difficulty collecting the amount I owe you;
- (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority;
- (9) I change my name or assume an additional name without first notifying you before making such a change;
- (10) I fail to plant, cultivate and harvest crops in due season;
- (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES - If I am in default on this note you have, but are not limited to, the following remedies:

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued unpaid charges).
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- (4) You may refuse to make advances to me or allow purchases on credit by me.
- (5) You may use any remedy you have under state or federal law.
- (6) You may make use of any remedy given to you in any agreement securing this note.

By selecting any one or more of these remedies you do not give up your right to use later any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to consider later the event a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES - I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER - I give up my rights to require you to do certain things. I will not require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT - I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us, will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

FINANCIAL INFORMATION - I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a pre-seizure hearing prior to seizure of any personal property which may secure this transaction.

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGES 1 AND 2. I have received a copy on today's date.

ECOLOGICAL INVESTMENTS, LLC

JOHN E. ROSENBERG, MANAGER/MEMBER

SIGNATURE FOR LENDER: PATRICK WRIGHT, SENIOR VICE PRESIDENT, AREA EXECUTIVE

GUARANTY

BLUEFTON
(City)

SOUTH CAROLINA
(State)

FEBRUARY 02, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce FIRST SOUTH BANK - BLUEFTON (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of ECOLOGICAL INVESTMENTS, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: _____ and any extensions,

renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☒ is checked, the Undersigned guarantees to Lender, the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): _____

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ UNLIMITED

(if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____;
☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

Philip J. Brust by John E. Rosenberg, Attorney
PHILIP J. BRUST by John E. Rosenberg, Attorney
in Fact

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.

EXHIBIT

D

RECORD 0700

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under § 111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2013-CP-07-00610
	)	
FIRST SOUTH BANK,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT PHILIP J. BRUST'S
vs.	)	RESPONSES TO PLAINTIFF'S FIRST
	)	SET OF REQUESTS TO ADMIT
JOHN E. ROSENBERG and PHILIP J.	)	
BRUST,	)	
	)	
Defendants.	)	

TO: JEFFREY L. SILVER, ESQUIRE, Attorney for Plaintiff:

Defendant Philip J. Brust, responds to Plaintiff's First Set of Requests to Admit, dated October 3, 2013, as follows:

RESPONSES TO REQUESTS TO ADMIT

1. On or around January 9, 2006, Defendant Philip J. Brust ("Brust") received a letter from Plaintiff wherein Brust, Ecological Investments, LLC ("Ecological"), and Defendant John E. Rosenberg ("Rosenberg") were informed of the terms and conditions, under which Plaintiff would provide a loan to Ecological in the amount of \$2,600,000.00 ("Commitment Letter"). A copy of the Commitment Letter is attached hereto as Exhibit A.

RESPONSE:

Due to Defendant's incapacity, Defendant cannot admit or deny the truth of the matters asserted in Request to Admit No. 1 based on lack of information and knowledge. Defendant's attorney-in-fact and counsel have made reasonably inquiry into the matters asserted in Request to Admit No. 1 and the information known or readily obtainable is not sufficient to enable an admission or denial.

2. The Commitment Letter informed Brust that the loan to Ecological was conditioned upon his execution of an Unlimited Guaranty.

RESPONSE:

Due to Defendant's incapacity, Defendant cannot admit or deny the truth of the matters asserted in Request to Admit No. 2 based on lack of information and knowledge. Defendant's attorney-in-fact and counsel have made reasonably inquiry into the matters asserted in Request to Admit No. 2 and the information known or readily obtainable is not sufficient to enable an admission or denial.

3. Brust signed the Commitment Letter acknowledging his agreement and acceptance of the terms and conditions contained therein.

RESPONSE:

Due to Defendant's incapacity, Defendant cannot admit or deny the truth of the matters asserted in Request to Admit No. 3 based on lack of information and knowledge. Defendant's attorney-in-fact and counsel have made reasonably inquiry into the matters asserted in Request to Admit No. 3 and the information known or readily obtainable is not sufficient to enable an admission or denial.

4. On January 25, 2006, Brust executed a Specific Limited Power of Attorney ("Power of Attorney") that was filed on February 6, 2006, in the Office of the Register of Deeds for Jasper County in Book 339 at Page 218. A copy of the Power of Attorney is attached hereto as Exhibit B.

RESPONSE:

Defendant admits the matters asserted in Request to Admit No. 4.

5. Under the Power of Attorney, Brust appointed Rosenberg as his true and lawful attorney, to appear for him, and in his name, place and stead execute any and all documents, and perform any lawful act or execute or amend any document, instrument or thing, including, but not limited to, the power to execute any document, instrument, contract, Note, Mortgage, agreement, assignment, affidavit, disclosure, etc. and to pay sums on his account, or to execute any such other documents as may be necessary for Ecological to close the loan with Plaintiff in the original principal sum of \$2,600,000.00 (See Exhibit B).

RESPONSE:

Defendant admits the matters asserted in Request to Admit No. 5.

6. The Power of Attorney also states that any act or deed lawfully performed by Rosenberg on Brust's behalf pursuant to the Power of Attorney and within the limits contained therein, shall be binding upon Brust, his heirs, legal and personal representatives and assigns. (See Exhibit B).

RESPONSE:

Defendant admits the matters asserted in Request to Admit No. 6.

7. On or about February 2, 2006, Ecological, made, executed, and delivered to Plaintiff a Universal Note and Security Agreement in the original principal sum of Two Million Six Hundred Thousand and 00/100 (\$2,600,000.00) Dollars, which was subsequently renewed and/or modified by those certain Commercial Debt Modification Agreements dated January 14, 2008, and January 21, 2010 and those Renewal Universal Note and Security Agreements dated May 27, 2008, August 26, 2008, October 15, 2008, and November 30, 2010 (collectively "Note"). A true and correct copy of the Note is attached hereto as Exhibit C.

RESPONSE:

Defendant admits the matters asserted in Request to Admit No. 7.

8. On or about February 2, 2006, Rosenberg, on Brust's behalf and direction pursuant to the Power of Attorney, executed and delivered to Plaintiff an Unlimited Guaranty ("Guaranty"). A true and correct copy of the Unlimited Guaranty is attached hereto as Exhibit D.

RESPONSE:

Defendant admits that Rosenberg executed on Brust's behalf the Guaranty and delivered the Guaranty to Plaintiff. Defendant denies that Rosenberg had authority to execute and deliver the Guaranty pursuant to the Power of Attorney. Defendant denies all remaining assertions contained in Request to Admit No. 8.

9. Pursuant to the Guaranty, Brust absolutely and unconditionally agreed to provide to Plaintiff the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations of Ecological. (See Exhibit D).

RESPONSE:

Defendant objects to Request to Admit No. 9 based on the fact that it calls for a legal conclusion. Without waiving that objection, Defendant denies the matters asserted in Request to Admit No. 9.

10. As an additional term thereof Brust agreed that the Guaranty shall be a continuing guaranty of payment of the indebtedness of Ecological and shall continue to be in force and be binding upon Brust, whether or not all indebtedness is paid in full, until the Guaranty is revoked by written notice actually received by Plaintiff, and that such revocation shall not be effective as to indebtedness existing or committed to at the time of actual receipt of such notice to Plaintiff, or as to any renewals, extensions, or refinancing thereof. (See Exhibit D).

RESPONSE:

Defendant objects to Request to Admit No. 10 based on the fact that it calls for a legal conclusion. Without waiving that objection, Defendant denies the matters asserted in Paragraph 10.

11. Prior to the maturity of the Note, at Plaintiffs, and in connection with the Guaranty, Brust provided Plaintiff his personal financial information for the years 2005, 2007, 2008, 2009, and 2010.

RESPONSE:

Due to Defendant's incapacity, Defendant cannot admit or deny the truth of the matters asserted in Request to Admit No. 11 based on lack of information and knowledge. Defendant's attorney-in-fact and counsel have made reasonably inquiry into the matters asserted in Request to Admit No. 11 and the information known or readily obtainable is not sufficient to enable an admission or denial.

12. Prior to the maturity of the Note, Brust made no communication, written or otherwise, with Plaintiff regarding Rosenberg's lack of authority, actual, apparent, or otherwise, to execute the Guaranty on his behalf.

RESPONSE:

Due to Defendant's incapacity, Defendant cannot admit or deny the truth of the matters asserted in Request to Admit No. 12 based on lack of information and knowledge. Defendant's attorney-in-fact and counsel have made reasonably inquiry into the matters asserted in Request to Admit No. 12 and the information known or readily obtainable is not sufficient to enable an admission or denial.

13. Prior to the maturity of the Note, Brust made no communication, written or otherwise, regarding the revocation of the Guaranty.

RESPONSE:

Due to Defendant's incapacity, Defendant cannot admit or deny the truth of the matters asserted in Request to Admit No. 13 based on lack of information and knowledge. Defendant's attorney-in-fact and counsel have made reasonably inquiry into the matters asserted in Request to Admit No. 13 and the information known or readily obtainable is not sufficient to enable an admission or denial.

14. The Note matured on November 30, 2012, Plaintiff made demand upon Ecological for payment of all sums due under same, and Ecological has failed to make the required payment.

RESPONSE:

Defendant admits the matters asserted in Request to Admit No. 14.

15. Plaintiff has made demand upon Brust for payment of sums due under the Guaranty, Brust has failed to pay all sums due under same, and, as a result, Brust is in default.

RESPONSE:

Defendant admits that Plaintiff has made a demand upon Defendant for payment of sums allegedly due under the Guaranty. Defendant admits that he has failed to make payments on any sums demanded by Plaintiff. Defendant denies all remaining assertions contained in Request to Admit No. 15.

MOORE & VAN ALLEN PLLC

By: E. B. Sumner, IV
Robert E. Sumner, IV
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brandongaskins@mvalaw.com
robertsumner@mvalaw.com

ATTORNEYS FOR DEFENDANT
PHILIP J. BRUST

CHARLESTON, SC

December 9, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
C/A NO.: 2013-CP-07-0610

First South Bank,
Plaintiff,

**PLAINTIFF'S RESPONSES TO
DEFENDANT PHILIP J. BRUST'S FIRST
SET OF INTERROGATORIES**

vs.

John E. Rosenberg and Philip J. Brust,
Defendants,

**TO: DEFENDANT PHILIP J. BRUST AND HIS ATTORNEY OF RECORD, ROBERT E.
SUMNER, IV, ESQUIRE**

Plaintiff herein answers Defendant's First Set of Interrogatories pursuant to Rule 33 of the
South Carolina Rules of Civil Procedure, as follows:

GENERAL OBJECTIONS

Plaintiff objects to Defendant's Interrogatories to the extent they: (1) seek to expand the
limits of discovery allowed under the South Carolina Rules of Civil Procedure; and (2) seek
information protected by the attorney/client privilege, the work product doctrine, or any other
applicable privilege or doctrine. Subject to the above general objections, the following is
provided.

ANSWERS TO INTERROGATORIES

1. Identify every person who has assisted in the preparation of responses to these
Interrogatories and Defendant Brust's First Set of Requests for Production.

ANSWER:

Patrick Wright, Vice President
First South Bank
7 Arley Way, Suite 100
Bluffton, South Carolina 29910

2. Identify the full name, address, job, title, and telephone number of each person
known to you or your counsel to have knowledge of any of the facts, events, circumstances,
claims, or allegations surrounding this lawsuit and indicate whether or not written or recorded
statements have been taken from each person and, if so, indicate who has possession of such

statements and, if not, set forth a specific summary sufficient to inform Defendant Brust of the important facts known to or observed by each person.

ANSWER:

Patrick Wright, Senior Vice President
First South Bank
7 Arley Way, Suite 100
Bluffton, South Carolina 29910
No written or recorded statements have been taken.

Patrick Wright is and at all times relevant was a Senior Vice President at Plaintiff's branch in Bluffton, South Carolina and performed the duties and responsibilities associated therewith. Mr. Wright was and continues to be the representative of Plaintiff who was responsible for the lending relationship with Ecological Investments, LLC. Mr. Wright has knowledge and information related to his communications, written or otherwise, with Mr. Brust and Mr. Rosenberg related to Ecological Investments, LLC, the Property, and the Guaranties which serve as collateral for the Loan. He has knowledge and information related to Plaintiff's underwriting procedures and process as well as the process and procedures Plaintiff followed during the origination, approval, and extensions of the Loan. Likewise, Mr. Wright has knowledge and information related the financial position of Mr. Brust, Mr. Rosenberg, and Ecological Investments prior to and during the administration of the Loan based upon financial documents provided by them to Plaintiff.

Frank Callison, Chief Credit Officer
First South Bank
1450 John B. White Sr. Blvd.
Spartanburg, SC 29306
No written or recorded statements have been taken.

Frank Callison is the current Chief Credit Officer and has knowledge concerning the procedures of Plaintiff in reviewing credit extension and renewal requests, as well as, the approval standards for same.

W. C. Lyerly, President
First South Bank
1333 Main Street, Suite 220
Columbia, SC 29201
No written or recorded statements have been taken.

W. C. Lyerly, III is the President of Plaintiff and has knowledge concerning the policies and procedures of Plaintiff relating to credit extension and renewal requests, the status of the Loan which is the subject of this action, and

J. Allen Billig, Senior Vice President
Senior Credit Officer
First South Bank
1068 N. Church Street
Greenville, SC 29601
No written or recorded statements have been taken.

J. Allen Billig is the current Senior Credit Officer and has knowledge concerning the procedures of Plaintiff in reviewing credit extension and renewal requests, as well as, the approval standards for same.

Philip J. Brust
20348 Christople Drive
Cornelius, North Carolina 28031
No written or recorded statements have been taken.

Philip J. Brust is and at all times relevant was a member of Ecological Investments, LLC. Mr. Brust has knowledge and information regarding all facts in dispute including, but not limited to, his communications, written or otherwise, with Mr. Rosenberg, Mr. Wright, other members of Ecological Investments regarding the Guaranty of the Loan, and other third parties regarding same. His knowledge and information also includes the events surrounding the execution of the Specific Limited Power of Attorney filed in the Office of the Register of Deeds for the County of Jasper, State of South Carolina in Book 339 at Page 218 and the authority granted therein. Mr. Brust's knowledge and information further extends to and includes the events surrounding his submission of his personal financial information and personal payments he made on the Loan in issue.

John E. Rosenberg
5085 Rivedro Street
Las Vegas, Nevada 81935
No written or recorded statements have been taken.

John E. Rosenberg is and at all times relevant was the managing member of Ecological Investments, LLC. Mr. Rosenberg has knowledge and information regarding all facts in dispute including, but not limited to, his communications, written or otherwise, with Mr. Brust, Mr. Wright, other members of Ecological Investments regarding the Property, the Loan, and the Guaranty of the Loan, and other third parties regarding same. His knowledge and information also includes the events surrounding the execution of the Specific Limited Power of Attorney filed in the Office of the Register of Deeds for the County of Jasper, State of South Carolina in Book 339 at Page 218 and the authority granted therein. Mr. Rosenberg's knowledge and information further extends to and includes the events surrounding his submission of personal financial information to Plaintiff related to the Guaranty. His knowledge and information further extends to the events surrounding the closing of the Loan.

Terry A. Finger, Esq.
35 Hospital Center Commons, Suite 200
PO Box 24005
Hilton Head, Island, South Carolina 29926
No written or recorded statements have been taken.

Terry Finger, Esquire was the closing attorney on behalf of Ecological Investments who closed the Loan for which the Guaranties are collateral. Mr. Finger has knowledge and information regarding his conversations with Mr. Rosenberg, Mr. Brust, and Mr. Wright regarding the closing of the Loan and his instructions related thereto from Plaintiff. Additionally, Mr. Finger has knowledge and information related to the circumstances surrounding the Specific Limited Power of Attorney filed in the Office of the Register of Deeds for the County of Jasper, State of South Carolina in Book 339 at Page 218 as well as the authority granted therein.

3. Set forth a list of all records, statements, photographs, sketches, reports, drawings, maps, models, exhibits, or other documents or tangible objects, whether in written, electronic, or computerized form, in your possession or control and/or the possession or control of your counsel that relate to your claims in this case and/or that you may seek to introduce, whether as evidence or otherwise, at any deposition, hearing, or trial of this action.

ANSWER: See Plaintiff's Answers to Defendant Philip J. Brust's First Requests for Production of Documents.

4. Set forth a list of all your personnel, employees or agents involved in any way with the Loan, including the name, address, and telephone number of each individual involved. For each employee or agent listed, please describe in detail the purpose of the employee's or agent's involvement and each decision made by the employee or agent with regard to the Loan.

ANSWER: See Plaintiff's response to Interrogatory No. 1.

5. List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case, and for each please state:

- a. the field in which you claim he/she is an expert;
- b. the subject matter on which the expert is expected to testify;
- c. the substance of the facts and opinions to which the expert is expected to testify;
- d. a summary of the grounds for each opinion; and
- e. identify all articles or publications written by the expert, including name and date of publication.

ANSWER: Plaintiff objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine. Subject to the foregoing objection, Plaintiff has not identified an expert at this time and reserves its rights to identify an expert witness at a later date.

6. Describe with specificity your corporate structure.

ANSWER: Plaintiff is a chartered bank and corporation organized and existing in the State of South Carolina and has branches in Greenville, Spartanburg, Columbia, and Bluffton, South Carolina. Its corporate offices are located in Spartanburg, South Carolina.

7 Explain and describe in full and complete detail the type of damages you claim to be entitled to recover from the named Defendants. This response should include, but is not limited to, the outstanding principal amount on the Loan, an accounting of all payments made on the Loan, an accounting of any and all fees charged as to the Loan, an accounting of all penalties charged as to the Loan and an accounting of all interest charged on the Loan. With regard to each interest charge, state the percentage rate, the nature of the interest rate (such as stated rate, default rate, etc.) for each interest charge, the time period covered by the interest charge, the principal balance or balances used in computing the interest charge, and the calculation of the interest charge.

ANSWER: Plaintiff has suffered damages in the principal sum of \$1,608,000.00, plus accrued interest in the sum of \$26,986.17, plus accrued late fees in the sum of \$2,348.49, plus advanced appraisal fee of \$1,450.00, for a total outstanding balance of \$1,638,784.66, plus interim interest from February 22, 2013, at the per diem rate of \$234.50, the same being set forth in the Complaint and Verification attached thereto, together with the attorney fees and court costs for the bringing of this action. The terms of interest are set forth on the Note attached to the Complaint as Exhibit A which is incorporated herein by reference. Please see Plaintiff's Response to Defendant Philip J. Brust's First Requests for Production of Documents.

8. Identify all collateral that secures the Loan, including the current value of the collateral.

ANSWER: The Loan is secured by a Mortgage on a certain piece of real property located in the County of Jasper, State of South Carolina bearing tax map number 42-0-5-1, said Mortgage being recorded in the Office of the Register of Deeds for the County of Jasper, State of South Carolina in Book 703 at Page 032. The Loan is also secured by those certain Unlimited Guaranties executed by Defendant John E. Rosenberg and Defendant Philip J. Brust, copies of which are attached to the Complaint as Exhibit B and incorporated herein by reference. No current appraisal exists.

9. Set forth a detailed narrative of the history of the contribution of funds to, and the ownership of, the Loan and all documents, guaranties, and instruments related thereto. This narrative should include, but not be limited to, any contributions of Loan funds from another lender, as well as any sales, assignments, syndications, or other transfers of any interest or participation in the Loan or any document, guaranty, or instrument related thereto. If any other lender has contributed funds for the Loan, or any part of, or participation in, the Loan or any document, guaranty, or instrument related thereto has been sold, assigned, syndicated, or transferred in any way, identify all transactions related to such contribution, sale, assignment, syndication, or transfer in accordance with the above definitions.

ANSWER: The Loan issued by Plaintiff to Ecological Investments, LLC was a refinance of a previous debt Ecological Investments owed to a third party lender. At the time of Plaintiff's refinance, the balance of the loan to the third party lender was approximately \$2,600,000.00. At the current date, Plaintiff is the sole owner of the Loan. Likewise, Plaintiff has not sold, assigned, transferred, or syndicated the Loan. Furthermore, no other lender has contributed funds to the Loan or is participating in same.

10. Identify all communications between Defendant Brust and you and any of your employees or agents regarding the Loan, Ecological Investments, LLC, the Butterfly Kingdom, Ecological Education Center, Inc., and Butterfly Kingdom Emporium, LLC.

ANSWER: See Plaintiff's Answers to Defendant Philip J. Brust's First Requests for Production of Documents.

11. Describe in detail all efforts by you to perform due diligence, research, and investigation regarding the Loan, collateral securing the Loan, Ecological Investments, LLC, and any guarantors of the Loan.

ANSWER: See Plaintiff's Answers to Defendant Philip J. Brust's First Requests for Production of Documents, including without limitation, the executed Commitment Letter, financials of Defendant Brust, executed Limited Power of Attorney, Attorney Opinion Letter, and Appraisals.

12. Identify all communications between Defendant John Rosenberg and you and any of your employees regarding the Loan, Ecological Investments, LLC, the Butterfly Kingdom, Ecological Education Center, Inc., and Butterfly Kingdom Emporium, LLC.

ANSWER: See Plaintiff's Answers to Defendant Philip J. Brust's First Requests for Production of Documents.

13. Identify all communications between any other person, including any appraisers, and you and any of your employees or agents regarding the Loan, collateral securing the Loan, Ecological Investments, LLC, and any guarantors of the Loan.

ANSWER: See Plaintiff's Answers to Defendant Philip J. Brust's First Requests for Production of Documents.

14. Explain specifically each reason you made the Loan to Ecological Investments, LLC, including the rationale, basis, and any documents relied upon for each decision to make, renew, modify, or extend the Loan, including those renewal, modifications, and/or extensions effected on January 14, 2008; May 27, 2008; August 26, 2008; October 15, 2008; January 21, 2010; and November 30, 2010, and the loan in January 2009 in the amount of or about Two Hundred Seventy-Five Thousand and No/100 Dollars (\$275,000.00).

ANSWER: See Plaintiff's Answers to Defendant Philip J. Brust's First Requests for Production of Documents.

15. Identify all transactions and/or dealings between you and Defendant Rosenberg and any entity in which he has a financial or ownership interest or affiliation, including but not limited to Ecological Education Center, Inc., Butterfly Kingdom Emporium, LLC, Efficient Energy Advisors, LLC, and AirPro Cooling & Heating, LLC, regardless of whether such transactions and/or dealings were of a personal nature or related to Ecological Investments, LLC. In answering this interrogatory, include the identity of the persons involved in the transaction, the date of the transaction, the nature of the transaction, and whether the transaction or the obligations thereunder are currently effective.

ANSWER: Plaintiff objects to this Interrogatory to the extent that it seeks information not relevant to the issues in this litigation; is not reasonably calculated to lead to discovery of relevant or admissible evidence; seeks information related to matters beyond the scope of the issues raised by this action; are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure, or violates privacy laws. Notwithstanding such objections, Plaintiff will respond upon consent of Defendant Rosenberg or Court Order.

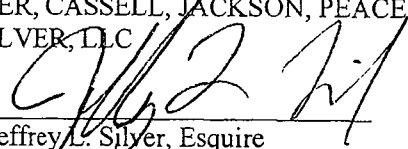
16. Describe in detail your knowledge regarding the proposed development or sale of all or portion of the property acquired by Ecological Investments, LLC in Jasper County, South Carolina, including, but not limited to, the development of the Butterfly Kingdom; the sale of such property to Quad Development, LLC; the sale of timber from the property; or the leasing or sale of rights to the property for advertising, cellular tower, or other commercial uses.

ANSWER: Plaintiff objects to this Interrogatory to the extent that it seeks information already in possession and control of Defendant Brust, is not relevant to the issues in this litigation; is not reasonably calculated to lead to discovery of relevant or admissible evidence; seeks information related to matters beyond the scope of the issues raised by this action; are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. Notwithstanding such objections, see copy of the Contract of Sale and cancellation thereof produced by Plaintiff in Answer to Defendant Brust's First Requests for Production of Document and the emails between Defendant Rosenberg and the attorney for Ecological Investments, LLC concerning the litigation with Quad Development, LLC.

17. To the extent that documents that are responsive to Defendant Brust's First Set of Requests for Production of Documents are or once were in existence but are not in your possession or control, identify those documents. In the events that emails or other electronic documents have been destroyed, please include the date of destruction, a description of the subject matter of any destroyed documents and a description of any document retention/destruction policies maintained by you for the applicable timeframe.

ANSWER: Plaintiff objects to this Interrogatory to the extent it seeks information that is overly broad and unduly burdensome. Plaintiff has no reasonable likelihood of determining the prior existence or date of destruction of any such documents.

TYLER, CASSELL, JACKSON, PEACE
& SILVER, LLC

By: 

Jeffrey L. Silver, Esquire

Taylor A. Peace, Esquire

1331 Elmwood Avenue, Suite 300

Post Office Box 11656

Columbia, South Carolina 29211

(803) 252-7689

ATTORNEYS FOR PLAINTIFF

12-20-2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
C/A NO.: 2012-CP-07-4597

First South Bank,

Plaintiff,

vs.

John E. Rosenberg and Phillip J. Brust,

Defendants.

**PLAINTIFF'S RESPONSES TO
DEFENDANT PHILLIP J. BRUST'S
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

**TO: PHILLIP J. BRUST AND HIS ATTORNEY OF RECORD ROBERT E. SUMNER,
IV, ESQUIRE**

Plaintiff herein answers Defendant's First Set of Requests to Produce to Plaintiff pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, as follows:

GENERAL OBJECTIONS

1. Plaintiff objects to these Requests for Production to the extent that they seek documents or other materials protected by the attorney client privilege or the Work Product Doctrine. If any document or other material protected by either of these doctrines is inadvertently produced, that is not to be deemed a waiver of the protection afforded to those documents, and Plaintiff requests that the parties return such document and all copies thereof upon request to the undersigned.

2. Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure.

3. Plaintiff objects to these Requests for Production to the extent that they are overly broad and/or unduly burdensome and to the extent that they seek information not within its possession or control.

4. Plaintiff objects to these Requests for Production to the extent that they contain vague and undefined terms that render them unsuitable for response.

5. These responses are made solely for the purpose of responding to discovery requests promulgated in this action and should not be construed as an admission of relevancy, materiality, or admissibility. Plaintiff reserves the right to seek exclusion of any response (or any document produced in connection with any such response) at trial and preserves all evidentiary objections, including but not limited to, objections as to confidence, relevance, materiality, and admissibility and preserves any other objections to exclude any statement contained in a document produced in response to these requests as if such statement had been made by a witness present and testifying in court. All such objections and grounds are reserved and may be interposed at the time of trial.

6. The responses set forth herein are based upon information that has been collected and/or reviewed for the purpose of responding to these requests. Plaintiff reserves the right to supplement its responses in the event it obtains additional information that has been requested.

7. Each of the above general objections is incorporated into all of the responses set forth below and no response is to be deemed a waiver of any of the above general objections whether or not specifically set forth in the response.

RESPONSES TO REQUESTS TO PRODUCE

1. All documents reviewed, referenced, consulted, or otherwise used in responding to the Defendant Brust's First Set of Interrogatories to Plaintiff.

ANSWER: All such documents, to the extent same exist, not otherwise privileged and which are in the possession or control of the Plaintiff contained in the loan files of Plaintiff

concerning Ecological Investments are available for review by Defendant at a mutually agreeable time at the Offices of Plaintiff in Bluffton, South Carolina.

2. All documents that support or concern your claim for damages.

ANSWER: Plaintiff craves reference to the Note and Guaranties attached to the Complaint as Exhibits A and B and incorporated herein by reference. Plaintiff would further crave reference to the Verification attached to the Complaint.

3. All documents that concern, show, reflect, or otherwise evidence any contributions to the Loan from other lenders, or any sales, assignments, syndications, or other transfers of any interest or participation in the Loan or any document, guaranty, or instrument related thereto.

ANSWER: No such documents exist.

4. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to real estate or commercial loan underwriting.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, to the extent same exist, Plaintiff will produce any such documents upon execution of a non-disclosure and confidentiality agreement. Plaintiff would further state that the manuals, guidelines, policies, practice memoranda, or other instructional materials are constantly being updated and prior versions are destroyed.

5. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to real estate or commercial loan closing standards or requirements.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, to the extent same exist, Plaintiff will produce any such documents upon execution of a non-disclosure and confidentiality agreement. Plaintiff would further state that the manuals, guidelines, policies, practice memoranda, or other instructional materials are constantly being updated and prior versions are destroyed.

6. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to powers of attorney.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. Further, Ecological Investments, LLC, was represented by counsel at the closing. The closing attorney delivered to Plaintiff an Opinion Letter certifying the proper preparation and execution of the Power of Attorney. Notwithstanding such objections, to the extent same exist, Plaintiff will produce any such documents upon execution of a non-disclosure and confidentiality agreement. Plaintiff would further state that the manuals, guidelines, policies, practice memoranda, or other instructional materials are constantly being updated and prior versions are destroyed.

7. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to loan commitment letters.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, to the extent same exist, Plaintiff will produce any such documents upon execution of a non-disclosure and confidentiality agreement. Plaintiff would further state that the manuals, guidelines, policies, practice memoranda, or other instructional materials are constantly being updated and prior versions are destroyed.

8. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to the personal guaranty of loans to an entity.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, to the extent same exist, Plaintiff will produce any such documents upon execution of a non-disclosure and confidentiality agreement. Plaintiff would further state that the manuals, guidelines, policies, practice memoranda, or other instructional materials are constantly being updated and prior versions are destroyed.

9. All manuals, guidelines, policies, practice memoranda, or other instruction materials of yours that relate to document retention and/or destruction.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, to the extent same exist, Plaintiff will produce any such documents upon execution of a non-disclosure and confidentiality agreement. Plaintiff would further state that the manuals, guidelines, policies, practice memoranda, or other instructional materials are constantly being updated and prior versions are destroyed.

10. All manuals, guidelines, policies, practice memoranda, or other instruction materials of yours that relate to commercial loan modifications, extensions, renewals, and/or loss mitigation.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, to the extent same exist, Plaintiff will produce any such documents upon execution of a non-disclosure and confidentiality agreement. Plaintiff would further state that the manuals, guidelines, policies, practice memoranda, or other instructional materials are constantly being updated and prior versions are destroyed.

11. All records of any loan write-downs or write-offs established by you for any anticipated loss from the Loan.

ANSWER: No such documents exist.

12. All documents that concern, show, reflect, or otherwise evidence the value of any collateral that secures the Loan.

ANSWER: All such documents, to the extent same exist, not otherwise privileged and which are in the possession or control of the Plaintiff are attached hereto in electronic format as Bates Numbers FSB/EI – 000001 through FSB/EI – 001316.

13. All documents that concern, show, reflect, or otherwise evidence any mortgage on, or any security interest in, any collateral that secures the Loan.

ANSWER: All such documents, to the extent same exist, not otherwise privileged and which are in the possession or control of the Plaintiff are attached hereto in electronic format as Bates Numbers FSB/EI – 000001 through FSB/EI – 001316.

14. All documents that concern, show, reflect, or otherwise evidence the net worth, assets, liabilities, finances, or financial condition of any person or entity that you contend is liable for the Loan, including without limitation, Defendants Brust and Rosenberg.

ANSWER: Plaintiff objects to this Requests for Production to the extent that it seeks documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seeks information related to matters beyond the scope of the issues raised by this action; are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure, or violates privacy laws. Notwithstanding such objections, any such documents relating to Defendant Rosenberg, to the extent same exist, will be produced upon the consent of Defendant Rosenberg or Court Order. All such documents relating to Defendant Brust, to the extent same exist, are attached hereto in electronic format as Bates Numbers FSB/EI – 000001 through FSB/EI – 001316.

15. All documents that concern, show, reflect, or otherwise evidence any communications (written, oral, electronic, or otherwise) between you or your employees, agents, officers, representatives, or anyone acting on your behalf and any person or entity (or any employee, agent, officer, or representative thereof) that you contend is liable for the Loan, including without limitation, Defendants Brust and Rosenberg.

ANSWER: Plaintiff objects to this Requests for Production to the extent that it seeks documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seeks information related to matters beyond the scope of the issues raised by this action; are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure, or violates privacy laws. Notwithstanding such objections, any such documents relating to Defendant Rosenberg, to the extent same exist, will be produced upon the consent of Defendant Rosenberg or Court Order. All such documents relating to Defendant Brust, to the extent same exist, are attached hereto in electronic format as Bates Numbers FSB/EI – 000001 through FSB/EI – 001316.

16. All documents that concern, show, reflect, or otherwise evidence any communications (written, oral, electronic, or otherwise) between or among your employees, agents, officers, representatives, or anyone acting on your behalf relating to the Loan or Ecological Investments, LLC.

ANSWER: All such documents, to the extent same exist, not otherwise privileged and which are in the possession or control of the Plaintiff are attached hereto in electronic format as Bates Numbers FSB/EI – 000001 through FSB/EI – 001316.

17. All documents that concern, show, reflect, or otherwise evidence any communications (written, oral, electronic, or otherwise) sent or received by you or your employees, agents, officers, representatives, or anyone acting on your behalf and any other person relating to the Loan or Ecological Investments, LLC.

ANSWER: See Plaintiff's Answer to Request for Production No. 16.

18. All documents that concern, show, reflect, or otherwise evidence your intent to lend money to Ecological Investments, LLC or to require any person to personally guarantee any loan made by you to Ecological Investments.

ANSWER: Plaintiff craves reference to the Commitment Letter previously produced in this matter. All such documents, to the extent same exist, not otherwise privileged and which are in the possession or control of the Plaintiff are attached hereto in electronic format as Bates Numbers FSB/EI – 000001 through FSB/EI – 001316.

19. All documents that concern, show, reflect, or otherwise evidence Ecological Investment's intent to borrow money from you or any person's intent to guaranty any loan made by you to Ecological Investments.

ANSWER: See the Commitment Letter previously produced. The Loan documents are attached hereto in electronic format as Bates Numbers FSB/EI – 000001 through FSB/EI – 001316.

20. All documents relating to the Loan, including without limitation, the loan file, emails, correspondence, financial statements, bank statements, closing documents, appraisals, property records, notices, loan officer notes and/or comments, internal memoranda, and personal financial statements and tax returns of guarantors.

ANSWER: All documents requested herein, to the extent same exist, not otherwise privileged and which are in the possession or control of the Plaintiff are attached hereto in electronic format as Bates Numbers FSB/EI – 000001 through FSB/EI – 001316.

21. A complete and itemized statement from the date of the origination of the Loan to the present of all payments, fees, penalties, interest, or other charges received by you for the Loan.

ANSWER: All such documents, to the extent same exist, not otherwise privileged and which are in the possession or control of the Plaintiff are attached hereto in electronic format as Bates Numbers FSB/EI – 000001 through FSB/EI – 001316.

22. All collection notes, reports, memos, statements, entries, data records, computer records, daily records, calendar reports, default reports, collection contacts, collection reports, or other documents generated in connection with the Loan.

ANSWER: All such documents, to the extent same exist, not otherwise privileged and which are in the possession or control of the Plaintiff are attached hereto in electronic format as Bates Numbers FSB/EI – 000001 through FSB/EI – 001316.

23. All documents relating to all accounts that Ecological Investments, LLC currently has or previously had with you, including without limitation, bank statements, account balances, transaction logs, invoices, receipts, checks, deposit slips, and ledgers.

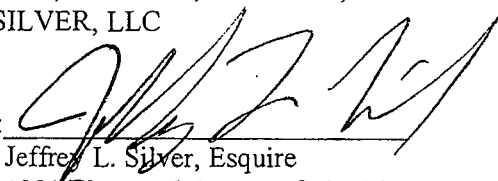
ANSWER: All such documents, to the extent same exist, not otherwise privileged and which are in the possession or control of the Plaintiff are attached hereto in electronic

format as Bates Numbers FSB/EI – 000001 through FSB/EI – 001316 or are available for review at mutually agreeable time and date at the offices of the Plaintiff in Bluffton, South Carolina.

24. All documents relating to any business transactions or dealings between you and Defendant Rosenberg and any entity in which he has a financial or ownership interest or affiliation, including but not limited to Ecological Investments, LLC, Ecological Education Center, Inc., Butterly Kingdom Emporium, LLC, Efficient Energy Advisors, LLC, and AirPro Cooling & Heating, LLC, including any correspondence, emails, bank statements, loan applications, contracts, agreements, promissory notes, guaranties, and mortgages.

ANSWER: Plaintiff objects to this Requests for Production to the extent that it is unduly burdensome, seeks documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seeks information related to matters beyond the scope of the issues raised by this action; are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure, or violates privacy laws. Notwithstanding such objections, any such documents relating to Defendant Rosenberg, to the extent same exist, will be produced upon the consent of Defendant Rosenberg or Court Order. All such documents relating to Ecological Investments, LLC, to the extent same exist, not otherwise privileged and which are in the possession or control of the Plaintiff are attached hereto in electronic format as Bates Numbers FSB/EI – 000001 through FSB/EI – 001316.

TYLER, CASSELL, JACKSON, PEACE
& SILVER, LLC

By: 

Jeffrey L. Silver, Esquire
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 252-7689
ATTORNEYS FOR PLAINTIFF

12-20-2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
C/A NO.: 2013-CP-07-0610

First South Bank,

vs.

John E. Rosenberg and Philip J. Brust,

Plaintiff,

Defendants,

**PLAINTIFF'S 1ST SUPPLEMENTAL
RESPONSES TO DEFENDANT PHILIP J.
BRUST'S FIRST SET OF
INTERROGATORIES**

**TO: DEFENDANT PHILIP J. BRUST AND HIS ATTORNEY OF RECORD, ROBERT E.
SUMNER, IV, ESQUIRE**

Plaintiff herein provides its 1ST supplemental answers Defendant's First Set of
Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, as follows:

GENERAL OBJECTIONS

Plaintiff objects to Defendant's Interrogatories to the extent they: (1) seek to expand the
limits of discovery allowed under the South Carolina Rules of Civil Procedure; and (2) seek
information protected by the attorney/client privilege, the work product doctrine, or any other
applicable privilege or doctrine. Subject to the above general objections, the following is
provided.

SUPPLEMENTAL ANSWERS TO INTERROGATORIES

1. Identify every person who has assisted in the preparation of responses to these
Interrogatories and Defendant Brust's First Set of Requests for Production.

ANSWER:

Tim Pless
Chief Information Officer
1450 John B. White Sr. Blvd.
Spartanburg, SC 29306

Tim Ellis
Compliance/Security Officer
1450 John B. White Sr. Blvd.
Spartanburg, SC 29306

2. Identify the full name, address, job, title, and telephone number of each person known to you or your counsel to have knowledge of any of the facts, events, circumstances, claims, or allegations surrounding this lawsuit and indicate whether or not written or recorded statements have been taken from each person and, if so, indicate who has possession of such statements and, if not, set forth a specific summary sufficient to inform Defendant Brust of the important facts known to or observed by each person.

ANSWER:

Tim Pless
Chief Information Officer
1450 John B. White Sr. Blvd.
Spartanburg, SC 29306
No written or recorded statements have been taken.

Mr. Pless has knowledge of the Plaintiff's software and electronic record keeping and its protocols related to same.

Tim Ellis
Compliance/Security Officer
1450 John B. White Sr. Blvd.
Spartanburg, SC 29306
No written or recorded statements have been taken.

Mr. Ellis has knowledge of the Plaintiff's software and electronic record keeping and its protocols related to same.

13. Identify all communications between any other person, including any appraisers, and you and any of your employees or agents regarding the Loan, collateral securing the Loan, Ecological Investments, LLC, and any guarantors of the Loan.

ANSWER: Plaintiff objects to the extent this interrogatory is overly broad and unduly burdensome and/or seeks information and documents already in custody and control of Defendant. Notwithstanding such objection, Plaintiff does not maintain an oral communication log and therefore cannot identify any and all oral communications. All communications reduced to writing in the custody and control of Plaintiff have been produced in Plaintiff's Answers to Defendant Philip J. Brust's First Requests for Production of Documents. Additionally, Patrick Wright, the Vice President for Plaintiff, recalls various conversations with Defendant Brust during the infancy stages of the underwriting process and at various times throughout the Loan related to Defendant Brust's personal guaranty of the loan, the underwriting requirements, financials, modifications and/or renewals, marketing of the property, and application of the proceeds of sale for an easement.

14. Explain specifically each reason you made the Loan to Ecological Investments, LLC, including the rationale, basis, and any documents relied upon for each decision to make, renew, modify, or extend the Loan, including those renewal, modifications, and/or extensions

effected on January 14, 2008; May 27, 2008; August 26, 2008; October 15, 2008; January 21, 2010; and November 30, 2010, and the loan in January 2009 in the amount of or about Two Hundred Seventy-Five Thousand and No/100 Dollars (\$275,000.00).

ANSWER: See Plaintiff's Answers to Defendant Philip J. Brust's First Requests for Production of Documents, specifically FSB/EI-001217-FSB/EI-001224 and FSB/EI-001235-FSB/EI-001252 which sets forth the terms, purpose, and parameters of the Loan. That further the original Note and each of the subsequent renewals and modifications set forth the maturity date of the Loan and by the terms of such renewals and modifications, extends the previous maturity date.

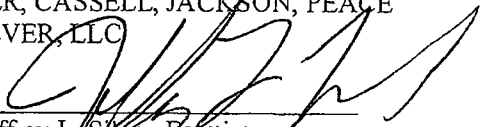
15. Identify all transactions and/or dealings between you and Defendant Rosenberg and any entity in which he has a financial or ownership interest or affiliation, including but not limited to Ecological Education Center, Inc., Butterly Kingdom Emporium, LLC, Efficient Energy Advisors, LLC, and AirPro Cooling & Heating, LLC, regardless of whether such transactions and/or dealings were of a personal nature or related to Ecological Investments, LLC. In answering this interrogatory, include the identity of the persons involved in the transaction, the date of the transaction, the nature of the transaction, and whether the transaction or the obligations thereunder are currently effective.

ANSWER: Plaintiff objects to this Interrogatory to the extent that it seeks information not relevant to the issues in this litigation; is not reasonably calculated to lead to discovery of relevant or admissible evidence; seeks information related to matters beyond the scope of the issues raised by this action; are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure, or violates privacy laws. Notwithstanding such objections, see Plaintiff's Supplemental Response to Defendant's Request for Production of Documents, Bates No. FSB/EI 001624 through FSB/EI 001625.

17. To the extent that documents that are responsive to Defendant Brust's First Set of Requests for Production of Documents are or once were in existence but are not in your possession or control, identify those documents. In the events that emails or other electronic documents have been destroyed, please include the date of destruction, a description of the subject matter of any destroyed documents and a description of any document retention/destruction policies maintained by you for the applicable timeframe.

ANSWER: Plaintiff objects to this Interrogatory to the extent it seeks information that is overly broad and unduly burdensome. Plaintiff is informed and believes all documents to the extent same exist have already been produced in response to the Plaintiff's Response to Defendant's Request for Production of Documents and Plaintiff's Supplemental Response to Defendant's Request for Production of Documents.

TYLER, CASSELL, JACKSON, PEACE
& SILVER, LLC

By: 

Jeffrey L. Silver, Esquire

Taylor A. Peace, Esquire

1331 Elmwood Avenue, Suite 300

Post Office Box 11656

Columbia, South Carolina 29211

(803) 252-7689

ATTORNEYS FOR PLAINTIFF

April 2, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
C/A NO.: 2012-CP-07-4597

First South Bank,

vs.

John E. Rosenberg and Phillip J. Brust,

Defendants.

Plaintiff,

**PLAINTIFF'S FIRST SUPPLEMENTAL
RESPONSES TO DEFENDANT PHILLIP
J. BRUST'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS**

**TO: PHILLIP J. BRUST AND HIS ATTORNEY OF RECORD ROBERT E. SUMNER,
IV, ESQUIRE**

Plaintiff herein supplements its answers Defendant's First Set of Requests to Produce to
Plaintiff pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, as follows:

GENERAL OBJECTIONS

1. Plaintiff objects to these Requests for Production to the extent that they seek documents or other materials protected by the attorney client privilege or the Work Product Doctrine. If any document or other material protected by either of these doctrines is inadvertently produced, that is not to be deemed a waiver of the protection afforded to those documents, and Plaintiff requests that the parties return such document and all copies thereof upon request to the undersigned.

2. Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure.

3. Plaintiff objects to these Requests for Production to the extent that they are overly broad and/or unduly burdensome and to the extent that they seek information not within its possession or control.

4. Plaintiff objects to these Requests for Production to the extent that they contain vague and undefined terms that render them unsuitable for response.

5. These responses are made solely for the purpose of responding to discovery requests promulgated in this action and should not be construed as an admission of relevancy, materiality, or admissibility. Plaintiff reserves the right to seek exclusion of any response (or any document produced in connection with any such response) at trial and preserves all evidentiary objections, including but not limited to, objections as to confidence, relevance, materiality, and admissibility and preserves any other objections to exclude any statement contained in a document produced in response to these requests as if such statement had been made by a witness present and testifying in court. All such objections and grounds are reserved and may be interposed at the time of trial.

6. The responses set forth herein are based upon information that has been collected and/or reviewed for the purpose of responding to these requests. Plaintiff reserves the right to supplement its responses in the event it obtains additional information that has been requested.

7. Each of the above general objections is incorporated into all of the responses set forth below and no response is to be deemed a waiver of any of the above general objections whether or not specifically set forth in the response.

RESPONSES TO REQUESTS TO PRODUCE

4. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to real estate or commercial loan underwriting.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably

calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, all documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI 001317 through FSB/EI 001622 and FSB/EI 001626 through FSB/EI 001626 through FSB/EI 001633.

5. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to real estate or commercial loan closing standards or requirements.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, all documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI 001317 through FSB/EI 001622 and FSB/EI 001626 through FSB/EI 001626 through FSB/EI 001633.

6. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to powers of attorney.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. Further, Ecological Investments, LLC, was represented by counsel at the closing. The closing attorney delivered to Plaintiff an Opinion Letter certifying the proper preparation and execution of the Power of Attorney. Notwithstanding such objections, all documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI 001317 through FSB/EI 001622 and FSB/EI 001626 through FSB/EI 001626 through FSB/EI 001633.

7. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to loan commitment letters.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this

Request for Production is inconsequential. Notwithstanding such objections, all documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI 001317 through FSB/EI 001622 and FSB/EI 001626 through FSB/EI 001626 through FSB/EI 001633.

8. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to the personal guaranty of loans to an entity.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, all documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI 001317 through FSB/EI 001622 and FSB/EI 001626 through FSB/EI 001626 through FSB/EI 001633.

9. All manuals, guidelines, policies, practice memoranda, or other instruction materials of yours that relate to document retention and/or destruction.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, all documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI 001317 through FSB/EI 001622 and FSB/EI 001626 through FSB/EI 001626 through FSB/EI 001633.

10. All manuals, guidelines, policies, practice memoranda, or other instruction materials of yours that relate to commercial loan modifications, extensions, renewals, and/or loss mitigation.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, all documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI 001317 through FSB/EI 001622 and FSB/EI 001626 through FSB/EI 001626 through FSB/EI 001633.

14. All documents that concern, show, reflect, or otherwise evidence the net worth, assets, liabilities, finances, or financial condition of any person or entity that you contend is liable for the Loan, including without limitation, Defendants Brust and Rosenberg.

ANSWER: Plaintiff objects to this Requests for Production to the extent that it seeks documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seeks information related to matters beyond the scope of the issues raised by this action; are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure, or violates privacy laws. Notwithstanding such objections, all documents to the extent same exist in the custody and control of Plaintiff were previously included in Plaintiff's Responses to Defendant's First Request for Production of Documents and further documents are attached hereto as documents Bates No. FSB/EI 001624 through FSB/EI 001625.

15 All documents that concern, show, reflect, or otherwise evidence any communications (written, oral, electronic, or otherwise) between you or your employees, agents, officers, representatives, or anyone acting on your behalf and any person or entity (or any employee, agent, officer, or representative thereof) that you contend is liable for the Loan, including without limitation, Defendants Brust and Rosenberg.

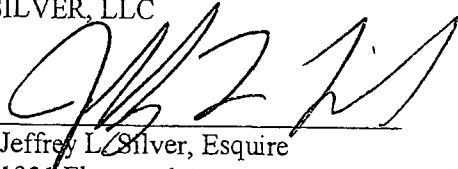
ANSWER: Plaintiff objects to this Requests for Production to the extent that it seeks documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seeks information related to matters beyond the scope of the issues raised by this action; are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure, or violates privacy laws. Notwithstanding such objections, all documents to the extent same exist in the custody and control of Plaintiff were previously included in Plaintiff's Responses to Defendant's First Request for Production of Documents and further documents are attached hereto as documents Bates No. FSB/EI 001317 through FSB/EI 001633.

24. All documents relating to any business transactions or dealings between you and Defendant Rosenberg and any entity in which he has a financial or ownership interest or affiliation, including but not limited to Ecological Investments, LLC, Ecological Education Center, Inc., Butterfly Kingdom Emporium, LLC, Efficient Energy Advisors, LLC, and AirPro Cooling & Heating, LLC, including any correspondence, emails, bank statements, loan applications, contracts, agreements, promissory notes, guaranties, and mortgages.

ANSWER: Plaintiff objects to this Requests for Production to the extent that it is unduly burdensome, seeks documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seeks information related to matters beyond the scope of the issues raised by this action; are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure, or violates privacy laws. Notwithstanding such objections, all documents to the extent same exist in the custody and control of Plaintiff were previously

included in Plaintiff's Responses to Defendant's First Request for Production of Documents and further documents are attached hereto as documents Bates No. FSB/EI 001624 through FSB/EI 001625.

TYLER, CASSELL, JACKSON, PEACE
& SILVER, LLC

By: 

Jeffrey L. Silver, Esquire
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 252-7689
ATTORNEYS FOR PLAINTIFF

April 2, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2013-CP-07-00610
	)	
FIRST SOUTH BANK,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT PHILIP J. BRUST'S
vs.	)	SUPPLEMENTAL RESPONSES TO
	)	PLAINTIFF'S FIRST SET OF
JOHN E. ROSENBERG and PHILIP J.	)	REQUESTS TO ADMIT
BRUST,	)	
	)	
Defendants.	)	

TO: JEFFREY L. SILVER, ESQUIRE, Attorney for Plaintiff:

Defendant Philip J. Brust provides the below Supplemental Responses to Plaintiff's First Set of Requests to Admit, dated October 3, 2013, as follows:

SUPPLEMENTAL RESPONSES TO REQUESTS TO ADMIT

12. Prior to the maturity of the Note, Brust made no communication, written or otherwise, with Plaintiff regarding Rosenberg's lack of authority, actual, apparent, or otherwise, to execute the Guaranty on his behalf.

RESPONSE:

Due to Defendant's incapacity, Defendant cannot admit or deny the truth of the matters asserted in Request to Admit No. 12 based on lack of information and knowledge. Defendant's attorney-in-fact and counsel have made reasonably inquiry into the matters asserted in Request to Admit No. 12 and the information known or readily obtainable is not sufficient to enable an admission or denial.

SUPPLEMENTAL RESPONSE:

Defendant's counsel have reviewed documents currently in their possession related to this matter and admit that such documents do not include any written communications by Defendant with Plaintiff regarding Rosenberg's lack of authority, actual, apparent, or otherwise, to execute the Guaranty on his behalf. Defendant's counsel reserve the right to amend or modify this response upon the discovery of such documents which may reveal written communications from Defendant to Plaintiffs regarding Rosenberg's lack of authority, actual, apparent, or otherwise, to execute the Guaranty on his behalf.

13. Prior to the maturity of the Note, Brust made no communication, written or otherwise, regarding the revocation of the Guaranty.

RESPONSE:

Due to Defendant's incapacity, Defendant cannot admit or deny the truth of the matters asserted in Request to Admit No. 13 based on lack of information and knowledge. Defendant's attorney-in-fact and counsel have made reasonably inquiry into the matters asserted in Request to Admit No. 13 and the information known or readily obtainable is not sufficient to enable an admission or denial.

SUPPLEMENTAL RESPONSE:

Defendant's counsel have reviewed documents currently in their possession related to this matter and admit that such documents do not include any written communications by Defendant regarding the revocation of the Guaranty. Defendant's counsel reserve the right to amend or modify this response upon the

discovery of such documents which may reveal written communications by
Defendant regarding the revocation of the Guaranty.

MOORE & VAN ALLEN PLLC

By: 

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ATTORNEYS FOR DEFENDANT
PHILIP J. BRUST

CHARLESTON, SC

April 28th, 2014

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
C/A NO.: 2012-CP-07-4597

First South Bank,
Plaintiff,

vs.

John E. Rosenberg and Phillip J. Brust,
Defendants.

**PLAINTIFF'S SECOND
SUPPLEMENTAL RESPONSES TO
DEFENDANT PHILLIP J. BRUST'S
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

**TO: PHILLIP J. BRUST AND HIS ATTORNEY OF RECORD ROBERT E. SUMNER,
IV, ESQUIRE**

Plaintiff herein supplements its answers Defendant's First Set of Requests to Produce to
Plaintiff pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, as follows:

GENERAL OBJECTIONS

1. Plaintiff objects to these Requests for Production to the extent that they seek documents or other materials protected by the attorney client privilege or the Work Product Doctrine. If any document or other material protected by either of these doctrines is inadvertently produced, that is not to be deemed a waiver of the protection afforded to those documents, and Plaintiff requests that the parties return such document and all copies thereof upon request to the undersigned.

2. Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure.

3. Plaintiff objects to these Requests for Production to the extent that they are overly broad and/or unduly burdensome and to the extent that they seek information not within its possession or control.

4. Plaintiff objects to these Requests for Production to the extent that they contain vague and undefined terms that render them unsuitable for response.

5. These responses are made solely for the purpose of responding to discovery requests promulgated in this action and should not be construed as an admission of relevancy, materiality, or admissibility. Plaintiff reserves the right to seek exclusion of any response (or any document produced in connection with any such response) at trial and preserves all evidentiary objections, including but not limited to, objections as to confidence, relevance, materiality, and admissibility and preserves any other objections to exclude any statement contained in a document produced in response to these requests as if such statement had been made by a witness present and testifying in court. All such objections and grounds are reserved and may be interposed at the time of trial.

6. The responses set forth herein are based upon information that has been collected and/or reviewed for the purpose of responding to these requests. Plaintiff reserves the right to supplement its responses in the event it obtains additional information that has been requested.

7. Each of the above general objections is incorporated into all of the responses set forth below and no response is to be deemed a waiver of any of the above general objections whether or not specifically set forth in the response.

RESPONSES TO REQUESTS TO PRODUCE

1. All documents reviewed, referenced, consulted, or otherwise used in responding to the Defendant Brust's First Set of Interrogatories to Plaintiff.

ANSWER: All such documents, to the extent same exist, not otherwise privileged and which are in the possession or control of the Plaintiff contained in the loan files of Plaintiff concerning Ecological Investments are available for review by Defendant at a mutually agreeable time at the Offices of Plaintiff in Bluffton, South Carolina. However, copies of originals specifically identified and requested by Defendant after review of the said loan files of Plaintiff concerning Ecological Investments on April 22, 2014 at the offices of Plaintiff in Spartanburg, South Carolina, are attached hereto as Bates No. FSB/EI001634 through FSB/EI001863.

4. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to real estate or commercial loan underwriting.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, all additional documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI001706 through FSB/EI001863 the same being those manuals, guidelines, policies, and practice memoranda, or other instructions materials in effect at the time of the origination of the Loan which is the subject of this action, together with all amendments, modifications, and/or updates which are contained therein.

5. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to real estate or commercial loan closing standards or requirements.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, all additional documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI001706 through FSB/EI001863, the same being those manuals, guidelines, policies, and practice memoranda, or other instructions materials in effect at the time of the origination of the Loan which is the subject of this action, together with all amendments, modifications, and/or updates which are contained therein.

6. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to powers of attorney.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related

to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. Further, Ecological Investments, LLC, was represented by counsel at the closing. The closing attorney delivered to Plaintiff an Opinion Letter certifying the proper preparation and execution of the Power of Attorney. Notwithstanding such objections, all additional documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI001706 through FSB/EI001863 the same being those manuals, guidelines, policies, and practice memoranda, or other instructions materials in effect at the time of the origination of the Loan which is the subject of this action, together with all amendments, modifications, and/or updates which are contained therein.

7. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to loan commitment letters.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, all additional documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI001706 through FSB/EI001863 the same being those manuals, guidelines, policies, and practice memoranda, or other instructions materials in effect at the time of the origination of the Loan which is the subject of this action, together with all amendments, modifications, and/or updates which are contained therein.

8. All manuals, guidelines, policies, practice memoranda, or other instructional materials of yours that relate to the personal guaranty of loans to an entity.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, all additional documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI001706 through FSB/EI001863 the same being those manuals, guidelines, policies, and practice memoranda, or other instructions materials in effect at the time of the origination of the Loan which is the subject of this action, together with all amendments, modifications, and/or updates which are contained therein.

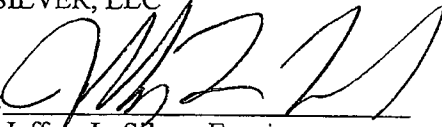
9. All manuals, guidelines, policies, practice memoranda, or other instruction materials of yours that relate to document retention and/or destruction.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, all additional documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI001706 through FSB/EI001863 the same being those manuals, guidelines, policies, and practice memoranda, or other instructions materials in effect at the time of the origination of the Loan which is the subject of this action, together with all amendments, modifications, and/or updates which are contained therein.

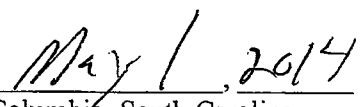
10. All manuals, guidelines, policies, practice memoranda, or other instruction materials of yours that relate to commercial loan modifications, extensions, renewals, and/or loss mitigation.

ANSWER: Plaintiff objects to these Requests for Production to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; seek information related to matters beyond the scope of the issue raised by this action; or are otherwise beyond the scope of discovery provided for by the South Carolina Rules of Civil Procedure. The Loan which is the subject of this action was approved and completed and accordingly this Request for Production is inconsequential. Notwithstanding such objections, all additional documents to the extent same exist in the custody and control of Plaintiff are attached hereto as documents Bates No. FSB/EI001706 through FSB/EI001863 the same being those manuals, guidelines, policies, and practice memoranda, or other instructions materials in effect at the time of the origination of the Loan which is the subject of this action, together with all amendments, modifications, and/or updates which are contained therein.

TYLER, CASSELL, JACKSON, PEACE
& SILVER, LLC

By: 

Jeffrey L. Silver, Esquire
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 252-7689
ATTORNEYS FOR PLAINTIFF


Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2013-CP-07-00610
	)	
FIRST SOUTH BANK,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF WILLIAM C.
vs.	)	BARKSDALE
	)	
JOHN E. ROSENBERG and PHILIP J.	)	
BRUST,	)	
	)	
Defendants.	)	
	)	

PERSONALLY appeared before me, William C. Barksdale who, being duly sworn, on oath, deposes and says that:

1. I am over eighteen (18) years old. I am competent to give this affidavit, and it is based upon my own personal knowledge.

2. I am a resident of Columbia, South Carolina.

3. I graduated from the University of South Carolina with a degree in English and an MBA in Finance. I am also a graduate of the Stonier Graduate School of Banking and have received Basic, Standard, Advanced and General American Institute of Banking Certificates. A copy of my curriculum vitae is attached hereto as Exhibit A.

4. I have worked as a banker and in the field of commercial lending for over thirty (30) years, and I currently work as a consultant providing services to financial institutions regarding banking and commercial lending matters.

5. I have been retained by Phillip J. Brust to serve as an expert witness in this lawsuit.

4. I have reviewed documents produced by the parties and transcripts of the depositions of Terry Finger, Esq., and First South Bank's Rule 30(b)(6) corporate representative Patrick Wright.

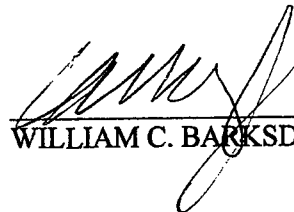
5. Based on my education, training, and experience, and my review of the documents in this case, I am of the opinion that First South Bank failed to comply with the standard banking practices for the underwriting, closing and administration of the loans in question. Specifically, First South Bank failed to comply with the standard banking practices in the following ways:

- a. Failing to properly investigate the value of the property that served as collateral on the loan;
- b. Failing to properly investigate the business plan for the Butterfly Kingdom;
- c. Failing to properly communicate with the borrower and alleged guarantors before, during, and after the closing;
- d. Failing to obtain and/or adequate financial records from the borrower and alleged guarantors;
- e. Improperly agreeing to finance the interest payments for the loans in question and taxes owed on the property;
- f. Improperly making the loan based on inadequate and speculative sources of repayment;
- g. Failing to inform the borrower and alleged guarantors of the terms of the loan as set forth in the Commitment Letter issued by the bank on January 9, 2006, and failing follow the terms of the Commitment Letter;
- h. Failing to obtain an attorney opinion letter or otherwise confirm the proper execution of loan documents from Borrower's counsel;
- i. Failing to attend the loan closing;
- j. Failing to communicate with Brust regarding the terms of the Guaranty or provide a copy of the Guaranty to Brust;
- k. Failing to communicate with Brust or anyone else regarding the Power of Attorney;

- l. Exceeding the authority granted in the Power of Attorney;
- m. Failing to consult with bank counsel regarding the Power of Attorney;
- n. Improperly modifying, renewing, applying payments, and changing the terms of the loan in question without communicating with Brust;
- o. Failing to retain proper documentation of the loans;
- p. Failing to follow bank policies and procedures related to commercial loan underwriting, closing, and administration;

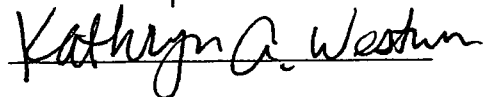
6. I reserve the right to supplement the opinions set forth herein as additional information becomes available during the course of this litigation.

Further, the Affiant sayeth naught.


WILLIAM C. BARKSDALE

SWORN to before me this 30th

day of MAY, 2014



Notary Public of South Carolina

My commission expires: 7/25/15

EXHIBIT "A"

WILLIAM C. BARKSDALE, JR.
1119 Princeton Street
Columbia, SC 29205
WBarksd759@aol.com
Office: 803-256-8009

CAREER

Principal - **Barksdale & Associates**. Provides services to Financial Institutions, Trade Associations and others on commercial lending matters including expert testimony in lender liability cases. Formerly Senior Vice President, Wachovia Bank of South Carolina and South Carolina National Bank. Career responsibilities include Senior Loan Officer, Head of Loan Administration, Special Assets Management, Lender Training, Loan Policy and Procedures Formulation Maintenance and Management, Commercial Real Estate Workout Management. Extensive involvement in workout and problem credit situations as well as lending, risk management, loan review and OREO functions.

EDUCATION

Graduate of the University of South Carolina with a degree in English and an MBA in Finance. Graduate - Stonier Graduate School of Banking -Thesis topic Bank Liquidity Management. Basic, Standard, Advanced and General American Institute of Banking Certificates. Risk Management Associates Loan Management Seminar graduate. Certified Lender Business Banking designation.

TEACHING

Former faculty member at, The Graduate School of Banking at The University of Wisconsin, Madison, Barret School of Banking at Christian Brothers University in Memphis, and The South Carolina Bankers School at The University of South Carolina. Instructor for Risk Management Association in Detecting Problem Loans, Problem Loan Workouts, Cash Flow Analysis and Financial Statement Analysis. Former instructor for The American Institute of Banking's Internet program instructing Analyzing Financial Statements, Commercial Lending and Problem Loans and Workouts.

Teaching experience- Faculty Member Stonier Graduate School of Banking at Georgetown University teaching Commercial Loan Portfolio Management, Credit Quality Maintenance and Problem Loans and Workouts. Interim Problem faculty member The Pacific Coast Banking School at The University of Washington, Faculty member The Southwestern Graduate School of Banking at SMU teaching Basic and Advanced Lending and Problem Loan Management, Faculty Member National Commercial Lending Graduate School, teaching Organization For Lending, Loan Portfolio Management and served as co-coordinator of the school's Interim Case Problem. Faculty Member National Commercial Lending School, teaching Problem Loans and Workouts. Faculty Member of the South Carolina Bankers School, teaching in the Loan Policy and Administration area and Loan Workouts. Served two terms as adjunct professor of Business Administration at the University of South Carolina. Lectured at the USC School of Law on Secured Transactions. Conducted seminars for Georgia Southern University's continuing business education program. Faculty Member Golden Gate University Graduate School teaching

Management Policy and Administration in their MBA program. Has spoken and lectured frequently in various capacities in continuing education programs for the legal, accounting and insurance professions. American Institute of Banking instructor for 15 years - teaching Accounting, Principles of Banking, Credit Administration, Bank Management, Fundamentals of Mortgage Lending and Fundamentals of Small Business Banking and Introduction to Commercial Lending. Faculty member Risk Management Association Commercial Lending School at East Carolina University

International teaching experience includes seminars on Problem Asset Management for the Czech Bank Training Institute in Prague, Czech Republic and for The Warsaw Institute of Banking in Warsaw, Poland. Daniel Management Center at The University of South Carolina-conducted seminars on lending and financial analysis in programs for Polish and Lithuanian bankers.

PROFESSIONAL

Past President Carolinas-Virginias Chapter of The Risk Management Association, the International Association of Risk Managers. Other duties with RMA at the national level include service on its Chapters Division Council and its Professional Development Council, chairing its Lender Training Round Table, participating in its Loan Management Seminar and service as a Director of the National Association. Life Member of RMA. Past President of the South Carolina Student Loan Corporation Board. Past director of Business Development Corporation of South Carolina. Past Chairman of the South Carolina Bankers School. Served in an advisory capacity to The Stonier Graduate School of Bank Management and The National Commercial Lending Schools. Consulted for investment bankers and investors on potential Savings & Loan purchase transactions. Has served on educational advisory boards of ABTAC, Risk Management Association and The American Bankers Association.

PUBLICATIONS

Published articles on loan officer training in the RMA "Journal of Commercial Lending". Co-authored the book How to Borrow Money, which has been produced as a video by Bankers Training and Consulting Company for use by banks nationwide in training and community outreach programs.



FINGER & ANDREWS, P.A.
ATTORNEYS AT LAW
P.O. BOX 24005
HILTON HEAD ISLAND, SC 29925-4005
STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

200100027372
Filed for Record in
JASPER COUNTY
MARGARET BUSTICK
09-04-2001 At 10:32 am.
POWER ATTY 10.00
Volume 243 Page 24 - 25

SPECIFIC LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, Philip Brust, of Hilton Head Island, SC, do hereby make, constitute and appoint Terry A. Finger of Hilton Head Island, South Carolina, as my true and lawful attorney, to appear for me, and in my name, place and stead, to execute any and all documents, and to perform any lawful act or to execute or amend any document, instrument, or thing, which may be involved in the financing of real property located in the State and County aforesaid, known as 82.68 acres, Sgt. Jasper State Park, Jasper County, South Carolina, including, but not necessarily limited to, the power to execute as my act and deed any document, instrument, contract, assignment, affidavit, disclosure, deed, note, mortgage, guarantee, etc. and to pay sums on my account, or to execute any such other documents as may be necessary to close the financing transaction with Lighthouse Community Bank in the original principal sum of \$1,400,000.00.

I hereby vest my Attorney in Fact with all authority needed and necessary to accomplish the above-captioned purpose, with full power of substitution, as fully as if I might do the same in my own capacity at any time subsequent to the date hereof and prior to my revocation.

I hereby declare that any act or deed lawfully performed by my Attorney in Fact pursuant to the within Specific Limited Power of Attorney shall be binding upon me and my heirs, legal and personal representatives and assigns.

I hereby indemnify and hold my Attorney in Fact harmless against any and all claims, damages, suits or injury whatsoever, including reasonable attorneys fees, arising out of his exercise of the within granted powers.

IN WITNESS WHEREOF, I have hereunto set my hands and seal to the within Specific Limited Power of Attorney this 17 day of June, 2001.

IN THE PRESENCE OF:

2) [Signature]
(Witness)

3) [Signature]
(Notary)

BY: [Signature]
Philip Brust

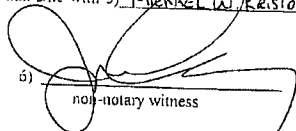
Instrument Volume Page
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FINGER 00121

RECORD 0749

STATE OF South Carolina)
) PROBATE
COUNTY OF Beaufort)

PERSONALLY appeared before me 4) John E Rasenberg, who on oath, says that s/he saw the within named Philip Brust sign the within Power of Attorney, and as his free act and deed deliver the same, and that s/he with 5) Michael W. Kestoff witnessed the execution thereof.

6) 
notary witness

SWORN to before me this 17
day of August, 2001

7)  (SEAL.)
Notary Public for SC
My Commission Expires: 5-1-2002

- 2 -

DEED BOOK 243 PAGE 264
DATE 9-6-01
David Holmes
AUDITOR JASPER COUNTY SC

FINGER 00122

RECORD 0750

SECTION 501INDEX1-11-00 PAGE 1.0TAB (SECTION) TOPIC

	501	Index
2	502	Introduction / Philosophy / Mission Statement
3	503	Loan Authority / Approvals
4	504	Loan Applications / Form / Requirements
5	505	Loan Review / Reporting
6	506	Financial Statements
7	507	Repayment Plans / Structuring
8	508	Insiders / Officers / Employees
9	509	Borrowing Authorizations
10	510	Co-Obligors / Guarantors / Endorsers
11	511	Unsecured
12	512	Lines of Credit
13	513	Term Loans
14	514	Pledged Collateral / Trust Receipts / Hypothecation
15	515	Stocks
16	516	Bonds
17	517	Savings / CDs
18	518	CSV Life Insurance
19	519	Equipment Loans
20	520	Accounts Receivable / Business Manager
21	521	Inventory
22	522	Real Estate - Commercial
23	523	Appraisals
24	524	UCC
25	525	Laws / Regs
26	530	Past Due / Non-Accrual / Problem Loans
27	(Reserved)	
28	<u>540 Series:</u>	
	540	Account Profitability / Rates / Fees
	541	Letters of Credit
	542	Municipal Loans
	543	Government Guaranteed Loans
	544	Inquiries
	545	Participations
	546	Subordination
29	<u>550 Series:</u>	(Reserved)
30	580	Form Listing & Samples
31	590	Bulletins

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First South Bank

LOAN POLICY

I. MISSION STATEMENT

First South Bank is a community focused bank offering quality loan services to its market areas. The attainment of sustainable earnings with growth, provided by a quality loan portfolio is central to the attainment of overall goals. We will develop and maintain loan relationships with safety and soundness as the central theme, and on a non-discriminatory basis. Our clients will receive superior service, and will become ambassadors for FSB's further success.

II. GENERAL POLICY

- A. The Management and Board of Directors of the bank believe that sound loans are a desirable and profitable means of employing the funds available for investment. Authorized bank employees are expected to develop loan business consistent with bank goals. In the allocation of resources available for loans, primary consideration shall be given to existing or potential customers with economic interest primarily within the general trade area of the bank, which are the Cities of Spartanburg and Columbia, and the counties in which they are located. While existing customers will be given prime consideration, loans shall also be made to good, non-depositing individuals or firms when appropriate yields can be attained. It is a goal to make all borrowers full relationship customers.

The Loan Policy of First South Bank shall guide and direct all officers and personnel in the preferred manner under which the bank's objectives are to be achieved by establishing a consistent yet flexible guide for loan officers, and a written standard providing for proper control and review of the loan portfolio. Likewise, this policy is written to assist employees, officers and directors with a clear and consistent place of reference on loan policy in an effort to assure that a sound, profitable loan portfolio results. It is expected that this policy will also provide for a flexible approach to the bank's lending function, which will enable it to meet the changing needs of our clients and of the bank.

SECTION 502**GENERAL POLICY****1-20-00 PAGE 2.0**

- B.** It is the belief of Management and the Board of Directors, that a primary function of a community bank is to provide its business, professional and consumer community with a source of loan funds marketed in a manner so as to develop sound banking relationships, profitable to the bank, at an acceptable level of risk. These loans should include short-term working capital loans, installment loans for the purchase of consumer goods and services, and longer amortized loans for the purchase of commercial and residential real estate, and fixed assets.
- C.** The Board of Directors of the bank realizes that the lending of money by the bank necessarily includes reasonable business risks, and that some losses are to be expected even though standard banking procedures and prudent judgment is used. It is the policy of the Board of Directors to maintain a reserve for future loan losses in a manner consistent with prudent banking practices and regulations.
- D.** It is the bank's philosophy to emphasize the quality of its loan portfolio rather than its size. The presence of large regional banks in our marketplace with significant resources and lending capabilities is acknowledged. It is our strategy to concentrate our lending efforts on the retail and small businesses and professional segments in our Spartanburg and Columbia trade area with some spill over to contiguous counties. The primary two industries in Spartanburg County are textiles and manufacturing, while for Richland County the economy is service oriented with a heavy presence of state government, university, and the military.

In the retail market, the bank will be focusing on a wide range of credit facilities including direct auto loans, home equity, checking overdraft credit lines, other monthly payment consumer purpose loans, and credit cards. (see Concentrations of Credit Section IX-G of this Loan Policy).

SECTION 502GENERAL POLICY1-20-00 PAGE 3.0

- E. The bank shall comply with all required State and Federal regulations, which include but are not limited to the following: Community Reinvestment Act, Truth-in-Lending Act, Equal Credit Opportunity Act, Real Estate Settlement Procedures Act, Financial Institution Reform, Recovery and Enforcement Act of 1989, Fair Housing Act, Home Mortgage Disclosure Act, Electronic Funds Acts, FRB Regulations O and U.
- F. Loans over the legal lending limit of the bank shall not be made unless at the time of disbursement or loan closing (whichever is earlier) the excess portion (overline) has been sold to another lending entity. It shall be the duty of the President to determine if particular loans to and/or guarantees from individuals or firms are so related as to constitute one loan within the lending limit prohibition. This determination shall be based on the guidelines of the bank's regulatory agencies.
- G. The maximum loan to deposit ratio of the bank will be recommended by the Investment/Asset Liability Committee and approved by the Board of Directors.
- H. Given the potential for rapid changes in interest rates, the bank will strive to maintain a majority of the loan portfolio in variable rate loans. Fixed rates should only be made where it is necessary and when a premium is being charged that justifies the rate risk for the specific term. The Board gives authority to establish specific interest rates and fees to the Loan Committee, and as a result a Loan Rate Schedule is utilized by all loan officers. These Schedules will be revised from time to time by that Committee.
- I. Consumer and Commercial Loan Policy Manuals will be prepared and kept updated to more specifically address loan types, collateral, forms, procedures, etc. which are too comprehensive to include in this Loan Policy statement.

SECTION 502GENERAL POLICY1-20-00 PAGE 4.0III. IMPORTANCE OF THE LOAN FUNCTION

- A. The lending function is of prime importance as it invests the majority of our deposits from a growing customer base into loans which constitute the majority of our earning assets. The loan portfolio is meant to (1) respond to loan demand (2) provide diversification (3) provide liquidity through an appropriate maturity schedule (4) provide profitable interest spreads (5) respect appropriate credit standards and prudent judgment, and (6) indicate a conservative policy capable of being responsive and flexible in our current evolutionary banking environment.

IV. DEVELOPMENT AND IMPLEMENTATION OF LOAN POLICY -
LOAN COMMITTEE

- A. This loan policy has been adopted by the Board of Directors and gives ultimate responsibility for the performance of the bank's loan portfolio to the President.
- B. The Board of Directors has given to the Loan Committee direct authority to approve loans and implement policy changes. The Loan Committee will directly supervise the bank's lending function to ensure that proper loan policies are carried out. The Loan Committee shall have the authority to approve loans up to the Board Approved limit for any individual, partnership, or corporate borrower.
- C. Regular meetings of the Board of Directors are held monthly. The Loan Committee will meet monthly or on call, if so needed, to consider any lending matter.
- D. The Loan Committee shall assign lending authority to each lending officer and the Loan Committee which consists of the Chairman of the Board, the President, the Regional Executives, Senior Loan Administrator, and other members of the Board of Directors upon invitation, and all others appointed by the President. The loan authority may be changed from time to time by the Loan Committee to meet current needs.

FSB/EI 001711

SECTION 502GENERAL POLICY1-20-00 PAGE 5.0**V. ROLE OF LOAN OFFICERS**

A. Because no single set of guidelines or policies can be all inclusive, the importance of the human element in lending remains paramount. There is no substitute for sound reasoning, good judgment, the loan officer experience. The bank will make every effort to promote these qualities in its lending personnel.

All officers must recognize also that flexibility is needed to further the bank's interests.

B. The Loan Officer's Objectives shall be to:

- (1) Establish a sound asset structure;
- (2) Provide a liquid yet profitable loan portfolio to protect depositor funds and maximize shareholder return;
- (3) Promote the stable economic growth and development of the trade area served by the bank;
- (4) Maximize the profitability of each relationship through appropriate credit pricing and the sale of multiple bank products and services.

C. Loan officers will represent the bank in the community and implement this loan policy in dealings with clients.

VI. TYPES OF LOANS**A. General Classes**

- (1) Mortgage Loans —The bank will provide term mortgage loans secured by commercial properties with such loans priced at either a fixed rate or a floating rate based on a

FSB/EI 001712

SECTION 502GENERAL POLICY1-20-00 PAGE 6.0

maximum thirty (30) year amortization, with a maximum five (5) year "balloon" payment term. Appropriate appraisals including cost, market and income data will be required based on the sophistication and size of the loan. (See Section 523 for the type appraisal required.) The source of repayment in most cases should be from projected earnings and cash flow of the business. (See - Consumer Loan Manual for consumer Mortgage Loans.)

(2) Consumer Loans and Consumer Revolving Credits. (Refer to Consumer Loan Manual)

(3) Business Loans

(4) Employee Loans (Refer to Section 508)

(5) Leases — Leases will require the same credit approval as any loan and will be made under the same pricing, term, credit standards, etc., as any other credit facility.

(6) Letters of Credit — Secured and Unsecured Standby Letters of Credit are underwritten just as our other credits.

B. Diversification

All loans must meet the tests of prudence in terms of risk, return, and liquidity. The President shall ensure that proper diversification is achieved in regards to type, client, and maturity, and that proper interest rate sensitivity is maintained.

SECTION 502GENERAL POLICY1-20-00 PAGE 7.0**VII. INTEREST RATES AND PRICING**

- A. Interest rates and pricing decisions will be made after taking into consideration among others, the following principal factors:**

- (1) The Risk Factor (Including the credit grade)**
- (2) Maturity of the Loan**
- (3) Type of Loan and Anticipated Servicing Requirements**
- (4) Banking Relationship — present and anticipated**

- B. Interest rates will be reviewed at the time a secondary review by the Loan Committee is provided on all credits of \$25,000 (excluding First Equity Lines, First Reserve and Credit Cards) or more (single loans or commitments - not total relationships).**
- C. The bank will change the rates on loans with rates tied to prime immediately when decisions are made internally to change our prime (and as agreed within the terms of the notes).**
- D. The timely collection of interest and fees can enhance yields tremendously. Most interest should be collected on a monthly basis with some exceptions for quarterly interest payments. Close attention shall be paid to past due loans.**
- E. As this bank develops and permits additional staff, target yield techniques will be considered in an effort to provide more specific guidelines to loan officers and assure better consistency in obtaining the levels of yields desired and necessary.**

SECTION 502GENERAL POLICY1-20-00 PAGE 8.0VIII. VARIOUS SPECIFIC POLICIESA. OVERDRAFT

The bank recognizes overdrafts as unsecured non-interest bearing loans, and as a rule they will not be allowed. Each overdraft shall require approval of the account Loan Officer or an appointed loan official and be permitted only on the customer's proven creditworthiness or ability to cover the overdraft from another deposit account at the bank. Overdrafts of employees and non-Executive Officers shall be covered on the day of their occurrence.

B. CREDIT FILES

Complete credit files including appropriate financial statements, credit reports, credit memos, etc. will be maintained and kept current on each borrower.

C. CONCENTRATION OF CREDIT

The bank's policy will be to conscientiously monitor the loan portfolio to assure a proper mix of loans to avoid excessive risks of credit concentration to any one individual (or company), related group of borrowers or industry. Our "House Limit," (see Section 503) represents the maximum for a credit concentration going forth. Any exceptions are to be ratified by the Loan Committee.

At least quarterly an evaluation of the economy locally is made by the Loan Committee (or a member as designated by the President) as a process in preparing our Loan Loss reserve position. This same data is input as we evaluate whether we need to increase or decrease specific loan types within our three broad categories: Real Estate Loans, Commercial and Industrial Loans, Individual and Consumer Loans.

FSB/EI 001715

SECTION 502**GENERAL POLICY****1-20-00 PAGE 9.0**

Quarterly, the "Loans Outstanding by Category" Report will be reviewed by the Loan Committee and Investment Committee. Our policy will be to not exceed the percentages below:

- 25% - Real Estate Loans
- 90% - Commercial and Industrial Loans
- 35% - Individual and Consumer Loans
(Includes Home Equity Loans)
- 20% - Business Manager Accounts

D. PROHIBITED PRACTICES

The bank's policy does not permit the following practices unless there are very unusual circumstances considered as an exception by the President:

1. The extension of principal due dates without the full payment of interest due.
2. The obtaining of separate notes in lieu of interest payments and/or as the capitalization of the interest by refinancing the old principal and the past due interest.

E. LOAN LOSS RESERVE

An appropriate Loan Loss reserve will be recommended monthly to the Board by the Loan Committee. The percentage of Loan Loss reserve to Gross Loans Outstanding will be determined after a review of the Note Risk Grades as of the month end dates, and after having applied a formula for such calculations which changes will be approved by the Board.

F. LOAN POLICY ITEMS NOT INCLUDED HEREIN

The President should be consulted for guidance in the event a matter arises for resolution or a loan request is received that requires a decision but cannot be identified within FSB written policy.

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SECTION 503LOAN AUTHORITY / APPROVAL PROCESS

5-11-05 PAGE 1.0

LOAN AUTHORITY DELEGATIONS AND LOAN LIMITS**I. LOAN AUTHORITY**

Board of Directors — Has the authority to approve loans and credit arrangements with the Unsecured and Secured Legal Lending Limits of the Bank as defined by State and Federal Regulations, and delegates this same authority to the Loan Committee.

Loan Committee — This Committee has the authority to approve Unsecured and Secured Lending Limits of the bank as stated below. The Loan Committee also sets Individual Loan Officer Limits. The members of this Committee are the holders of the following titles:

Chairman of the Board
 President and CEO
 Loan Committee Chairman
 Banking Group President
 Chief Credit Officer
 Senior Credit Officer

The Loan Committee on Dec. 15, 2004 set the following Lending Limits to a single borrower (loans to include direct and indirect loans, advances, commitments both to the borrower and liabilities of a firm where the borrower is a partner):

- **Two Thirds Legal Lending Limit - Loan Committee (Excluding First Equity Lines)** — on an unsecured basis, or if secured by other than prime collateral. (Carefully note the definition of "prime collateral" on the next two pages — as the definition of "prime collateral" applies to this Loan Authority.)
- **\$2,000,000 – In-House Limit Preferred Maximum Exposure (Excluding First Equity Lines)**
- **\$2,000,000 Co-Approval - Senior Credit Officer**
 (Chief Credit Officer with same co-approval authority)
- **\$3,250,000 Co-Approval - A combination of two, of the following three officers, may approve up to \$3,250,000: Chief Executive Officer; Chief Credit Officer; Senior Credit Officer.**

SECTION 503

LOAN AUTHORITY / APPROVAL PROCESS

3-15-00 PAGE 2.0

Individual Loan Limits — Individual loan limits listed below cannot be added together for larger loan approval other than the one exception set forth below. If a higher level authority is needed by an officer, they should get approval of an officer with a higher limit, or a majority vote of the full Loan Committee if needed.

Consumer Purpose — is hereby defined as any loan to an individual(s) where the purpose is personal, family or household in nature.

Business Purpose — is hereby defined as any loan to a corporation, partnership or proprietorship as well as any loan to an individual(s) where the purpose is not personal, family or household in nature.

Secured or Secured Limit — is hereby defined under this "Loan Authority Delegations and Loan Limit," to be loans or credits which have as collateral any of the following so long as the percentage of loan/collateral values and other terms and conditions are within our Loan policy.

- A. Prime Collateral (as defined in our Loan Policy Section 514)
- B. Real Estate Loans when all terms and conditions are within Loan Policy to include policy LTVs (see Section 522)
- C. Vehicle loans should not exceed 90% of the sales price of the vehicle as indicated by the new car invoice nor should they exceed loan value as shown by the NADA Book or Black Book. (see also Consumer Loan Manual)

Loans secured by collateral other than enumerated in A, B, and C above will be considered under the "Unsecured Limits" (i.e., machinery, equipment, mobile homes, etc.).

SECTION 503LOAN AUTHORITY / APPROVAL PROCESS3-15-00 PAGE 3.0

Exceptions to Policy — Any loan that is an exception to policy for any reason must be graded a 4 (or higher, i.e., 5, 6) and approved within the unsecured authority of the approving officer(s).

Legal Loan Limit — Provides for loans "not fully secured" to be limited to 15% of the unimpaired capital fund of the Bank. In order to make loans greater than 15% of the unimpaired capital, such loans or credit have to be "fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of funds outstanding." Loans or credits of up to 10% of unimpaired capital may be made in addition to the 15% (not fully secured) if made on a "fully secured" basis as defined above.

NOTE: Real estate is not eligible secured collateral for Legal Lending Limit Purposes.

II. LOAN APPROVAL PROCESS

- A. All loan applications will be processed in a timely manner by the Loan Officers.
- B. It shall be the duty of each lending officer to ensure that an appropriate loan application, (CAS), is prepared for each and every loan. This application (plus a supplementary credit memo if necessary) should contain the purpose of the loan, the factors which justify it, the plan and source of repayment, and other information relating to the borrower's total relationship with the bank.
- C. Financial Statement Requirements — Appropriate current financial statements on the borrower and other obligors of a loan are required, based on the nature and size of the credit, collateral, etc. (see also Section 506)

SECTION 503**LOAN AUTHORITY / APPROVAL PROCESS****3-15-00 PAGE 4.0**

- D. Loan Authority Delegations and Loan Limits are set forth in FSB "Lending Authority" forms for each Loan Officer.
- E. All loan approval authorities relate to the aggregate direct and indirect credit exposure and not on an individual loan basis.
- F. All loan extensions and modifications must be made using the same manner and underwriting requirements as new loan commitments. Approvals for modification or extensions should be "signed off on" and dated by the approving officer(s) on the back of the original application, or on a newly prepared CAS. Typically, loans with an original maturity of less than one year, or single pay notes (i.e. 90 days), should not be extended for an additional period or periods which result in extensions longer than the original term of the loan, or six months, whichever is less, unless a substantial principal reduction has been made and all other credit considerations remain favorable.
In order to maintain continuity on relationships every effort should be made to have the original loan officer "handle" any extensions or modifications.
- G. All loan requests must be approved or denied in accordance with Federal and State regulations. Special consumer credit procedures are detailed in the Consumer Loan Manual.

III. SPECIALTY ITEMS**A. OVERDRAFTS**

The bank recognizes overdrafts as unsecured non-interest bearing loans, and as a rule they will not be allowed. Each overdraft shall require approval of the account Loan Officer or an appointed loan official and be permitted only on the customer's proven creditworthiness or ability to cover the overdraft from another deposit account at the bank. (Overdrafts of employees and non-Executive Officers shall be covered on the day of their occurrence.)

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SECTION 503

LOAN AUTHORITY / APPROVAL PROCESS

12-16-04 PAGE 5.0

B. LETTERS OF CREDIT

Letters of credit are considered to be loans and their approval is to be identical with that for loans EXCEPT FOR the following further requirement: *All letters of credit, regardless of amount, are to be further countersigned by one of the following: President; Chief Credit Officer; or Senior Credit Officer*

C. FACTORING ACCOUNTS

"Business Manager" and similar receivables/factoring accounts are to be considered loans for approval purposes.

D. "ODD COLLATERAL"

Any collateral falling outside the classes covered in this manual are to be considered unsecured, unless approved on another basis by the President, Chief Credit Officer, or Senior Credit Officer to include LTV and repayment terms.

E. GOVERNMENT GUARANTEED LOANS

The full amount of loans with SBA or other government guarantees will be used for loan authority purposes, not just the un-guaranteed portion.

F. PARTICIPATIONS

The full amount of a participated loan sold will be used for loan authority purposes, not just the portion retained by FSB.

G. "WATCH LOANS"

All renewals, modifications, extensions, releases, and alterations of loans listed on the FSB "Watch List", other than receipt of payments, are to be *co-approved by either the President, Chief Credit Officer, or Senior Credit Officer.*

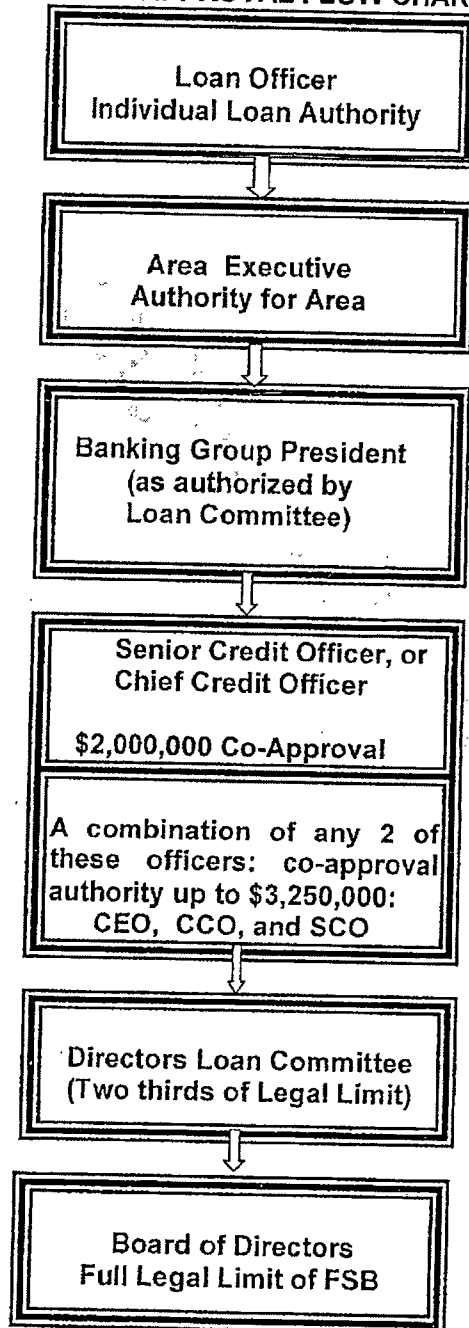
IV. LEGAL REVIEW OF LARGE LOANS

In addition to other requirements for various classes of collateral, and for loan approval, it is the policy of FSB to require outside legal counsel to review all loans exceeding \$1MM, and loans exceeding \$500M when their main collateral involves a security agreement AND UCC-1 filing. Loans properly margined with realty AND having clean title insurance policies are exempted. The cost for their opinion is to be borne by the customer.

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SECTION 503**LOAN AUTHORITY / APPROVAL PROCESS**

12-16-04 PAGE 6.0

LOAN APPROVAL FLOW CHART

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SECTION 504**LOAN APPLICATIONS / PACKAGING**1-20-00 **PAGE 1.0****I. APPROVAL FORM**

For every commercial loan, the file is to contain a completed Credit Approval Summary, (CAS), signed by the Loan Officer. This is to provide an overview of the loan, with specifics on its key points such as:

- Name and address of Borrower
- Employer or nature of entity and principals
- Date of Request
- Amount of Request
- Purpose of Request
- Term of Request / Maturity
- Repayment Sources, primary and secondary
- Collateral description, value, LTV
- Financial Statement date and data
- Guarantor F/S date and data
- Debt Service Coverage
- Risk Rating

Any exceptions to bank policy/waivers are to be cited with justification. Additional pages may be attached to further detail background, repayment, etc.

The **completed and signed CAS** will be used as the bank's official documentation attesting to the approval of outstanding loans. This will be for every level of approval through the full Board of Directors, and a copy of this form, (CAS), with approval signatures, will be in the appropriate credit file.

II. LOAN PACKAGE

In addition to the completed CAS, the Loan Officer will submit borrower financial statements, guarantor statements, appraisals, credit reports, and other pertinent documents with each specific loan request package when requesting higher approval. These same items will be provided to Loan Operations when a loan is approved and ready for booking. Required documentation is described in various sections of this manual, generally by collateral type.

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SECTION 505**LOAN REVIEW & REPORTING**

8-18-04 PAGE 1.0

I. LOAN ADMINISTRATION AND LOAN REVIEW**A. Loan Review**

The loan review function shall be the ultimate responsibility of the President, and shall include credit review, documentation and collateral review, regulatory compliance, and maintenance of the note department. It is acknowledged that delegation of some of these functions will be required. Part II below outlines the bank's "Loan Review Program."

B. Loan Grading

It is important that all loan officers use the same loan grading criteria to improve risk evaluation, to insure that proper servicing is maintained and to assist the Bank in maintaining an appropriate Loan Loss Reserve. Only with proper grading can the loan portfolio be priced to adequately compensate the Bank for a given level of credit risk. Every loan, (except Personal Lines, Home Equity Lines, and credit cards), regardless of amount will be graded at the time the loan is made. *There are a host of credit factors to be applied and weighed for each grade such as character, liquidity, cash flow, equity support, leverage, experience, and many others. Some will be more important in particular loans than in others. The loan officer must apply them wisely to arrive at the final risk grade.* The following risk grades (numbered 1 through 8) will be monitored on the loan system:

NOTE RISK GRADE (1) EXCEPTIONAL**No Apparent Risk; Highest Quality**

Exceptional graded loans are considered to be of excellent quality, having no apparent credit risk. These notes have multiple sources of repayment due to the strong financial condition and cash flow of the borrower. These sources of repayment may include access to the capital markets (selling stock or issuing subordinate debt), a strong cash flow, (generally a DSC ratio of 4x or better), a high level of liquidity relative to debt, a high level of net worth relative to total indebtedness and refinancing at a large number of banks. Unsecured notes graded Exceptional (1) must be supported by financial statements which exhibit good liquidity, long term favorable trends, and increasing or consistent earnings.

SECTION 505**LOAN REVIEW & REPORTING****8-18-04 PAGE 2.0**

Secured notes in this grade are typically collateralized by properly margined, readily marketable collateral such as First South Bank deposit accounts and/or short term government securities. Due to the strength of the primary borrower for a note in this grade, guarantees generally are not required. If the loan is secured, repayment should come from a source other than the liquidation of the collateral. Loans graded Exceptional (1) will require a minimal amount of servicing.

NOTE RISK GRADE (2) ABOVE AVERAGE QUALITY

Minimal Risk; Good Quality

Loans in this grade are considered to be of above average quality having a minimal amount of credit risk. These credits are sufficiently strong to minimize the possibility of loss. More than one source of repayment exists for notes that are graded Above Average (2). These sources of repayment include: (a) Consistent company earnings with a high level of cash flow; (generally a DSC Ratio of 2.5x or better), (b) The contraction of liquid assets other than those being financed; (c) Excellent job stability coupled with a low debt to income ratio; and/or (d) Refinancing with several other banks. Unsecured notes in this grade must be supported by financial statements which reflect established favorable and consistent trends. Advances on secured notes in this grade should be secured by highly marketable collateral and may sometimes be priced at rates less than those allowed by bank policy. Guarantors may or may not be required. If present, guarantors should exhibit excellent liquidity and capacity to repay. Only a moderate amount of servicing will be required on Above Average (2) credits.

NOTE RISK GRADE (3) STANDARD: WITH NO EXCEPTIONS TO LOAN POLICY

Average Risk; Acceptable Quality

Loans in this grade are considered to have a reasonable or satisfactory credit risk. Although some unfavorable factors may be present in the credit, other factors are sufficiently strong to minimize the possibility of loss. The majority of the

SECTION 505**LOAN REVIEW & REPORTING****8-18-04 PAGE 3.0**

Bank's portfolio should fall in the Standard (3) Risk Grade. A primary source of repayment, such as cash flow from operations, (generally a DSC Ratio of 1.4x or better), personal income of the individual, or liquidation of assets in the ordinary course of business should be readily identifiable and documented. Satisfactory secondary sources of repayment exist for these loans including collateral or refinancing at a limited number of banks. Generally, loans in this grade will be secured. The collateral securing these notes should be satisfactorily marketable. While a sale of the collateral could result in a decline in value, the funds received should cover the loan. Advances under loans in this grade normally do not exceed the maximum amount permitted by loan policy. Guarantors should have satisfactory ability to repay. Debt retirement could be handled by the guarantors over the term of the loan. A moderate amount of servicing will be required.

NOTE RISK GRADE (4) STANDARD WITH POLICY EXCEPTIONS**Average Risk; Acceptable Quality**

Notes in this grade should be identical to those in Risk Grade (3) Standard but credits in Risk Grade (4) will have exceptions to loan policy. It is important that these credits have no greater risk as a consequence of the policy exceptions. Typical exceptions to policy might be loan to value or terms slightly in excess of loan policy. It is essential that strengths in the credit outweigh policy exceptions so as to minimize the possibility of loss. DSC Ratio should be 1.2X or better. (At times exceptions to policy require the "sign off" of a Loan Officer's supervisor — see "Exhibit D" for details.)

NOTE RISK GRADE (5) SPECIAL**Higher Than Normal Risk; Lowest Acceptable Quality**

Loans graded Special (5) will have higher than normal credit risks and servicing needs. These could include loans with collateral margins that exceed bank policy, a borrower whose

SECTION 505**LOAN REVIEW & REPORTING****8-18-04 PAGE 4.0**

financial condition indicates a need or a higher degree of watchfulness (but not alarm), inconsistent operating results, a high degree of leverage, etc. Nevertheless, with an appropriate yield the Bank is willing to make these loans. The primary source of repayment may be anticipated cash flow from operations, (DSC Ratio a minimum of 1x), and most often the only satisfactory secondary source of repayment is the liquidation of collateral. Guarantors for these credits may add only minimal strength to the credit. Loans graded Special (5) demand a high amount of servicing. Close review is required since the loan has the potential for developing into an adverse situation due to the credits reaction to economic or industry conditions.

NOTE RISK GRADE (6) SPECIAL MENTION

Higher than Satisfactory Degree of Risk; Unacceptable Quality
 Loans in this grade do not meet bank credit standards. These loans may be currently protected, but are potentially weak. These constitute an undue and unwarranted credit risk, but not to the point of justifying a classification of substandard. The credit risk may be relatively minor, yet constitute an unwarranted risk in light of the circumstances surrounding a specific asset. These may have potential weaknesses which may, if not checked or corrected, weaken the asset or inadequately protect the bank's credit position at some future date. Loans which might be detailed in this category include credits that the lending officer may be unable to supervise properly because of a lack of expertise, an inadequate loan agreement, the condition of and control over collateral, failure to obtain proper documentation, or any other deviations from prudent lending practices. Economic or market conditions which may, in the future, affect the obligor; an adverse trend in operations, or an imbalanced position in the balance sheet that suggests future difficulty, may be evident.

All loans graded OLEM by the Bank's Examiners should be graded Special Mention (6), Substandard (7), or Doubtful (8).

SECTION 505LOAN REVIEW & REPORTING

8-18-04 PAGE 5.0

NOTE RISK GRADE (7) SUBSTANDARD

High Degree of Risk; Unacceptable Quality
Loans in this grade do not meet bank credit standards. Substandard Loans are considered to be of low or marginal quality, and when graded (7) will be placed on the "Watch List." Loans graded Substandard are inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Assets so classified have a well-defined weakness, or weaknesses that jeopardize the liquidation of the debt. These are characterized by the distinct possibility that the bank will sustain some loss if the deficiencies are not corrected. Usually these have a marginal primary source of repayment, and no secondary source of repayment can be identified other than the liquidation of the borrowers' assets. The value of the collateral may be difficult to determine and a limited market for the sale of collateral may exist. The capacity and willingness of the guarantors to honor their obligations may be uncertain or not favorable. Credits graded Substandard (7) require a maximum amount of watchfulness. Frequent account officer contact with the borrower and keeping a current "reading" on the financial status through updated financial statements are necessary. All loans graded Substandard by the Bank's Examiners should be graded Substandard (7) or as a Doubtful Credit (8).

NOTE RISK GRADE (8) DOUBTFUL / PROBLEM CREDIT

Workout and/or Non-Accrual Loan
Loans graded as DOUBTFUL credits (8) have all the weaknesses inherent in one classified substandard (7) with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors, which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until a more exact status may be determined. Pending factors include proposed merger, acquisition, or liquidation procedures, capital injection, perfecting liens on additional collateral, and refinancing plans. These are Watch List credits.

FSB/EI 001731

SECTION 505**LOAN REVIEW & REPORTING**

4-19-06 PAGE 6.0

II. LOAN REVIEW PROGRAM**A. INITIAL LOAN DOCUMENTATION REVIEW**

Every loan booked will be reviewed daily for documentation under the direction of the Loan Operations Manager. Any exceptions noted will be recorded for tracking, and the originating loan officer will be advised for corrective action. (The Loan Officer is responsible for all documentation on his/her loans.) The Chief Credit Officer will monitor the level, volume, and seriousness of exceptions and report to the President and Loan Committee quarterly or as deemed appropriate.

B. INITIAL LOAN QUALITY REVIEWS**1. Standard Review Process**

- a. All Commercial Loans will be forwarded daily to the Chief Credit Officer (CCO) after the above documentation review, for credit/underwriting and loan grade review. Review sheets and/or emails will be sent to loan officers and the credit file as needed, and to the President or Loan Committee when appropriate.
- b. Additionally, All new Commercial Loans of more than \$250M, or renewals #3 or more regardless of size, will be reviewed by the bank's Loan Review Officer or Credit Analyst, and an individual review sheet will be produced. These will be forwarded to the President, and then circulated to appropriate officers for information and action, and then become part of the customer credit file. The Loan Committee will receive for review, a copy of these reports for Watch loans, and other specific loan reports as deemed appropriate by the CCO or President.
- c. All Consumer Loans will be forwarded daily to the Consumer Loan Administrator for loan quality review. The loans will then be reviewed by the Compliance Officer for regulatory purposes. Loans with grades of 5 or worse, or with unusual aspects, will be forwarded to the CCO for further review. Subsequent standard review will consist of monitoring for past due payments, statements, and documentation.

2. Review of Co-Approved Loans

All loans co-approved by the Senior Credit Officer will be subject to review in the standard manner prescribed in this section of the manual, under the supervision of the Chief Credit Officer. Whenever the Chief Credit Officer co-approves a loan, it will be submitted for review to the Loan Committee. This policy will be followed regardless of other levels of review.

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SECTION 505**LOAN REVIEW & REPORTING****4-19-06 PAGE 7.0****C. ANNUAL LOAN AND RELATIONSHIP REVIEWS****1. Term Loans**

For long term loans, an annual quality review will be conducted by internal (or outsourced) review specialists, and/or the Credit Review Committee for notes with balances of \$500M or more. The review will be scheduled during the month of the notes anniversary booking date, or on receipt of annual financial statements, as appropriate.
(This will be for loans maturing beyond one year that are NOT annual renewal lines of credit, or renewal loans to be reviewed in accordance with section II B 2 above, or section II C 2 below.)

2. Large Relationships

For credit relationships with total aggregate exposures (TCE) in excess of \$1MM, an annual quality review will be conducted by the officers Credit Review Committee. When possible, these reviews will be scheduled during the month in which the annual financial statement update is received, or as circumstances dictate. The Directors Loan Committee will be briefed on the CRC findings at the next scheduled meeting.

D. RELATIONSHIPS / TOTAL CREDIT EXTENDED

When each loan is sent for booking, the Credit Approval form will reflect the total credit exposure (TCE) of the borrower, directly and indirectly. Loan reviews will also factor relationship indebtedness into their conclusions with an individual loan grade and a relationship grade.

E. WATCH LIST REVIEW

The Loan Committee will maintain a "watch list" of loans identified by management as warranting special attention for a variety of reasons bearing on ultimate collectibility. The following actions will be required:

- (1) Monthly, these loans will be reviewed by the Loan Committee, and at least quarterly by the Board of Directors along with data as to actions taken by management.
- (2) Typically all loans given a Risk Grade 6 (Special Mention); 7 (substandard), or 8 (doubtful) will be placed on the Watch List along with non-accruals. Management will review all grade 5 and better quality loans as deemed necessary.

F. CEO AND LOAN COMMITTEE SELECTED REVIEW

As a further review safeguard, the CEO and/or Loan Committee shall each be provided by the Loan Operations Manager, a loan system report containing a complete listing of loans made. The CEO and Loan Committee may then select any loan(s) for further review in whatever manner and by whomever they wish.

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SECTION 506FINANCIAL STATEMENTS1-20-00 PAGE 1.0I. IMPORTANCE OF FINANCIAL STATEMENTS

It is the loan officer's responsibility to evaluate loan applications and make sound credit decisions based on full knowledge of the borrower and the circumstances of the loan. In most instances, credit decisions rest largely on the financial strength of the borrower, and thus an analysis of the subject's financial statement is generally a crucial element of this process. *The loan officer must satisfy himself of the borrower's strength and ability to repay, apart from any collateral, or other secondary source.*

II. CURRENT STATEMENTS

Financial statements supporting FSB loans must be "current". This means the statement date must be less than one year old. (It is realized that annual business financials from accounting firms take some time to prepare, therefore, interim financials are recommended whenever possible to stay within the one year time frame.) **LOAN OFFICERS SHOULD BE ALERT TO BORROWERS WHO ARE DELINQUENT IN PROVIDING CURRENT FINANCIAL STATEMENTS.** *This may be an indication of financial problems.*

III. WHEN STATEMENTS ARE REQUIREDA. NEW LOANS; RENEWALS; MODIFICATIONS

Current financial statements will be required of borrowers and/or guarantors for:

1. Unsecured loans or commitments of \$5M and over.
2. Loans secured by owner occupied residential (1-4 family) realty, and/or commitments totaling \$50M and over.
3. Loans secured with properly margined prime collateral will not REQUIRE financial statements, but they are recommended.
4. All loans secured by other than prime collateral or with commitments that total \$50M and over.

The requirement for statements in the \$5M to \$50M zone is left to the loan officer's judgement. Their absence should be compensated for by other appropriate material such as applications, credit reports, appraisals, etc.

FSB/EI 001735

SECTION 506**FINANCIAL STATEMENTS****1-20-00 PAGE 2.0****B. ANNUAL UPDATE OF FINANCIAL STATEMENTS**

Current dated financial statements are required for all borrowers and guarantors for the following loans and commitments:

1. Unsecured loans of \$10M and more.
2. Loans secured by owner occupied residential (1-4 family) realty NOT required, (unless the loan is a renewal, or has its terms modified).
3. Loans secured by properly margined prime collateral, NOT required.
4. Loans secured by other than prime collateral of \$50M and more.

IV. PERSONAL FINANCIAL STATEMENTS

Personal financial statements must be dated and signed by the borrower or accountant. It is strongly preferred that they be presented on the standard FSB form, if not prepared by a CPA. Statements should be accurate, contain supporting schedules, income data, life insurance data, and identify assets not wholly owned by the borrower. Loan officers should inspect statements for accuracy, detail, and should sign and date when they are received. The borrower is also to sign the Representations and Warranties section of the FSB form, (FSB 613), or if another f/s form is used, sign the separate Certification of Financial Information form (FSB 614).

V. BUSINESS ENTITY FINANCIAL STATEMENTS

FSB policy is to obtain current financial statements on all business borrowing entities, regardless of their legal form of organization. These are to include as a minimum, a balance sheet and income statement. It is preferred that these be prepared by a CPA firm. Statements not prepared by a CPA are to be signed by an officer, partner, or member of the business. *In the case of new or "shell" entities that have no statement, the loan officer must write this on the CAS form stating the reason the statement is waived, and that the loan is based on other specified factors. Tax returns are encouraged for these situations.*

FSB/EI 001736

SECTION 506FINANCIAL STATEMENTS1-20-00 PAGE 3.0VI. INCOME TAX RETURNS

A copy of a borrower's Federal Income Tax Return is useful to supplement the customer's regular financial statements. For some small businesses and "shell" type entities, this may be the only available data.

FSB policy is to **require** tax returns on individual borrowers (and guarantors) for loans that require financial statements.

For business borrowers, copies of tax returns are **required IF** the business does not submit a CPA prepared statement.

(Tax returns are preferred file documentation for all FSB borrowers.)

VII. INTERIM FINANCIALS

For many borrowers it is prudent to obtain interim financials, whether semi-annually, quarterly, or monthly. This allows the loan officer to remain current on the financial health of the borrower. They are especially important for lesser quality credits, loans with trading assets as collateral, certain highly seasonal businesses, and after major developments are experienced by borrowers.

Interim financials also prevent a f/s exception while awaiting a borrower's latest fiscal year end statement.

VIII. NEW BUSINESS CUSTOMERS

FSB credit files will contain f/s for the last several fiscal years for business borrowers. For new clients, loan officers are requested to obtain statements for at least the latest 3 years, and when possible the latest 5 years. This will allow spreads and trend analysis.

SECTION 506**FINANCIAL STATEMENTS****1-20-00 PAGE 4.0****IX. BUSINESS STATEMENT TYPES/SUPPLEMENTS**

The **Balance Sheet**, a statement of assets, liabilities, and net worth and **Income Statement** are the two most basic types of financial statements and are the two minimal f/s requirements of the bank. It is preferred to have a **Cash Flow Statement** and **Net Worth Reconciliation** as well, plus explanatory footnotes and schedules. Projections for the upcoming year(s) are also to be obtained when available.

X. CPA PREPARED FINANCIALS

It is highly preferred to have business (and large personal borrower) financials prepared by Certified Public Accounting firms. The opinion they render, depending on the scope of their engagement with the borrower, will be one of the following:

- UNQUALIFIED or "clean" opinion is expressed without reservation when a complete and independent audit has been performed, and generally accepted accounting principles have been adhered to in consistency with the previous year. These are appropriate for loans, particularly on an unsecured basis, exceeding \$500M.
- QUALIFIED opinions are expressed when the CPA feels the statements reflect a generally fair presentation of the financial position of the company, but there is a lack of full satisfaction on certain aspects of the audit (limited as to scope) or in some instance GAAP were not followed. Thus there is some stated reservation ("subject to" or "except for") in the opinion. A statement with a QUALIFIED opinion should be signed by an officer of the company.
- REVIEW opinions indicate the CPA has studied the nature of the business, questioned its management, studied its accounting system, and has followed proper accounting procedures. However, NO AUDIT VERIFICATION is performed by the CPA. Loan Officers should be cautious in reliance on unaudited financials for unsecured credits in excess of \$50M.

SECTION 506FINANCIAL STATEMENTS1-20-00 PAGE 5.0

CONTINUATION: CPA PREPARED FINANCIALS

- **COMPILATION** opinions are rendered when statements are based solely on the numbers given the CPA by their client. There is absolutely no assurance by the CPA that the numbers are "right". Loan Officers should be cautious in reliance on unaudited financials for unsecured credits exceeding \$50M.
- **NEGATIVE** or **ADVERSE** opinions are seldom encountered, and Loan Officers should consult Loan Administration before proceeding with any loan request.

Loan officers should strive to get large borrowers to have CPAs prepare their annual statements. For those using CPAs, the upgrade from Compilations to Reviews, and from Reviews to audits should be an ongoing process, when appropriate for specific borrowers.

NOTE: Whenever a borrower changes CPA firms, or submits a lower quality statement (opinion), the loan officer should determine the reason, and note it in the credit file.

1740

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FSB/EI 001740

RECORD 0785

SECTION 507**REPAYMENT PLANS****7-17-03 PAGE 1.0****I. ALL LOANS MUST HAVE A DEFINITE REPAYMENT PLAN CLEARLY ESTABLISHED WITH THE BORROWER FROM LOAN INCEPTION.**

Evaluating the borrower's request should indicate the general repayment source, timing, and repayment program. The loan purpose may be seasonal, short or long term, with a variety of primary repayment sources. Identification of these generally points to the specific type of payback program that is most appropriate.

II. LOAN OFFICER'S RESPONSIBILITY.

It is the loan officer's responsibility to review the loan request, structure its terms to coincide with fund flows, and to clearly instruct the borrower on the repayment plan. **The loan officer should stress to the borrower the moral and legal importance of making payments on their due dates.** FSB expects borrowers to adhere to specified note payment terms, and failure to do so will jeopardize the borrower's relationship with the bank.

III. PLANS TO AVOID

There are many general types of loan repayment plans to avoid. Common sense and FSB policy include the following:

- Highly Leveraged Transactions
- When repayment is dependent upon some future event or circumstance beyond the direct control of the borrower (i.e. "when the market is right" etc.)
- When repayment is dependent on another creditor (other than permanent take outs on construction loans and similar situations)
- Demand loans
- Term loans not reducing in proportion to collateral depreciation
- Three or more renewals with no principal reductions, (interest only)
- Seasonal loans/lines with no annual payout period
- When repayment involves an undue speculative element, to include reliance on future earnings/cash flows above a customer's historic norm
- Plans requiring the success of new products, technologies, etc.
- When repayment is likely to depend on secondary sources
- Plans that have no secondary repayment sources

IV. EXTENSIONS, RENEWALS, MODIFICATIONS, DEFERRALS

Deferrals of principal or payments are reserved for special situations, and are to be rare, and on a case by case basis. When these occur, interest and fees are to be collected up front. This procedure is not to be used to avoid past due status, and is available only once per calendar year per loan. Exceptions are to be approved by the CEO or Chief Credit Officer.

1742

8

FSB/EI 001742

RECORD 0787

SECTION 508INSIDERS, OFFICERS, EMPLOYEES1-20-00 PAGE 1.0I. LOANS TO OFFICERS, EXECUTIVE OFFICERS, DIRECTORS, OR PRINCIPAL SHAREHOLDERS AND RELATED INTEREST OF EITHER

The intention of the Board of Directors is to comply with South Carolina General Statutes and Section 215 of the Federal Reserve System Regulation "O" (Code of Federal Regulations, Title 12, Chapter II, Part 215), and any revisions thereto as it relates to loans to Officers, Executive Officers, Directors, Principal Shareholders, and Related Interests of the latter three groups.

A. Officer

Loans to officers who are not designated as "Executive Officers" will be processed the same as any other employee loans under the "Employee Loan Policy" (Exhibit G Attached).

B. Executive Officers — are those bank officers so designated by the Board of Directors. (It is the Board's intent to comply with the definition of "Executive Officers" as set forth in Section 53-91 of the South Carolina General Statutes and Section 215 of the Federal Reserve System Regulation O, 12 C. F. R.

The South Carolina Statutes provide for loans to "Executive Officers" of up to \$25,000 to be made without approval of the Board of Directors. It shall be the bank's policy to ratify all such loans up to \$25,000 on an "after the fact" basis. These loans may also be made on an unsecured basis. Any borrowings in excess of \$25,000 are to be made supported by good collateral or ample security or endorsement, and after prior approval of the Board. (While the aggregate maximum amount that the bank may lend to an Executive Officer under the S.C. General Statutes is \$250,000, Regulation "O", effective 5/18/92, placed a more restrictive limit of \$100,000 as the maximum credit extension to an "Executive Officer" for "other purpose credits." The \$250,000 limitation under S.C. Statutes

FSB/EI 001743

SECTION 508INSIDERS, OFFICERS, EMPLOYEES1-20-00 PAGE 2.0

does not apply, however, to a loan for the purpose of purchasing a primary residence.)

A majority of the Board of Directors must by resolution in the minutes approve any loan to an "Executive Officer" in excess of \$25,000 whether or not the State Statutes or Regulation "O" governs. The resolution must set forth:

1. Names of the Directors approving the resolutions, and
2. Amount of the loan, and
3. A brief description of the security of the loan.

C. Directors or Principal Shareholders and their Related Interests

1. The Bank's separate Loan Policy Manual — Regulation "O" section should be consulted before committing any loans to this group.

D. Other Related Matters

1. Terms and Creditworthiness - The bank will not extend credit to any of its "Executive Officers," Directors, or principal shareholders or to any related interest of that person unless the extension of credit: ① is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for a comparable transaction by the bank with other bank customers who are not "Executive Officers," Directors or principal shareholders, etc., and ② does not involve more than the normal risk of repayment or present other unfavorable features.
2. Overdrafts — The bank may not pay an overdraft of an "Executive Officer" or Director on an account at the bank unless the payment is made in accordance with our present First Reserve or First Equity account. This prohibition

SECTION 508INSIDERS, OFFICERS, EMPLOYEES1-20-00 PAGE 3.0

does not apply to inadvertent overdrafts which aggregate \$1,000 or less, provided the account is not overdrawn for more than two business days, and the bank collects its regular fee for an overdraft item. Principal shareholders and Related Interests are not affected by this restriction.

- E. All loans and credit commitments to non-officer employees are to be ratified by the Loan Committee.

All loans and credit commitments to Officers are to be ratified by the Loan Committee (except that loans to Officers designated by the Board as "Executive Officers" must be approved by the Board of Directors as required under South Carolina Statutes and Regulation "O").

II. LOANS TO "EXECUTIVE OFFICERS," DIRECTORS, PRINCIPAL SHAREHOLDERS AND THEIR "RELATED INTERESTS"

Credit extended to these persons (as designated by the Board of Directors) must be made in full compliance of Regulation "O" requirements including the fact that they must be made at rates, and on terms and conditions normally available to other parties in the marketplace using similar credit strength, collateral, and terms and circumstances.

SECTION 508INSIDERS, OFFICERS, EMPLOYEES1-20-00 PAGE 4.0**EMPLOYEE LOAN POLICY****(APPROVED BY BOARD OF DIRECTORS ON JULY 17, 1996)****III. PURPOSE OF EMPLOYEE LOAN PROGRAM.**

The purpose of the Employee Loan Program is to meet the normal consumer needs of Bank employees. It is not intended nor designed for investment or speculative purposes or to provide long-term financing of real estate.

IV. QUALIFICATIONS FOR SECURING AN EMPLOYEE LOAN

- A. Must be an employee or officer of First South Bank.
- B. Employees must be active and working at least 20 hours per week.
(Either full time or regular part-time employees.)
- C. Employees must be at least eighteen years of age.
- D. Employees must have been employed at least 90 days before an application for any type of credit will be considered. (Exceptions may be made by the President when he deems necessary in negotiating employment terms with new employees.)

V. OPERATING POLICY

- A. All loans to employees are to be made under the Employee Loan Policy.

FSB/EI 001746

SECTION 508INSIDERS, OFFICERS, EMPLOYEES1-20-00 PAGE 5.0

- B. All employee loan applications will be subject to a credit investigation.
- C. When an employee does not have established credit, applications generally will be considered with a qualified guarantor.
- D. The Bank will have the right to limit the number of loans, First Reserve accounts and credit card accounts an employee may have. This limit will generally be one (1) charge card (MasterCard or Visa), one (1) First Reserve account and one (1) consumer loan outstanding at any one time.
 - ☒ (Consumer loan could consist of either a First Equity Line or other usual type consumer notes — auto, etc.)
- E. All loan applications and credit records will be kept by the Human Resources Department. (Unless the Application is a part of the note — i.e., Credit Card Application, etc.)
- F. All note and collateral documents will be kept by the Loan Operations Department.
- G. The employee is encouraged to set up Consumer and First Equity Line accounts on a monthly draft.

VI. LOANS TO SPOUSES WHERE EMPLOYEE DOES NOT ENTER INTO LOAN APPLICATION, AND TO CHILDREN OR CLOSE RELATIVES OF EMPLOYEES

- A. Loan applications of this type will be considered as regular bank consumer loans using normal bank lending underwriting policies.
- B. Loans of this type will be made at the normal customer interest rates.
- C. These loans will still be reviewed as other regular customer credits.

FSB/EI 001747

SECTION 508INSIDERS, OFFICERS, EMPLOYEES1-20-00 PAGE 6.0VII. RESPONSIBILITY

- A. The employee's immediate supervisor will interview, take the employee's application, and present the loan package to the Consumer Loan Administrator who will be responsible to make the final decisions on the credit.
- B. The employee's immediate supervisor will communicate the final decision to the employee.

VIII. LOAN INTEREST RATES, CONDITIONS, LIMITS AND TERMS

- A. Employee loan interest rates will be established by the Loan Committee. They are subject to change and can be obtained from the employee's immediate supervisor.
- B. Employee loans will be made consistent with normal bank lending policy relative to collateral if a secured loan or income, financial strength and other obligations if an unsecured loan.
- C. The maximum term for a secured loan at the employee interest rate shall be sixty (60) months (except First Equity Line which normal maturity is fifteen (15) years) and the maximum term for an unsecured loan, thirty-six (36) months. Loan applications requesting longer term, single payment notes, etc. will be handled on an individual basis based on the particular situation of the application and at an interest rate and term deemed appropriate by the Bank.
- D. The employee will be required to stay within established credit limits on charge card and cash reserve accounts. If they exceed their limit, they will be notified and can apply for a limit adjustment. If the increase in limit is denied, they will be required to reduce their indebtedness to within the established limit. If this problem persists, the Bank retains the right to terminate the account privileges.

FSB/EI 001748

SECTION 508INSIDERS, OFFICERS, EMPLOYEES1-20-00 PAGE 7.0IX. APPLICATION PROCEDURES

- A. Employee must come directly to his or her immediate supervisor to apply for a loan.
- B. The employee must fill out the normal and usual loan or credit application for the desired credit.
- C. The Human Resources Department will obtain a current credit report.
- D. A personal financial statement will be required for an unsecured loan or where total unsecured debt exceeds \$5,000.
- E. The Bank retains the right to require a financial statement or other supporting credit documentation to justify the current employee rate for the specific loan type (First Reserve 16%, for example). The employee acknowledges the fact that should he/she leave the Bank, he/she understands the interest rate will automatically convert to the current product rate. See attached addendum.

X. DELINQUENCIES

- A. Delinquency on an employee loan will not be permitted.
- B. If an employee loan becomes delinquent (more than 15 days past due), the employee will be contacted by his or her immediate supervisor. If the loan becomes thirty (30) days past due, the employee will be required to meet with his or her immediate supervisor to discuss the problems. If the loan becomes forty-five (45) days past due, payments will automatically be placed on a payroll deduction.
- C. If an employee loan requires the payroll deduction, the employee's credit privileges will be revoked until the loans are paid in full.

SECTION 508INSIDERS, OFFICERS, EMPLOYEES4-6-04 PAGE 8.0XI. PROCEDURE UPON TERMINATION OF EMPLOYEE

- A. An employee's First Reserve, and First Equity Line will be reviewed by the Consumer Loan Administrator. At the Bank's option, the account will either be continued at the regular customer rate or terminated. (See attached "Employee Loan Addendum" to be executed at the time an Employee Loan is booked.)
- B. All other employee consumer loans will be due in full upon termination. Refinancing the loan will be at the option of the Bank and if done, will be done at regular terms and interest rates consistent with the type of loan, credit strength, and other relationships anticipated to remain with the Bank.

XII. CURRENT EMPLOYEE LOAN RATE SCHEDULE

WHEN EMPLOYEE LOANS ARE MADE IN CONFORMANCE WITH OUR EMPLOYEE LOAN POLICY, OUR EMPLOYEE RATES WILL BE AS FOLLOWS:

1. First Reserve Account — 16%
2. First Equity Line — .75% reduction from our regular rate as of application date.
3. Consumer Installment Loans — Variable: 1% reduction from our regular rate as of application date; Fixed 2% reduction from our regular rate as of application date, or PRIME rate, whichever is greater.

XIII. OFFICER LOANS

Loans made to officers who are not Executive Officers (as designated by the Board of Directors) will be handled in the same manner as other employee loans.

FSB/EI 001750

SECTION 508**INSIDERS, OFFICERS, EMPLOYEES**

4-6-04 PAGE 9.0

EMPLOYEE LOAN ADDENDUM

I hereby understand and agree that should I leave the employment of First South Bank, the employee loan account identified below can either be continued at the then in effect customer rate or terminated at the option of the Bank. This action will take place within thirty (30) days after termination.

Amount	Acct. #	Employee Rate	Fee	APR	Client Rate

Credit Card

First Reserve

Consumer Loan

Equity Line

(Circle One)

Date: _____

Witness: _____

(SEAL)

Consumer Loan Administrator

Employee

First South Bank
CURRENT EMPLOYEE LOAN RATE SCHEDULE

WHEN EMPLOYEE LOANS ARE MADE IN CONFORMANCE WITH OUR
 EMPLOYEE LOAN POLICY, OUR EMPLOYEE RATES WILL BE AS FOLLOWS:

1. First Reserve Account — 16%
2. First Equity Line — .75% reduction from our regular rate as of application date.
3. Consumer Installment Loans — Variable: 1% reduction from our regular rate as of application date; Fixed 2% reduction from our regular rate as of application date, or PRIME rate, whichever is greater.

FSB/EI 001751

#9

02/24/20

FSB/EI 001752

SECTION 509BORROWING AUTHORIZATION1-20-00 PAGE 1.0

This section addresses the most commonly encountered borrowing entities and signing authority for notes and related documents.

I. INDIVIDUALS

Use the borrower's full name. This should be identical to the name used for the borrower's deposit accounts maintained with FSB.

II. PROPRIETORSHIPS

The proper method of execution by a proprietor is as follows:

John's Specialty Shop

BY: John S. Smith
Proprietor (or owner)

The proprietor is liable as an individual for the obligations of his business. The use of the FSB personal guarantee form (COG-WG) is nevertheless recommended.

The signature of the spouse may also be necessary on a real estate mortgage or other collateral instrument when jointly owned personal property is involved. The bank credit file should contain an authorization form (BS - SPR-1).

III. PARTNERSHIPS

The proper method of execution by a partnership is as follows:

Smith and Jones

BY: Edward K. Smith
Partner

BY: Alfred F. Jones
Partner

The signature is defective unless the partner indicates the existence of the partnership by the addition of the word "partner" after his signature.

FSB/EI 001753

SECTION 509BORROWING AUTHORIZATION1-20-00 PAGE 2.0

(partnerships continued)

Authorization: A partnership authority form (BS – PR-1) should be in the customer credit file. This is to establish the existence of the partnership, and to designate which partners are authorized to sign checks, drafts, etc. as well as notes and other loan documents on behalf of the partnership. ALL partners should sign this form confirming their agreement on any designated parties.

Loan proceeds are to be deposited into the partnership account with FSB, or the partnership is to be referenced on the proceeds check. This will document that the proceeds were not for an individual partner's private/personal use.

FSB guarantee forms (COG-WG) are recommended whenever possible for signature by all partners.

IV. CORPORATIONS

The proper method of execution by a corporation is as follows:

Able Corporation

BY: John A. Doe
Treasurer (or other corporate title)

Authorization: No corporate borrowings are to be allowed unless the bank is furnished with a certified copy of the resolution passed by the corporation's board of directors which states that the board has authorized certain officers to execute loan papers, to sign checks/drafts, and that the bank may deal with these certain named persons who hold offices which have the requisite authority. FSB form (BS – CA-1) is to be obtained after signature by the corporate Secretary, with the corporate seal affixed.

Loan proceeds are to be deposited into the FSB account, or the check made or referenced to the corporation.

FSB guarantee forms (COG-WG) are required for closed corporations.

FSB/EI 001754

SECTION 509**BORROWING AUTHORIZATION****1-20-00 PAGE 3.0****V. OTHER BUSINESS FORMS**

There are other legal forms for business entities including Professional Associations, Professional Corporations, Limited Liability Companies, Limited Liability Partnerships, and Limited Partnerships.

Each of these is to supply the bank with an appropriate borrowing authority resolution (such as BS – LLC-1 or BS – OA-1), and certificate of existence from the state. Loans are to be executed by the authorized party. **FSB policy is to consider all of these as though they are corporations, and to obtain the FSB personal guarantee from appropriate principals.**

VI. FIDUCIARIES

A fiduciary is one who conducts business for another in a representative capacity, and whose obligation involves a relationship of trust and confidence beyond a mere contractual obligation. Any dealing in which a fiduciary violates his duty to the person for whom he represents is illegal, and any contract causing such a violation is an illegal contract. Consultation with bank counsel is advised.

COMMONLY ENCOUNTERED FIDUCIARIES

- a. **Officers of companies**
(see section IV above)

- b. **Executor**

Company Example:
XYZ Bank, Executor of the Estate of John A. Doe

BY: James A. American
VP and Trust Officer

Individual Example:
John K. Smith
Executor of the Estate of John A. Doe

BY: John K. Smith

SECTION 509**BORROWING AUTHORIZATION****1-20-00 PAGE 4.0**

Authorization: There are two basic representations that an Executor must make to borrow or pledge assets: that he has been named Executor in the decedent's will and that he is qualified to perform his duties. The loan officer must verify this from a certified copy of the will obtained from the Probate Court. Also, the will must specifically state that the Executor is empowered to borrow on behalf of the estate.

c. Administrator, c.f.a.

Example:
Same as "executor" above with title change.

Authorization: Same as for an Executor, and once again, the will must be read to verify there is borrowing authority to bind the estate.

d. Administrator

Example:
Same as "executor" with word title change.

Authorization: Letters of Administration from the Court certifying the person as the qualified Administrator of the estate. SC law requires a Court Order in order to borrow money.

e. Guardian

Example:
Mr. John A. Doe, Guardian for Sally Doe, a minor (or incompetent)

BY: John A. Doe

Authorization: Letters of Guardianship designating the person who has qualified as guardian of another's property. A guardian cannot borrow money for his ward without a Court Order.

SECTION 509**BORROWING AUTHORIZATION****1-20-00 PAGE 5.0****f. Trustee Under a Will**

Example:

Mrs. Alice J. Doe, Trustee under the Last Will of John Doe

BY: Alice J. Doe

Authorization: A certified copy of the probated will from Probate Court which must specify that the trustee has the power to borrow.

g. Trustee Under Agreement

Example:

Edward J. Stone, Atty., Trustee under Agreement with Peter R. Smith,
Dated May 1, 1999 FBO John A. DoeBY: Edward J. Stone

Authorization: The written contract names the trustee and details his powers. This must specify borrowing authority.

NOTE: *Loan officers are encouraged to seek the advice of bank counsel whenever there is any question regarding the authority and powers of fiduciaries.*

10

CONFIDENTIAL

FSB/EI 001758

SECTION 510**CO-MAKER, GUARANTOR, ENDORSER****DATE: 1-20-00 PAGE 1.0****I. GENERAL FSB POLICY**

The addition of other obligors who join the maker of a note, are similar in concept to collateral, in that they are to be viewed as potential secondary repayment sources. They may provide additional strength to the financial resources of the maker. No loan should be entered into with the expectation that accommodating third parties will be needed for loan repayment.

II. LOAN OFFICER RESPONSIBILITY

The loan officer should be confident the primary borrower has a reasonable source of repayment and in all other respects stands completely behind the obligation before considering co-obligors. The officer must then discuss the nature of the guarantee/endorsement with the prospective third party, clearly explaining the responsibility being incurred for repaying the loan. Each is to be given a copy of the note. (IMPORTANT NOTE: See also the Consumer Loan Manual for notice forms required for "consumer" loans).

III. FINANCIAL STATEMENTS

In evaluating a prospective obligor, the loan officer must obtain a current financial statement, credit bureau reports, and other appropriate information. This data should demonstrate financial strength sufficient to retire the loan.

IV. SIGNATURES

When the additional obligor is not signing in the loan officer's presence, the signature should be guaranteed by a bank or other reputable witness.

V. CHANGES IN TERMS

It is the policy of FSB to obtain the signatures of **ALL** obligors on renewal notes before the existing note is released. The agreement of **ALL** parties is to be obtained prior to any extension, change in terms, release/substitution of collateral, etc. Failure to do so could release obligors from their liability to FSB.

VI. CLOSELY HELD COMPANIES

It is the policy of FSB that loans to closely held entities are to be personally guaranteed by the principals. This applies to **ALL** legal forms of business, with and without collateral.

SECTION 510**CO-MAKER, GUARANTOR, ENDORSER****DATE: 1-20-00 PAGE 2.0****VII. CO-MAKER**

A "co-maker" is a party who is primarily liable, along with the maker, for the debt. This party can be sued originally in case of default. Co-makers sign each note with the maker, and are thus kept abreast of their exposure when renewals are made.

NOTE: CONSUMER LOANS

It is vital that the bank observe government regulations to include ECOA/Reg B, and the SC Uniform Consumer Protection Code. Except for the spouse of the maker, the co-maker must be given "identification of debt you may have to pay" forms, (COSIGN-SC). Failure to do so may relieve the co-maker from liability.

SEE THE CONSUMER LOAN MANUAL FOR FULL DETAILS.

VIII. GUARANTOR**A. PERSONAL**

A guarantor, like the maker and co-maker of a note, is primarily liable for the debt, and can be sued originally in case of default without waiting for collateral liquidation or other events. The FSB guarantee form (COG-WG) is a continuing guarantee of payment, and may specify a specific obligation or all obligations of the maker. Aside from technical legal advantages, guarantee agreements often allow more flexibility when dealing with a number of parties, particularly when in diverse locations.

It is recommended that these forms be updated every 3 to 4 years, and whenever any major management or ownership change occurs.

NOTE: CONSUMER LOANS

It is vital that the bank observe government regulations to include ECOA/Reg B, and the SC Uniform Consumer Protection Code to include providing required notices (COSIGN-SC). Failure to do so may relieve the guarantor from liability.

SEE THE CONSUMER LOAN MANUAL FOR FULL DETAILS.

SECTION 510**CO-MAKER, GUARANTOR, ENDORSER****DATE: 1-20-00 PAGE 3.0****B. CORPORATE AND OTHER GUARANTEES**

Loan officers may also use the FSB Guarantee Form (COG-WG) when accepting the guarantee of a corporation or other entity. In these cases, the file should also contain a letter from the entity offering the guarantee reciting the benefit it receives from providing the guarantee. Absence of consideration can void a guarantee, especially when the entity has minority shareholders. It is recommended that bank counsel be contacted in these situations.

- Guarantee of an Individual's Debt
ALL shareholders must consent to the guarantee
- Corporate Guarantee of Another Business
Generally this will be a parent/subsidiary/affiliate relationship, or possibly a customer/supplier situation. The key element is to demonstrate the benefit the guarantor receives from its guarantee.

The bank must have a resolution from the Board of Directors of the guarantor authorizing the guarantee.

IX. ENDORSER

Any party signing a note who is not a maker, co-maker, witness, nor in any other specifically designated capacity is deemed to be an endorser. Of the three methods covered in this section, an endorsement is the weakest in that the endorser is secondarily liable for the note. The endorser has the option of forcing the bank to exhaust all methods of recovery against the maker, to include lengthy collateral liquidation, before proceeding against him/her. *FSB policy is to obtain guarantees instead of endorsements unless approved by Loan Administration.*

It is especially important when dealing with endorsers to obtain their agreement on ANY change/modification in note terms, collateral, or other matters. Failure to do so may discharge their liability.

NOTE: CONSUMER LOANS

It is vital that the bank observe government regulations to include ECOA/Reg B, and the SC Uniform Consumer Protection Code to include providing required notices (COSIGN-SC).

Failure to do so may relieve the endorser from liability.

SEE THE CONSUMER LOAN MANUAL FOR FULL DETAILS.

1762

11

FSB/EI 001762

RECORD 0807

SECTION 511**UNSECURED LOANS****1-20-00 PAGE 1.0****I. FSB POLICY**

FSB will extend loans without collateral to the most credit worthy of borrowers. The absence of collateral eliminates a designated secondary repayment source, and therefore, entails more risk than a secured loan under the same conditions.

Loan officers are encouraged to obtain collateral (and other enhancements) whenever possible.

II. GENERAL REQUIREMENTS

For **ALL business loans**, (non-consumer purpose), FSB shall require the following: (*Consult Consumer Manual for consumer purpose loans*)

- A. **Credit Approval Summary**, (CAS), form (FSB 801). This is to provide at a minimum, an executive summary of the loan transaction, repayment sources and coverage. ("Business Credit Application" also needed).
- B. Current fiscal year end and interim financial statements on the borrower including profit & Loss and Balance Sheet information. (Tax Return and personal financial statement if individual or proprietor. (see IV below)
- C. Historical Information on Borrower (i.e. previous three years financial statements including Income Statement and Balance Sheet information unless the current or fewer years historical statements indicate adequate cash flow to service debt). Credit references such as D&B and others if deemed appropriate.
- D. Current Personal Financial Statements on all principals and guarantors.
- E. Credit Reports on guarantors are recommended. However, it is the loan officer's decision as to whether they should be required.
- F. Applicants should demonstrate the historical cash flow to service the proposed debt, or must provide thorough and reasonable projections which indicate adequate cash flow to service debt in the normal course of business.

SECTION 511**UNSECURED LOANS****7-17-03 PAGE 2.0****(CONTINUATION OF GENERAL REQUIREMENTS)**

G. Generally loans should have at least two sources of repayment.

H. Variable interest rates are preferable. However, the bank will make fixed rates available to borrowers with deposit relationships which warrant a fixed rate, or when required by regulations.

V. TERMS

The maximum term for unsecured credit shall be 36 months. The maturity and repayment plan should relate to the loan purpose, source of funds for repayment, and their timing.

VI. FINANCIAL STATEMENT REQUIREMENTS**NEW LOANS**

Current financial statements will be required of the borrower and/or guarantors for all unsecured loans or commitments of \$5M and over at inception of the loan.

(Whenever a loan or commitment combined with all direct and indirect credits exceeds \$50M, financial statements will always be required unless secured with "PRIME" collateral that is properly margined. The requirement for statements in the \$5M to \$50M zone is left to the loan officer's judgment.)

STATEMENT UPDATES

Annual updates of financial statements are required for all unsecured loans of \$10M or more. (Updates are also required when total exposure is \$50M or more if secured by other than PRIME collateral, properly margined.)

VII. UNDERWRITING REQUIREMENTS

Since unsecured loans are absent a secondary repayment source in the form of collateral, they are more risky than secured loans. Therefore, loan officers are to be careful in evaluating the borrower's ability to repay.

- Debt to Income ratios should usually be no more than 36%
- Debt/Worth ratios should usually be no more than 1x
- Liquid assets should usually equal, exceed, (or at least be a substantial percentage) of total debt.
- Secured debt to other creditors should not be excessive.

NOTE: (Consult Consumer Manual for consumer purpose loans)

1765

#12

RECORD 0810

FSB/EI 001765

SECTION 512**LINES OF CREDIT****DATE: 1-20-00 PAGE 1.0****I. GENERAL**

FSB policy is to utilize lines of credit with select customers. These may be seasonal lines, revolving lines, or guidance lines. Loan authority and approval is to be employed on the maximum amount that may potentially be extended under the facility, (plus other FSB exposure). "Floor plan" financing is presently an exception to policy.

II. ELIGIBILITY

Lines are to be limited to financially sound customers with a definite and borrower acknowledged agreement on the use of proceeds, availability requirements, draw requirements, and expiration. Documentation components include the completion of FSB form (BS-LCA) as an operational requirement, and commitment letters/loan agreements are a recommendation.

III. TERMS

Lines should usually have an expiration of one year or less, and should be reviewed at least annually for possible renewal. Line maturity should generally coincide with the expected time of receipt of annual financial statements from the borrower's accountants. Collateral is recommended as a secondary repayment source at normal bank prescribed margins. When unsecured lines are extended, they should generally include an annual payout requirement of 30 consecutive days or more. These will generally have variable interest rates, and FSB should also receive further compensation via deposit balances and fees.

IV. SEASONAL LINES

These lines should have a maximum maturity of one year, and if unsecured will feature a 30 day payout period. These lines are for temporary increases in trading assets such as inventory and receivables, with repayment expected to be funded from the orderly liquidation of these assets, in the borrower's normal course of business

FSB/EI 001766

SECTION 512LINES OF CREDITDATE: 1-20-00 PAGE 2.0V. REVOLVING LINES

These lines should have a maturity of one year or less, and be subject to review at least annually for possible renewal. Appropriate customers are businesses with consistent sales growth trends, and with adequate profitability to fund some growth internally. These are generally companies that may become seasonal borrowers within a 3 to 5 year timeframe. These are normally secured, with the collateral consisting of trading assets, and/or frequently augmented with real estate or other fixed asset types.

VI. GUIDANCE LINES

In some instances, FSB may facilitate customer servicing by providing a "guidance line". These lines may not be known to the customer, but do allow the loan officer to handle routine/normal/regular transactions anticipated with a customer in an expeditious manner up to the amount of the line. Each "advance" is handled as a separate specific loan under the terms/conditions approved on the Credit Approval Summary.

VII. DOCUMENTATION / FORMS

The "normal" documents for the type collateral, borrower, and repayment are utilized, and are discussed in other sections of the manual. For lines of credit, (except guidance lines), each will include in its documentation the completed FSB form (BS-LCA). It is recommended that a loan agreement and/or commitment letter be employed for lines exceeding \$100,000.

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RECORD 0813

SECTION 513

TERM LOANS

DATE: 1-20-00 PAGE 1.0

I. DEFINITION AND POLICY

- For the purposes of this manual a "term loan" refers to any loan with a maturity greater than one year. These are normally amortized on a monthly repayment basis, and usually have cash flow as the repayment source.
- FSB will offer term loans for valid business needs such as expansion or modernization of plant and equipment; to refinance present debt; acquisitions; and for general working capital.

II. TERMS

- A. The maximum term for unsecured term loans is 36 months. Obtaining collateral is recommended whenever possible. The maximum term for secured loans is determined by the type of collateral obtained. See the appropriate section of this manual for terms for each type of collateral.
- B. Repayment should normally be based on a regular amortization. We should usually avoid plans involving a moratorium on principal, or balloons, except for special situations featuring appropriate collateral and borrower strength.

III. INTEREST RATES

Interest rates for term loans should carry a premium over rates for short term obligations for the same borrower. Generally, an increment of 1% to 2% should be added to the customer's normal short term rate.

IV. CASH FLOW

Cash flow is generally the intended primary repayment source for term loans. FSB policy is to evaluate this source for adequacy on a historic basis, in addition to projected cash flows that include those resulting from changes effected by the loan. A Debt Service Coverage ratio is to be **documented** for all term loans on the Credit Approval Summary, with details in the accompanying officer narrative.

SECTION 513TERM LOANSDATE: 1-20-00 PAGE 2.0V. LOAN AGREEMENTS

Loan agreements are recommended for all term loans. They are required for all term loans exceeding \$500,000 unless formally waived on the Credit Approval Summary form. These may be specially customized for the specific loan situation, or may be the standard FSB form.

These are to be filed in the borrower file, with an extra copy placed in a general loan agreement file to facilitate periodic monitoring.

VI. INCREASED RISK FACTORS

Other things equal, the longer the term of a loan, the greater the risk of loss. By their nature, term loans offer more time for deteriorating circumstances. The usual basic borrower underwriting, payment coverage, and collateral valuation exercise should feature a greater focus on:

- The historic business cycle performance of the borrower
- Management age, health, succession, and life insurance
- Collateral life expectancy, value retention, and obsolescence potential
- Other financial needs (such as for additional working capital and equipment additions/replacement) over the life of the proposed loan
- Industry trends in technology, law, customer base, competition etc.
- Local market trends and growth patterns
- Leases and contract expirations over the life of the loan
- Start up enterprises or exotic industries

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RECORD 0816

SECTION 514**PLEDGED COLLATERAL****DATE: 1-20-00 PAGE 1.0****I. DEFINITION AND FSB POLICY**

Pledged collateral is that which is physically delivered to the bank and held in its possession until the loan is paid. Properly documented and margined loans secured with this type collateral may enjoy a lower degree of risk than do other loans, and these are therefore attractive to the bank. Pledged collateral may be considered either as "prime" or "other" pledged collateral.

II. PRIME COLLATERAL

In order to be considered as prime, the collateral must be liquid, of good quality, and must be properly margined.

FSB defines "PRIME" collateral as follows:

- FSB Savings Instruments
- Savings Instruments of other financial institutions
- US Government and Agency Obligations
- High Grade Municipal Bonds (Moody's Aaa or Aa)
- High Grade Corporate Bonds (Moody's Aaa or Aa Non Convertible or NYSE Bond List)
- Stocks actively traded on NASDAQ, NYSE, or AMEX
- High Grade Mutual Funds
- CSV Life Insurance

Each of these general types is discussed in detail in the following sections of this manual. Because there are special allowances in general FSB policy regarding loans secured with prime collateral, it is important that the loan officer carefully evaluate the collateral to insure that it is in fact "prime". Any collateral not listed above is NOT considered prime, including other forms of securities.

SECTION 514**PLEDGED COLLATERAL****DATE: 1-20-00 PAGE 2.0****III. "OTHER" PLEDGED COLLATERAL (NON-PRIME)**

There may be occasional instances in which the bank will accept, for certain borrowers, less actively traded securities, or bonds with a Moody's rating of A. In these cases, the borrower must be more carefully scrutinized and the advance rates allowed for other pledged collateral must not exceed 60%.

These loans are to be approved by the Regional Executive or other executive officer regardless of loan size, unless to FURTHER SECURE an existing loan.

IV. NOT GENERALLY ACCEPTABLE SECURITIES

The following types of collateral should generally be avoided.

- US Savings Bonds (Not able to perfect assignment)
- Control, Lettered, or Restricted Stock
- Stocks/bonds of foreign companies or governments
- Stocks/bonds of country clubs, churches etc.
- Bonds with a Moody's rating of less than A
- Stocks of inactive companies
- Rights/warrants/options/futures contracts and other derivatives
- Stocks selling for less than \$10/share
- Unlisted stocks having only a local market
- Stock issues not registered with the SEC such as investment stocks or stocks sold outside the US
- Stock of First South Bank (unless approved by Loan Administration)

In deteriorating loan situations, loan officers may generally accept any collateral available to further secure the bank.

SECTION 514PLEDGED COLLATERALDATE: 5-11-05 PAGE 3.0V. HYPOTHECATION OF COLLATERAL

Whenever a security is registered in joint names (with only one borrowing), or in a name other than that of the maker of the loan, a security agreement is required. (FSB form SA-BUS-SC). This form is to be executed regardless of whether the person in whose name the collateral is registered is a guarantor/endorser on the note.

VI. AUTHORIZATION

Be certain that there is no legal problem which might prohibit the pledging of the security by a third party. Examples might include situations when collateral pledged is registered in the name of a corporation (requiring special authorization), or the securities are registered in the name of a minor. Check carefully to verify that the person pledging the collateral has the authority to do so, especially with anyone acting in a fiduciary capacity.

VII. TRUST RECEIPTS

In some limited circumstances, a borrower may sign a trust receipt to exchange or otherwise temporarily take possession of the pledged collateral for up to 21 days. Form FSB 616 is to be used in these situations. **BANK OFFICERS ARE TO UNDERSTAND THAT WHEN THIS OCCURS, THE LOAN BALANCE IS ON AN UNSECURED BASIS.** Only financially sound and trustworthy borrowers are to be extended this privilege. The UNSECURED lending limit of a loan officer is to be applied in these situations, with higher balance loans requiring the further prior approval of Loan Administration.

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RECORD 0820

SECTION 515**STOCK SECURED LOANS****DATE: 1-20-00 PAGE 1.0****I. FSB POLICY**

It is the policy of First South Bank to extend credit secured by stocks and other securities to creditworthy borrowers. FSB is not a "collateral lender", therefore all factors which determine creditworthiness should be examined prior to a stock loan approval. These factors include credit rating, capacity, personal and financial stability, etc. A loan of this variety should **not** be approved based solely upon value, or *perceived value*, of stock or other securities offered as collateral. As with all secured loans, the collateral should generally be viewed as a secondary repayment source.

II. TERMS & PRICING

- The maximum maturity for a stock loan is 36 months.
- Pricing is to be a minimum of "Prime" for customers with extensive FSB relationships, whose financial statements exhibit a sound financial condition. Upward adjustments in rate should be made for less attractive borrowers.

III. ELIGIBLE COLLATERAL

Securities eligible for collateral status include shares of many companies that are **listed** on the NYSE or American stock exchanges, or those actively traded OTC stocks appearing on NASDAQ. The earnings, financial condition, and share price history of the business should be reviewed for quality and volatility. (**First South Investment Services** may be of assistance in this regard, and is willing to provide S&P, Value Line, or major brokerage ratings to document value. *Other stock issues may possibly be deemed as eligible, but must be approved by the Regional Executive.*) Values should be at least \$10 per share.

Generally not eligible are stocks in closed corporations; country clubs; control, lettered, or restricted shares; "penny stocks"; stocks not registered with the SEC or foreign issues; rights, warrants, options, futures contracts, or other derivatives.

FSB/EI 001776

SECTION 515**STOCK SECURED LOANS****DATE: 1-20-00 PAGE 2.0****IV. MAXIMUM LOAN-TO-VALUE**

Maximum loan-to-value ratios (LTV) determined by the Bank's Loan Policy and by Regulation U are as follows:

- NYSE, AMEX, and NASDAQ shares at \$10 and up: **75% Maximum**
NYSE, or AMEX listed stock with market per share of \$10 or more
- Margin stock pledged as collateral for credit to purchase Margin Stock (Regulation U): **50% Maximum ***

* (When a loan is **secured by stock**, and its **purpose** is to **purchase or carry stock (purpose credit)**, it is governed by Federal Reserve Regulation U, which is described in more detail in the *Compliance* article entitled *Regulation U – Lending on Securities. Fed Form U-1 is required when the loan amount is \$100M or more, AND the loan is stock secured regardless of purpose*).

V. APPRAISAL DOCUMENTATION

To document initial value, the general Collateral Appraisal form (FSB 607) is to be completed for stock secured loans, showing total current market value, the LTV ratio applied, and loan value. (*Loan Operations will subsequently review valuations at least quarterly to verify that proper margins are maintained during the life of the loan.*)

VI. STOCK SPLITS/DIVIDENDS

With stock splits/dividends, the newly-issued shares generally go to the record owner of the stock. The loan officer should require the borrower to pledge to FSB all additional share certificates. These should be accompanied by properly executed *Stock Assignments* and, if appropriate, *Third Party Pledge Agreement*. The loan officer should then complete an updated *Collateral Appraisal*.

SECTION 515**STOCK SECURED LOANS****DATE: 1-20-00 PAGE 3.0****VII. SECURITIES EXAMINATION AND INQUIRY**

When stock certificates are accepted by the Bank as collateral, they should be examined to see that the following information appears:

- Name of the issuing corporation and the signatures of corporate officials
- Number of shares represented by the certificate
- Type of stock (common or preferred)
- Name of stockholder
- Signature of the registrar
- Signature of the transfer agent
- Seal of the issuing corporation

Securities Inquiry

The Securities and Exchange Commission **requires** the Bank to inquire whether a security is missing, lost, stolen or counterfeit when accepting securities into its possession. *Securities* are defined as stock, corporate or municipal bonds, debentures, warrants, stock rights or U.S. Treasury securities. Coupons are not included. An inquiry is required when the Bank receives bond or debenture certificates with an aggregate face value, or stock certificates with an aggregate market value which exceeds \$10,000 through the Securities Information Center. If no match is found, the transaction may proceed.

Detailed information and inquiry instructions may be found in the *Compliance* article entitled *Regulation U Supplement – Securities Inquiries.*

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SECTION 515**STOCK SECURED LOANS****DATE: 1-20-00 PAGE 3.0****VII. SECURITIES EXAMINATION AND INQUIRY**

When stock certificates are accepted by the Bank as collateral, they should be examined to see that the following information appears:

- Name of the issuing corporation and the signatures of corporate officials
- Number of shares represented by the certificate
- Type of stock (common or preferred)
- Name of stockholder
- Signature of the registrar
- Signature of the transfer agent
- Seal of the issuing corporation

Securities Inquiry

The Securities and Exchange Commission **requires** the Bank to inquire whether a security is missing, lost, stolen or counterfeit when accepting securities into its possession. *Securities* are defined as stock, corporate or municipal bonds, debentures, warrants, stock rights or U.S. Treasury securities. Coupons are not included. An inquiry is required when the Bank receives bond or debenture certificates with an aggregate face value, or stock certificates with an aggregate market value which exceeds \$10,000 through the Securities Information Center. If no match is found, the transaction may proceed.

Detailed information and inquiry instructions may be found in the *Compliance* article entitled *Regulation U Supplement – Securities Inquiries.*

SECTION 515**STOCK SECURED LOANS****DATE: 1-20-00 PAGE 4.0****VIII. RESTRICTED STOCKS****A. REGISTRATION**

Federal law (Securities Act of 1933) prohibits offers or sales of corporate securities in interstate commerce unless registration of such transactions is affected through the SEC.

B. LISTED STOCKS

Listed stocks are those corporate stocks approved for trading on a formal stock exchange. An exchange is defined as an organized market which has a physical location, i.e. NYSE or AMEX.

C. UNLISTED STOCKS

These are issues not listed on an organized exchange, but traded over the counter (OTC). The most active of this category is NASDAQ, many of whose issues are as liquid as those on the NYSE, although many are not. Less active issues are traded OTC among various broker/dealers.

D. RESTRICTED OR LETTERED STOCK

This refers to any stock which is not transferable due to restrictions placed upon the shares when issued. These generally carry a notation on the certificate itself stating that the securities have not been registered and may not be sold without prior registration or in certain other circumstances. SEC Rule 144 generally requires the holder to actually own the stock for at least two years prior to sale.

E. CONTROL STOCK

Control stock is any stock which is held by a "control person". This generally refers to any person who may be in control of an issuer through ownership of the stock; holding a position as an executive officer; by contract, etc. This is very similar to restricted/lettered stock in that the owners do not have unlimited trading privileges.

F. FSB POLICY

Any transaction involving "lettered", "restricted", or "control" stock is to be approved by bank counsel.

FSB/EI 001780

SECTION 515STOCK SECURED LOANSDATE: 5-11-05 PAGE 5.0IX. PROCEDURES

1. Complete FSB combination secured note/security agreement form, and list each issue of stock in the following format:

<u># of shares</u>	<u>Class of Stock</u>	<u>Name of Company</u>	<u>Certificate #</u>

2. Obtain possession of the certificates, and have the owner(s) sign a stock assignment form for each certificate. The signature must be EXACTLY as printed on the certificate. The loan officer should witness the signature and leave the remainder of the form blank. When the signer is at a distant location, the signature must be guaranteed by a bank or brokerage firm.
3. Complete Reg U form for "purpose loans" of \$100M or more.
4. Complete security agreement (FSB form SA-BUS-SC) when the stock owner(s) is not the borrower. Names must be identical to those on the certificate, and an FSB officer must witness or have the signatures notarized.
5. Complete Collateral Appraisal form showing value and margin.
6. Complete Trust Receipt if the shares are not immediately placed in FSB custody. NOTE: Never advance funds based on a Trust Receipt unless the borrower is "good" for unsecured credit in the amount under consideration. These are effective for a maximum of 21 days.
7. Complete Safekeeping Receipt.

SECTION 515**STOCK SECURED LOANS****DATE: 5-11-05 PAGE 6.0****X. SUMMARY OF FORMS NEEDED**

<u>Name of Form</u>	<u>Form #</u>	<u>When Needed</u>
Promissory Note & Sec. Agr.	UNS-LAZ-SC	Non-hypothecated
	UN-Universal Note and SA-BUS-SA	If hypothecated
Stock Power/Assignment *(When shares held by another institution, obtain "CTRL AGREEMENT" for signatures of stock owner and the other institution)	MBA-20-AC-50	Always *
Stock Certificate	-----	Always
Collateral Valuation Form	FSB 607	Always
Reg U-1	FR U-1	"Purpose Loans"
Trust Receipt	FSB 616	Non-possession
Credit Approval Form	FSB 801	Always
Safekeeping Receipt	FSB 610	Always
Securities Inquiry	-----	See Section VII

NOTE: Examine the front and back of each certificate for
any language restricting sale of the shares.

1783

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SECTION 516BONDSDATE: 1-20-00 PAGE 1.0I. U.S. GOVERNMENTS & U.S. GOV. AGENCIES

These obligations are considered as prime collateral, but are subject to market risks as interest rates fluctuate. FSB advance rates are:

<u>Maturity</u>	<u>Maximum Advance</u>
5 years or less	90% of market
5 + years	85% of market

II. HIGH GRADE CORPORATE ISSUES

Non-convertible investment grade obligations with Moody's rating of Aaa or Aa are considered as prime collateral:

<u>Maximum Advance</u>
80% of market

III. HIGH GRADE MUNICIPAL ISSUES

Investment grade obligations with Moody's rating of Aaa or Aa may be considered as prime collateral:

<u>Maximum Advance</u>
80% of market

IV. OTHER CATEGORIES

Bonds of lesser rating, of foreign issuers, US Savings bonds, church bonds, country club bonds, and similar types are not considered prime collateral, and should be accepted as collateral as exceptions or to further secure an existing obligation. Approval by the Regional Executive will be required for these types with lower advance rates.

SECTION 516BONDSDATE: 5-11-05 PAGE 2.0V. PROCEDURES

1. Complete FSB note/security agreement (UNS-LAZ-SC) describing the collateral in this format:

Name of Issuer Face Amount Maturity Interest Rate Serial #

2. Obtain a Bond Power/Assignment form (C-133) for each bond certificate. This is to be left blank, but signed exactly as the name in which the bond is registered. If the bond is a "bearer" bond, FSB will still obtain this form, signed as is the note.
3. If the bond is a coupon bond, verify that all unmatured coupons are present, that they have not been mutilated or altered, and write the date of the next maturing coupon on the note and collateral safekeeping receipt.
4. Obtain a current valuation and complete FSB 607 Collateral Appraisal showing current market, margin applied, and loan value. Updated pricings will be performed monthly by Loan Operations to insure maintenance of the required loan value.
5. If hypothecated collateral is accepted, the owner must execute the bond power/assignment form, and also complete a Security Agreement, FSB form SA-BUS-SC. It is desirable to obtain the endorsement of the note by the owner if at all possible.
6. A Safekeeping Receipt detailing the collateral should be given to the customer with a copy to be retained in the collateral file.
7. Collateral should not ordinarily be released to customers while the loan is active. When an exception is made, obtain a Trust Receipt for these temporary occurrences. Do not issue a Trust Receipt to any customer who is not "good" for the loan balance on an unsecured basis. These are permissible for only 21 days.

SECTION 516**BONDS****DATE: 5-11-05 PAGE 3.0****VI. SUMMARY OF FORMS NEEDED**

<u>Name of Form</u>	<u>Form #</u>	<u>When Needed</u>
Promissory Note/Security Agreement	UNS-LAZ-SC	Always
Bond Power/Assignment	FSB C 133	Always
Bond Certificate	-----	Always
Collateral Valuation Form	FSB 607	Always
Security Agreement	SA-BUS-SC	Hypothecation
Trust Receipt	FSB 616	Non-possession
Credit Approval Form	FSB 801	Always
Safekeeping Receipt	FSB 610	Always

#17

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SECTION 517SAVINGS/CDsDATE: 1-20-00 PAGE 1.0I. FSB SAVINGS INSTRUMENTS

There is minimal collateral risk of principal when there is a valid pledge and assignment of FSB's deposit accounts. Bank policy is to allow advances up to 100% of the deposit account balance.

II. ACCOUNTS WITH OTHER INSTITUTIONS

When accounts of other FDIC insured institutions are accepted for collateral, the maximum advance rate allowed is 95% of the deposit account balance. (When the loan amount is in excess of \$100M, a maximum of 90% is recommended)

III. INTEREST RATES

FSB policy is to charge a loan interest rate that is at least 2% higher than the rate paid on the deposit account. The loan rate **MUST** be at least 1% higher than any current FSB rate offered for any type of deposit account.

IV. FDIC REGULATIONS

FDIC requires a minimum spread of 1% for the loan rate over the FSB deposit rate on the collateral account. Regulations also prohibit the use as collateral of IRA accounts, Trust, Pension & Profit Sharing Accounts. *FSB policy is to fully comply with all appropriate Fed and State regulations.*

SECTION 517**SAVINGS/CDs****DATE: 5-11-05 PAGE 2.0****V. PROCEDURES**

1. Complete FSB note/security agreement (form UNS-LAZ-SC) listing the collateral in the following format:

<u>Institution</u>	<u>Account Type</u>	<u>Account #</u>	<u>Owner</u>	<u>Balance</u>

2. Have each account holder sign one copy of Savings Assignment (form # M-160) which is to accompany the certificate to loan operations. Use instead FSB form CTRL-DEP when the deposit is with another institution.
3. The loan officer will place a "hold" on accounts with FSB. If with another institution, the Control Deposit form is to be sent for recording at that bank and returned for the FSB collateral file.
4. If the account is not owned by the borrower, the owner must sign the assignment forms and also a Security Agreement, (FSB SA-BUS-SC).
5. Complete the FSB Safekeeping Receipt form (FSB 610).

VI. SUMMARY OF FORMS NEEDED

<u>Name of Form</u>	<u>Form #</u>	<u>When Needed</u>
Note/Security Agreement	UNS-LAZ-SC	Always
Savings Assignment	M-160	FSB Account
Control Deposit	CTRL-DEP	Other bank account
Certificate/Instrument	-----	Always
Collateral Valuation Form	FSB 607	Always
Security Agreement	SA-BUS-SC	Hypothecated
Trust Receipt	FSB 616	Non-possession
Credit Approval Form	FSB 801	Always
Safe Keeping Receipt	FSB 610	Always

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#18

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SECTION 518**CSV LIFE INSURANCE****DATE: 1-20-00 PAGE 1.0****I. CHARACTERISTICS**

There are two basic types of life insurance with which the bank will be involved. The first is "term" insurance which generally has no cash surrender value. The face value of the policy does not constitute collateral, but may be of value due to the death benefit, particularly if the policy is assigned to the bank. This is an optional enhancement on many large loans.

The second type of life insurance is a "whole" or ordinary policy which normally features a cash surrender value. This usually increases with the age of the policy and can normally be determined from a table in the policy.

II. FSB POLICY**A. Maximum Loan Amount**

CSV life insurance can be considered "prime" collateral when properly assigned to the bank. The maximum advance rate is 95% of the verified value.

B. Eligibility

To be acceptable, the policy must be issued by a reputable insurance company which is licensed to do business in South Carolina. The company must have a Best rating of "A" or higher.

C. Verification and Assignment

Assignment and verification of CSV value are to be completed with the insurance company prior to disbursement. Subsequent verifications are to be made every 24 months with the insurance company, (which may be in the form of a statement provided to the borrower).

SECTION 518**CSV LIFE INSURANCE****DATE: 1-20-00 PAGE 2.0****III. PROCEDURES**

CSV secured loans are to be documented as follows:

1. Obtain possession of the policy, determine the owner, the insured, the beneficiary, and CSV.
2. Complete "Life Insurance Assignment Questionnaire", (form MBA-17A) in duplicate for the owner's signature and mail to the insurance company.
3. Complete "Assignment of Life Insurance Policy as Collateral", (form M-170), in duplicate for signatures to be witnessed and notarized. This should also be mailed to the insurance company for recording and be returned to FSB.
4. When these forms are returned from the insurance company, the amount of CSV is confirmed, along with premium payment data, existence of any other policy loans, and assignment to FSB of available value. It is then "safe" to disburse proceeds.
5. Complete FSB note & security agreement, (UNS-LAZ-SC) listing the name of the insurance company, policy # and date, face value, and the name of the insured.

IV. SUMMARY OF FORMS FOR DOCUMENTATION

<u>Name of Form</u>	<u>Form #</u>	<u>When Required</u>
Promissory Note & S/A	(UNS-LAZ-SC)	Always
Insurance Policy	---	Always
Assignment Form	M-170	Always
Questionnaire Form	MBA-17A	Always

1793

#19

CONFIDENTIAL

FSB/EI 001793

RECORD 0838

SECTION 519**EQUIPMENT LOANS****DATE: 4-20-05 PAGE 1.0****I. GENERAL CONSIDERATIONS****A. Definition**

The SC UCC defines "equipment" as goods, other than inventory, used or bought for use primarily in business (including farming or a profession), or used or bought for use by a non-profit organization or a governmental subdivision or agency. Equipment is also negatively defined to include all goods which are neither inventory, farm products, nor consumer goods.

***NOTE:** Sometimes "equipment" is incorporated into or affixed to a building so as to become a "fixture", a separate legal class. When this occurs, it is necessary to perfect the bank's security interest as a real estate lien or risk being an unsecured creditor. (If in doubt perfect both ways!!)*

B. Structuring Repayment

Generally, equipment financing involves a term loan with the source of repayment being cash flow. These loans should, therefore, usually be structured with periodic payments using that source, and designed to keep the loan balance declining as does the value of the equipment collateral. The expected useful life of the equipment and its depreciation characteristics are thus important factors in these loans. The existing debt service requirements of the borrower, plus the amount necessary to amortize the equipment loan under consideration, should be related to the borrower's cash flow track record and future projections.

C. Marketability

Equipment comes in various classes, some losing value rapidly while others retain their value for many years. The type of equipment, general versus special use, susceptibility to technical obsolescence, market demand, assembly/transportation/storage, and other factors must be considered in establishing a sound margin.

SECTION 519**EQUIPMENT LOANS****DATE: 4-20-05 PAGE 2.0****D. Legal Considerations**

When equipment is housed in a location which is leased or rented by the borrower, the landlord may have rights which conflict with those of the lender. In order to avoid this, a landlord's waiver should be obtained. In addition, if the property is subject to a mortgage, the mortgagee must also agree to waive any rights to the equipment.

II. FSB POLICY**A. ACCEPTABILITY AS COLLATERAL**

Equipment may be used to secure loans to businesses which have a history of successful operating results. It is recommended that the borrower's financial statements for the last 3 years be obtained to assist in the loan decision. Often with new ventures, an equipment loan should be evaluated as though it were unsecured credit.

Loans should generally be made to purchase equipment rather than refinance existing equipment, except when reworking an existing FSB loan or when lending against substantially all of a borrower's assets. When possible and appropriate, loan proceeds should be disbursed jointly to the borrower and vendor to better evidence a "purchase money security interest".

B. SECURITY AGREEMENT

All loans including equipment as collateral will be documented with a security agreement evidencing a blanket lien on all equipment, or with the specific items identified, preferably by serial number.

SECTION 519**EQUIPMENT LOANS****DATE: 4-20-05 PAGE 3.0****C. FINANCING STATEMENTS**

A UCC-1 financing statement will be filed for all equipment secured loans with the Secretary of State, with the expense born by the borrower. UCC-11 searches will be conducted to verify the FSB lien as first in priority, (whenever possible before disbursement).

NOTES: (1) A county realty filing is to also be made whenever the nature of the equipment provides the potential for it to be classified as a fixture.
(2) Contact Loan Administration if out of state filing is necessary, relative to engaging an attorney to assist with the transaction, and providing a legal opinion for the bank.

D. RATE OF ADVANCE

Various types of equipment lose value at different rates, and some represent essentially unsecured loans, such as restaurant equipment. The loan officer should therefore establish a realistic rate of advance based on the type of equipment and its intended use. This should reflect liquidation costs to include removal, transport, and storage. Generally, a maximum of 80% on new, and 60% on used, are the bank's standard guidelines. Exceptions to this must be approved by the officer's Area Executive of Loan Administration.

Note: Advance rates and terms for titled vehicles are to conform to the FSB Consumer Loan Rate Sheet.

E. TERM OF LOAN

Equipment loans should be repaid as quickly as possible and within its expected useful life. The maximum term will be for 5 years unless approved by the Area Executive or Loan Administration.

F. REPAYMENT PLAN

The repayment plan should feature regularly scheduled payments, preferably monthly, which will retire the loan in a reasonable manner relative to its declining value. The goal is for the borrower to have equity in the collateral at all times. In this regard, balloon payments on equipment should be avoided.

FSB/EI 001796

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SECTION 519**EQUIPMENT LOANS****DATE: 4-20-05 PAGE 4.0****G. INSURANCE**

As with other forms of collateral, casualty insurance should be obtained by the borrower for FSB protection. Any exceptions/waivers must be explained for the file and approved by the Area Executive or Loan Administration.

H. MARKET AREA

As with other classes of collateral, it is preferable that the borrower be a local area resident, and that the equipment be located in the FSB market area.

III. PROCEDURES

The following steps are needed to properly perfect a security interest:

1. Complete UCC-1 financing statements for filing with the Sec of State. A specific item of equipment should have an adequate identifying description to include type, brand name, model, serial number, etc. For a general or "blanket" interest in all equipment of a borrower, a phrase such as "All equipment of the debtor presently owned and subsequently acquired" should be used.

Notes: (1) *If the nature of the collateral could allow it to be deemed by a court to be "fixtures", file also as fixtures in the county mortgage recording office, (See Loan Administration)*

(2) *If out of state filing is involved, contact Loan Administration relative to engaging an attorney to handle the filing and to render an opinion for the bank.*

SECTION 519**EQUIPMENT LOANS****DATE: 4-20-05 PAGE 5.0**

2. A copy request (UCC-11) should also be sent to determine the FSB lien position. If, a prior filing is revealed, a termination of same must be obtained, *or purchase money procedures as outlined in the UCC section of this manual must be followed. (Contact Loan Administration in these cases).*
3. Complete the FSB note form and security agreement, listing the equipment by blanket category or by specific items that are clearly identified.
4. Obtain evidence the equipment is protected with casualty insurance.
5. A copy request (UCC-11) should also be sent to determine the FSB lien position. If, a prior filing is revealed, a termination of same must be obtained, *or purchase money procedures as outlined in the UCC section of this manual must be followed.*
6. Complete the FSB note form and security agreement, listing the equipment by blanket category or by specific items that are clearly identified.
7. Obtain evidence the equipment is protected with casualty insurance.
8. When the collateral is housed in a location not owned by the borrower, a landlord's waiver should be obtained, and also a mortgagee's waiver when appropriate.
9. In most cases, a current financial statement on the borrower should be obtained.

SECTION 519**EQUIPMENT LOANS****DATE: 4-20-05 PAGE 6.0**

10. Disbursement of loan proceeds should be made by check when possible, and payable jointly to the borrower and vendor referencing "purchase of equipment". This is especially important for purchase money transactions involving prior filings by other creditors. Also, obtain a copy of the purchase invoice for the file.
11. Appraisal/evaluation is needed to document the value of the equipment. Copies of invoices should be the minimum standard accepted to substantiate value, and should be attached to the FSB collateral valuation form.
12. Credit Approval form (FSB 801/801a) outlining the key factors of the credit is required for FSB files.

IV. SUMMARY OF FORMS FOR DOCUMENTATION

<u>Name of Form</u>	<u>Form #</u>	<u>When Required</u>
Financing Statement	UCC-1	Always
Copy Request	UCC-11	Always
Note/Security Agreement	UNS-LAZ-SC	Always
Appraisal	FSB 607	Always
Credit Approval form	FSB 801	Always
Joint payee check and invoice copy		Purchase Money

The following may be waived by the Area Executive,
in writing on the approval form.

Insurance	---	Always
Landlord's Waiver	---	Leased location
Mortgagee's Waiver	---	Mortgaged site
Current Financial Statement	---	Debt exceeds \$5M

FSB/EI 001799

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FSB/EI 001800

RECORD 0845

SECTION 520**ACCOUNTS RECEIVABLE**

4-20-05

PAGE 1.0

I. GENERAL CHARACTERISTICS

Accounts receivable financing is filled with inherent dangers and is expensive to administer if close monitoring is required. The bank's collateral is open accounts from customers of our borrower. In addition to normal credit risks, receivables loans are also subject to several special hazards: Fraudulent Receivables; Uncollectable Receivables; Concentrations; Lax Supervision of the collateral / receipts; Weak Borrower Financial Condition. These factors contribute to a generally higher risk than that associated with other types of loans.

II. METHODS OF HANDLING

There are several basic methods of handling a receivables secured loan. FSB will generally employ the following methods:

A. Non-Notification Basis

This is the least involved method, in which the borrower assigns the account(s) to the bank without notifying the borrower's customer. The bank entrusts the borrower with forwarding receipts to the bank when collected. This may involve a simple initial lien perfection arrangement in which the bank performs no monitoring. With this arrangement, *the bank should consider itself an unsecured creditor*, and underwrite the loan accordingly.

The non-notification basis may provide a greater degree of protection if augmented with extensive monitoring to include field audits of the borrower's books and accounts, periodic borrower reporting of receivables, client verifications, and the use of a lock box for receipts. Policing may range from daily up to monthly, with administrative expense escalating with the frequency and extent of monitoring. A separate deposit account for receipts from the borrower is often beneficial as is a bank controlled lock box. Even with the closest of supervision, there is never a guarantee of absolute protection.

B. Notification Basis

With this method, in addition to perfecting its lien, FSB would notify the borrower's customers of the receivables assignment, and instruct them to remit directly to a bank lockbox. This yields an increment of further protection, but is expensive, and unpopular with many borrowers who do not wish their customers to be bothered, or to be informed of their need for this type of financing.

SECTION 520ACCOUNTS RECEIVABLE4-20-05PAGE 2.0**C. Special Arrangements**

The above methods may be varied in many ways for specific customers. In addition, the bank may from time to time participate with another experienced lender in a receivables loan involving various degrees of monitoring. Often, SBA and other types of loans may require liens against receivables, and FSB will do so accordingly. Third party agents may also be utilized to perform various monitoring procedures for the bank.

D. Monitoring Disclosure

For all loans having receivables as collateral, FSB policy is to DISCLOSE on the Credit Approval form that:

- receivables are collateral (or "abundance of caution")
- definition of eligible receivables
- the LTV margin to be observed
- the level/type of monitoring to be employed

III. FSB POLICY**A. Acceptability as Collateral**

Due to the generally higher risk, administrative expense, officer time demands, and lack of in-house specialists, the bank will not actively solicit this type of loan. They may be made in the following circumstances:

- To further secure an existing loan
- To prevent their being assigned to another creditor
- As incidental collateral
- When required under SBA or similar arrangements
- In participations with experienced receivables lenders

Much of their use is a "defensive" device. When some actual reliance is to be placed on this form of collateral, the monitoring procedures and receivables quality must be evaluated as part of the approval process.

B. Maximum Advance

For all receivables loans the maximum advance is to be 75% of eligible receivables. Eligible accounts are generally those that are less than 60 days old unless other terms are offered and are acceptable to FSB, or when other extenuating circumstances warrant. The advance rate should be lowered whenever situations such as weak A/R clients exist, heavy concentrations are involved, or with low quality merchandise.

FSB/EI 001802

SECTION 520**ACCOUNTS RECEIVABLE****4-20-05 PAGE 3.0****C. Account Profitability**

Due to the combination of generally higher risk, administrative costs, account officer and clerical time demands, a rate premium should be assessed for these loans. A general guideline will be pricing in the Prime + 2% area plus any fees that may be appropriate.

D. Requirements

General credit requirements on financial statements, guarantees, etc. are to be observed. In addition, a recent initial listing and aging of receivables is to be received before closing. Security agreement, UCC-1 filing, and UCC-11 records check are required before disbursement.

Note: *Whenever the UCC filings are to be in another state, contact Loan Administration relative to seeking outside counsel to arrange for the filing and to render an opinion as to the bank's secured position.*

Caution: *If the UCC-11 indicates another creditor has a security interest in a prospective borrower's **inventory**, there could be a conflict if "inventory and **proceeds**" are claimed by the other creditor. If this situation should arise, contact Loan Administration.*

SECTION 520**ACCOUNTS RECEIVABLE****4-20-05****PAGE 4.0****IV. PROCEDURES**

1. Complete the bank's secured commercial note & security agreement form and check the box that includes accounts receivable. This provides a "blanket" lien on all receivables. If a specific receivable is to be designated, it should be identified in the section available for narrative comment.
2. Complete a UCC-1 financing statement form for filing with the SC Secretary of State with the collateral description being **identical** to that on the security agreement.
3. Complete a UCC-11 records check for filing with the SC Secretary of State to verify the FSB lien position. *(Contact Loan Administration if out of state filings are necessary, or if "inventory & proceeds" are claimed by another creditor).*
4. Obtain the borrower's most recent listing/aging of receivables and attach to the FSB Collateral Appraisal Form showing the amount of eligible collateral and loan advance rate.
5. Complete the FSB Credit Approval form covering the basics of the loan to include monitoring procedures, eligibility, and LTV margin.

V. SUMMARY OF FORMS FOR DOCUMENTATION

<u>Name of Form</u>	<u>Form #</u>	<u>When Needed</u>
Note & Security Agreement	UNS-LAZ-SC	Always
Financing Statement	UCC-1	Always
Copy Request	UCC-11	Always *
Listing of Receivables	---	Always *
FSB Collateral Appraisal Form	FSB 607	Always *
Credit Approval form	FSB 801/801a	Always
Current Financial Statement	---	Always

* These items may be waived by the Area Executive when the Credit Approval form states the collateral is taken in an "abundance of caution".

FSB/EI 001804

SECTION 520**ACCOUNTS RECEIVABLE****1-20-00****PAGE 5.0****IV. PROCEDURES**

1. Complete the bank's secured commercial note & security agreement form and check the box that includes accounts receivable. This provides a "blanket" lien on all receivables. If a specific receivable is to be designated, it should be identified in the section available for narrative comment.
2. Complete a UCC-1 financing statement form for filing with the SC Secretary of State with the collateral description being **identical** to that on the security agreement.
3. Complete a UCC-4 records check for filing with the SC Secretary of State to verify the FSB lien position.
4. Obtain the borrower's most recent listing/aging of receivables and attach to the FSB Collateral Appraisal Form showing the amount of eligible collateral and loan advance rate.
5. Complete the FSB Credit Approval Summary form covering the basics of the loan to include monitoring procedures, eligibility, and LTV margin.

NOTE: For "Business Manager" accounts, the Business Manager Agreement must also be completed, and reserve deposit accounts opened.

SECTION 520ACCOUNTS RECEIVABLE1-20-00PAGE 6.0V. SUMMARY OF FORMS FOR DOCUMENTATION

<u>Name of Form</u>	<u>Form #</u>	<u>When Needed</u>
Note & Security Agreement	UNS-LAZ-SC	Always
Financing Statement	UCC-1	Always
Copy Request	UCC-4	Always *
Listing of Receivables	---	Always *
FSB Collateral Appraisal Form	FSB 607	Always *
Credit Approval Summary	FSB 801	Always
Current Financial Statement	---	Always

* These items may be waived by the Regional Executive when the CAS form states the collateral is taken in an abundance of caution.

Business Manager Agreement	---	Bus. Mgr. Lines
DDA Reserve Account	---	Bus. Mgr. Lines
Plus other documents per Business Management Program		

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FSB/EI 001807

RECORD 0852

SECTION 521**INVENTORY LOANS****DATE: 4-20-05 PAGE 1.0****I. GENERAL CONSIDERATIONS****A. Definition**

The SC UCC defines "inventory" as goods held for sale such as those on a merchant's shelf, manufactured goods awaiting customer orders, goods held for lease such as a fleet of motor vehicles owned by a rental company, and goods furnished or to be furnished under contracts of service. It also includes raw materials, work in process, and materials used or consumed in a business such as maintenance repair and operating supplies.

Inventory financing is in many respects similar to accounts receivable financing in that the loans frequently involve a high degree of risk and are generally costly to service if monitored properly.

B. Hazards of Inventory Financing**Financial Condition**

Often customers offering inventory as collateral do not have the financial strength to seek unsecured financing, and may have their other more substantive assets such as realty already encumbered. Thus, their financial condition may entail greater than normal risk.

Documentation/Policing

UCC requirements must be met to perfect the bank's lien. That protects, provided sufficient actual inventory of value exists. Without constant monitoring, there can be no assurance that adequate amounts of inventory are on hand to properly cover the loan balance.

Quality

Even if the bank has established full control and legal right to the collateral, some or all of the inventory may not be marketable due to spoilage or damage, obsolescence, style changes, price fluctuations, seasonal demand, destruction by fire, etc.

SECTION 521**INVENTORY LOANS****DATE: 4-20-05 PAGE 2.0****Fraud**

Inventory loans contain a higher risk of fraud since it is usually in the borrower's possession. Bank's have had losses due to empty storerooms, phony documentation, "selling out of trust", crates containing dummy merchandise, etc. Conflicts with landlords and/or mortgagees may also be a factor.

II. METHODS OF HANDLING

Banks without asset based loan departments commonly employ several basic methods of monitoring such as:

Non-monitored Method

The bank may properly file its UCC-1 and execute a security agreement covering the collateral when the loan is closed. An initial inventory check may or may not be made with LTV margins established. This method offers the least protection, but claims any possible existing inventory for the bank rather than other creditors.

Periodic Reporting

With this method lien perfection is augmented with periodic reporting by the customer of the amount of inventory on hand. The established LTV can then be checked against the outstanding loan balance. The account officer may also conduct verification inspections while servicing the loan customer.

Warehouse Receipts

Possession of warehouse receipts provides the bank with "possession" of the collateral. This allows better protection from a monitoring standpoint if the warehouse is financially sound, bonded, insured, and release procedures are bank approved. There are negotiable as well as non-negotiable receipts, and different levels of bonding/insurance carried by warehouses. This method provides the bank with better assurance that a certain amount/value of inventory actually exists, and allows constant bank control. *NOTE: Receipts for containers are marked: "said to contain", and do not verify their contents.*

SECTION 521**INVENTORY LOANS****DATE: 4-20-05 PAGE 3.0****Third Party Assistance**

The bank may elect to increase its level of confidence in the collateral by employing an outside party to conduct periodic field audits, or even establish a field warehouse at the customer location. These are expensive methods to employ, and can never eliminate all risk. Participation loans with other banks having asset based departments is another option of utilizing inventory as collateral.

III. FSB POLICY**A. Acceptability of Inventory as Collateral**

FSB policy is not to actively solicit this type of loan due to the risk and expense associated with this form of financing. Inventory is to be utilized as collateral in the following instances:

1. To further secure an existing or proposed loan;
2. As additional collateral /abundance of caution;
3. To reserve it for FSB rather than another creditor;
4. When required for SBA or other loan guarantees;
5. When available for problem loans.

B. Maximum Advance

With no present capability to adequately monitor inventory, FSB policy is to generally treat these loans as "**unsecured**", even with proper documentation for perfection of the bank's security interest. Even with a high level of policing, advances should not generally exceed 40% of value. LTV considerations should include location(s), price stability, quality, balance, perishability etc.

C. Account Profitability

Due to heightened risk and servicing expense, inventory loans should generally enjoy a higher interest rate than "normal" loans. Loan officers are encouraged to require at least Prime + 2% plus fees.

SECTION 521**INVENTORY LOANS****DATE: 4-20-05 PAGE 4.0****D. Requirements**

All loans featuring inventory as a collateral component are to be properly documented with a security agreement, state filed UCC-1, state file search UCC-11 to show the FSB lien position, and fire insurance.

Additionally, the Credit Approval form, (or attached memo) is to specify the initial level of inventory, the LTV contemplated for this component, and the frequency/type of monitoring to be employed. If the inventory is "extra" collateral, *the approval form should state it is taken in an abundance of caution with no policing to be performed.*

E. Purchase Money Inventory Lien

On occasion, FSB may take a "purchase money lien" in a borrower's inventory. This is when FSB retains documentation that the bank's loan funds were used to purchase the inventory. We should observe the above basic requirements, and also, in the event there are prior inventory liens on file by other creditors, notify those creditors by registered mail, return receipt requested, within 3 days of our disbursement. These will be rare occasions, *and are to be approved by Loan Administration.*

Note: Should FSB receive notification that another creditor is taking a purchase money security interest in a borrower on which we have filed, the person receiving notification should immediately inform Loan Administration.

SECTION 521**INVENTORY LOANS****DATE: 4-20-05 PAGE 5.0****IV. PROCEDURES**

The following steps are needed to properly perfect a security interest:

1. Complete UCC-1 financing statement for filing in Sec of State office. Blanket coverage language is preferred such as "all inventory of the debtor presently owned and hereafter acquired".
2. A copy request (UCC-11) is to be sent to the Sec. of State with or after the UCC-1 to document that the FSB filing is first.
3. Complete the FSB secured note & security agreement covering the collateral. Its description should be identical with the UCC-1 filing language.
4. Complete an evaluation/appraisal form showing the initial inventory value and LTV.
5. Complete the Credit Approval form showing the LTV to be maintained, and monitoring procedures/frequency to be employed, OR recite that it is taken in an abundance of caution.
6. Obtain evidence of fire insurance.
7. Obtain current financial statement on the borrower.
8. When situated in rented quarters, a landlord lien waiver / mortgagee lien waiver, should be obtained.

V. SUMMARY OF FORMS FOR DOCUMENTATION

<u>Name of Form</u>	<u>Form #</u>	<u>When Required</u>
Financing Statement	UCC-1	Always
Copy Request	UCC-11	Always
Note & Security Agreement	UNS-LAZ-SC	Always
Current Financial Statement	---	Debt > \$5M
Credit Approval form	FSB 801/801a	Always
Appraisal (& updates)	---	(*) Always
Insurance	---	(*) Always
Landlord's Waiver	---	(*) Leased location
Mortgagee's Waiver	---	(*) Mortgaged site
(*) Area Executive may waive <u>in writing</u> for abundance of caution loans.		

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SECTION 521**INVENTORY LOANS****DATE: 1-20-00 PAGE 6.0****V. SUMMARY OF FORMS FOR DOCUMENTATION**

<u>Name of Form</u>	<u>Form #</u>	<u>When Required</u>
Financing Statement	UCC-1	Always
Copy Request	UCC-4	Always
Note & Security Agreement	UNS-LAZ-SC	Always
Current Financial Statement	---	Debt > \$5M
Credit Approval Summary	FSB 801	Always

The following may be waived by the Regional Executive
in writing on the C A S form for "abundance of caution" loans.

Appraisal (& updates)	---	Always
Insurance	---	Always
Landlord's Waiver	---	Leased location
Mortgagee's Waiver	---	Mortgaged site

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FSB/EI 001814

RECORD 0859

SECTION 522**REAL ESTATE LOANS****DATE: 1-20-00 PAGE 1.0****I. GENERAL CONSIDERATIONS**

While our primary geographic lending areas are those census tracts which are designated in our CRA Statements as our "delineated communities", we also consider making real estate loans throughout each county in which FSB has a banking office, and those counties contiguous to them. For local customers we will also consider loans for their "second homes" and investment properties beyond the boundaries set forth above.

II. MAXIMUM MATURITIES

Real estate loans will generally be structured within the following terms and conditions.

<u>LOAN TYPE</u>	<u>MAXIMUM TERM</u>
Raw Land	1 to 3 years
Land Development	1 to 3 years
Commercial/Multi-Family Construction	1 year
Purchase/Refinance of Commercial or Multi-Family	3 to 5 years
Purchase/Refinance of Non-Owner Occupied 1 to 4 Family Residential	3 to 5 years
Purchase/Refinance of Owner Occupied 1 to 4 Family Residential	3 to 5 years
Home Equity Lines	15 years

FSB/EI 001815

SECTION 522**REAL ESTATE LOANS****DATE: 4-19-06 PAGE 2.0**

Regular periodic payments that fully retire the loan over its term are preferred. **Amortization schedules** for all loan types should generally **not exceed 15 years** in balloon balance situations. Construction loans may generally be extended on an interest only basis for their first year.

III. MAXIMUM ADVANCE RATES

Borrowers should generally have a cash equity position in property financed by this bank. FSB policy is to limit advances for most types of realty to levels under those allowed by the Federal Banking Agencies. Unless specifically approved by Loan Administration, **Maximum LTV** advances, (to be the **LESSER** of cost or appraisal), are as follows:

<u>Realty Type</u>	<u>FSB</u>	<u>Regulatory</u>
Raw Land	60%	65%
Land Development	70%	75%
Commercial/Multi-Family Construction	75%	80%
1-4 Family Residential Construction/Spec	80%	85%
1-4 Family Residential Construction/Contract	80%	85%
Purchase/Refinance Commercial Multi-Family	75%	85%
Purchase/Refinance of Non-Owner Occupied 1-4 Family Residential	75%	85%
Purchase/Refinance of Owner Occupied 1-4 Family Residential	80%	89%
First Equity Loans (1 st and 2 nd liens)	85%	89%

FSB/EI 001816

SECTION 522**REAL ESTATE LOANS****DATE: 4-19-06 PAGE 3.0**

The preceding FSB maximum limits are to be observed by all loan officers. Any exceptions must be properly approved by Loan Administration with written justification for the excess. *(The bank must monitor various concentrations to include types of realty at higher than prescribed LTV ratios. There is a limited dollar amount of these exceptions available, so that they must be "rationed" wisely.)*

I. GENERAL UNDERWRITING CONSIDERATIONS

The normal underwriting techniques practiced for all FSB lending will be applied to real estate loans. *All the "general requirements" outlined in the Unsecured Loans Section are to be observed.* In addition, the following areas are to be addressed:

A. MARKET CONDITIONS

FSB market areas are influenced by national, regional, and local economic cycles, interest rates, and also by local real estate trends. Loan officers should be familiar with local market conditions to include absorption rates for various classes of property. Real estate can be subject to fast moving "boom/bust" phases that impact prices, result in overbuilt situations, and therefore affect collateral values.

B. INTEREST RATES / FEES

The bank shall generally float rates at FSB Prime plus 1% to 3%. Most real estate loans should also have fees attached to compensate the bank for the additional underwriting and servicing necessary to complete these transactions. It will be customary to charge origination fees of 1% to 2%. In addition, the borrower should pay all closing costs to include attorney fees, environmental assessment costs, appraisals, and other charges to third parties, plus any additional special handling expenses to FSB.

FSB/EJ 001817

SECTION 522**REAL ESTATE LOANS****DATE: 1-20-00 PAGE 4.0****C. CREDIT WORTHINESS**

As with all borrowers, those with real estate as collateral are to be evaluated on the basis of their general financial strength to include their net worth "cushion"; their indebtedness/leverage before and with the proposed realty loan; liquidity in their assets; income/cash flow; past credit experience; and repayment source/adequacy. *All the "general requirements" outlined in the Unsecured Loans Section are to be observed.*

The collateral should be viewed as a secondary repayment source, and not the primary strength of the loan.

- Loans with approved take out commitments, sale contracts, or other repayment sources that are established and documented are preferred to speculative loans dependent on the development of a future source of payment. "Spec" loans are to be limited to strong borrowers who have demonstrated in the past their ability to sell properties in the normal course of business.
- Term loans are to be documented as having adequate servicing capacity in the form of Debt Service Capacity Ratios with a reasonable cushion.
- Income properties will generally include the assignment of rents, leases and profits, and tenant credit quality will be documented.

D. ENVIRONMENTAL ISSUES

Many collateral sites could have contamination that could prove costly to the bank. These could include present or former industrial areas; properties with present or previous underground tanks; chemical storage facilities etc. FSB loan officers are to be vigilant to this potential and complete an "Environmental Site Questionnaire"

FSB/EI 001818

SECTION 522**REAL ESTATE LOANS****DATE: 1-20-00 PAGE 5.0**

form (FSB 804) for loans of \$50,000 or more, (may exclude residential lots in established subdivisions). If it appears that there is risk, the bank will require a site assessment, at borrower expense, by qualified professionals. As an alternative, the bank may elect to purchase, at borrower expense, environmental protection insurance in lieu of site assessment efforts.

V. CONSTRUCTION LOANS

The following are the **MINIMUM** requirements for real estate construction loans:

- FSB policy is to require a written take out commitment for all construction loans prior to any advance. Exceptions will be limited to loans of under \$250M for strong borrowers with the financial strength to arrange repayment from other assets. If FSB is to provide the permanent financing, the C.A.S. should so state.
- Closing and mortgage recording are to **precede ANY** work on the project.
- A supervising architect should be employed at borrower expense for all loans exceeding \$500M to oversee the project and approve draw requests for the bank. If no architect is involved on smaller loans, a competent licensed contractor may be used, with close monitoring by the loan officer.

NOTE: Due to the presence of "construction risks" in addition to normal credit risk, construction loans will receive loan grades of "4" until final full completion.

SECTION 522**REAL ESTATE LOANS****DATE: 1-20-00 PAGE 6.0****VI. JUNIOR LIENS**

FSB policy is to generally avoid situations other than a first lien position. Second and other liens on realty should be considered an exception.

In the following cases, second liens are permissible:

- To FURTHER secure an existing FSB loan;
- For "First Equity Line" loans;
- For SBA or other government-guaranteed loans;
- When taken in an abundance of caution / incidental collateral.

Repayment terms, advance rates, and other requirements are as with first liens. The LTV for junior liens is calculated by dividing the (first lien balance plus junior lien balances) by the appraised value. A Verification of Balance form (FSB 611) is recommended for all such loans.

SECTION 522**REAL ESTATE LOANS****DATE: 1-20-00 PAGE 7.0****VII. DOCUMENTATION**

Each loan is unique to some degree which influences its specific documentation. *All the "general requirements" outlined in the Unsecured Loans Section are to be observed.*

FSB policy is to require as a **MINIMUM**, the following for each **COMMERCIAL** real estate secured loan.

IMPORTANT NOTE: THESE REQUIREMENTS DO NOT INCLUDE THOSE SPECIFIED FOR CONSUMER LOANS. REFER TO THAT MANUAL FOR CONSUMER LOAN FORMS/REQUIREMENTS.

A. CREDIT APPROVAL SUMMARY

This form is to include the LTV of the collateral, and the DSC Ratio for term loans.

B. ATTORNEY INSTRUCTION LETTER

FSB will require a closing instruction letter for all realty loans. This will outline the specific documentation requirements for which the attorney is responsible.

C. PROMISSORY NOTE**D. RECORDED MORTGAGE**

This is to be signed by all persons having an ownership interest in the property. (FSB will accept a copy of the mortgage plus a Recorder's Receipt as a substitute for a reasonable time after booking. See bank guidelines for various county time limits.)

SECTION 522**REAL ESTATE LOANS****DATE: 1-20-00 PAGE 8.0****E. TITLE INSURANCE POLICY**

This is required for all loans exceeding \$250M, and is suggested for all loans. Title opinion letters from approved attorneys may be accepted for smaller loans with the title chain checked back at least 40 years. (A Title Insurance Commitment or Preliminary Title Opinion Letter are acceptable temporary substitutes for a reasonable time after closing. See bank guidelines for the appropriate county time limits.)

F. APPRAISAL

Each parcel of collateral realty is to be documented with an appraisal. (See the Appraisal Section of this manual for full details). Loans of under \$250M may substitute an internal appraisal (evaluation) performed and signed by at least two bank officers, although outside professional appraisals are recommended.

G. INSURANCE PROTECTION

All realty that includes structures are to be protected with casualty insurance. The amount of the policy is to be no less than the amount of the improvements. In addition, flood insurance is to be obtained for property situated in an area identified as being in a flood zone.

SECTION 522**REAL ESTATE LOANS****DATE: 1-20-00 PAGE 9.0****IX. PROCEDURES**

Real estate loans are generally to be closed by an attorney. The bank will normally issue a closing instruction letter detailing the required documentation to be executed. Documents required by FSB are to be properly completed to be eligible for disbursement.

X. SUMMARY OF FORMS FOR DOCUMENTATION

NOTE: *See Consumer Manual for Regulatory Compliance Items*

<u>Name of Form</u>	<u>Form #</u>	<u>When Needed</u>
Basic Commercial Realty Loan:		
Credit Approval Summary	FSB 801	Always
Attorney Instruction Letter	.....	Always
Promissory Note	UNS-LAZ-SC	Always
Recorded Mortgage	.....	Always
Title Insurance Policy	.....	Always
<i>(TI preferred: Loans under \$250M may substitute Title Opinion Letter)</i>		
Appraisal	.....	Always
Casualty Insurance	.....	Improved Property
Flood Hazard Determination	.....	Always
Flood Insurance	.....	Property in Flood Zone
Environmental Site Questionnaire	FSB 804	\$50M + & not in s/d
Survey/Plat	.....	Business Loans

SECTION 522REAL ESTATE LOANSDATE: 1-20-00 PAGE 10.0Additional for Construction Loans:

Construction Loan Agreement	.....	Always
Construction Contract Copy	.....	Always
Plans/Specs Copy	.....	Always
Building Permit	.....	Always
Contractor's Affidavit	FSB 805	Always
Payment/Performance Bond	.....	Per C.A.S. Form
Foundation Survey	.....	Per C.A.S. Form
Progress Inspection Reports	FSB 621	Always
Permanent Take Out Commitment	.....	Always

Additional Miscellaneous:

Third Party Pledge Agreement	M-150	Hypothecation
Lease Copy	.....	Lease Assigned
Assignment Rents/Leases/Profits	.....	Lease Assigned
Security Agreement/UCC-1	UCC-1	Fixtures/Equip.

The wide variety of real estate types and loan structurings can call for additional documents. If in doubt, consult a senior loan officer or attorney for specific additional items.

See also Documentation Checklists (FSB-605)

SECTION 522**REAL ESTATE LOANS****DATE: 1-20-00 PAGE 11.0****REAL ESTATE LOANS ADDENDUM****A. CLOSING**

A competent attorney will be required to close all real estate loans, except First Equity Lines. The loan officer will oversee the preparation of the documents, and it will be his/her responsibility to ensure that all documents are completed correctly and in compliance with all applicable regulations. After closing, the loan officer will review the loan package for completeness and then forward it to Loan Operations to be "booked" onto the bank's loan accounting system.

The loan officer will have the responsibility of acquiring any missing documents and to correct any documentation errors. The Loan Operations Department will have the responsibility of initially checking loan packages for completeness and compliance with bank policy and regulations, and providing loan officers and management with current exceptions status reports on an ongoing basis.

B. DISBURSEMENT

Disbursements for real estate loans will generally be made by the branch originating the loan with the proceeds check made out to the closing attorney as Trustee.

C. PAYMENT PROCESSING

All loan payments will be processed at the client Service Desk. Any questions that arise pertaining to payments should be directed to the Loan Operations Department. Loan payoffs should be verified with the Loan Operations Department for continuity and accuracy. Once the payoff is made, all applicable documents will be marked as paid and be returned to the borrower by the Loan Operations Department.

FSB/EI 001825

SECTION 522**REAL ESTATE LOANS****DATE: 1-20-00 PAGE 12.0****D. EXTENSION/RENEWAL/MODIFICATION**

FSB policy is to provide for two methods of amending a real estate mortgage loan's original terms. The creation of an entirely new note and mortgage is one method.

The other involves a modification of the original terms. When this procedure is elected, the FSB Extension and Modification Agreement form (FSB 807) is to be completed and signed by all parties to the original mortgage. It is then to be recorded in the county office in which the original mortgage was recorded.

The new note that reflects the amended terms, is to include in the collateral description, the original mortgage date and recording data. A phrase such as "This note represents an extension and modification of a certain mortgage in the amount of \$_____ dated _____ and recorded in book _____ on page _____ on _____ (date)" is recommended. All original documents are to be retained in the collateral file until the loan is fully paid.

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FSB/EI 001827

RECORD 0872

SECTION 523REAL ESTATE APPRAISALSDATE: 1-20-00 PAGE 1.0I. OBJECTIVE:

It is the objective of the Bank to have a well defined and effective Real Estate Appraisal Policy as a part of its overall Loan Policy. Through the communication and execution under this policy, management can assure reliable appraisal services, better control, risk management, and safe and sound performance within the bank's real estate lending portfolio.

Within this Real Estate Appraisal Policy, it is the full intent of this Bank to assure compliance with the following Federal and State Laws and/or Regulatory Rules and Guidelines:

1. FDIC guidelines set forth in the December 14, 1987 Interagency Appraisal "Guidelines for Real Estate Policies and Review Procedures" and subsequent revisions to FDIC 12 CFR Part 323.
2. The new federal appraisal regulations put into law effective September 19, 1990 by Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).
3. The Laws of South Carolina Relating to Bankers and the S.C. Administrative Code as interpreted by the S. C. Banking Commission.
4. The "Guidelines for Real Estate Appraisal Policies and Review Procedures" provided in a 12/14/87 memo from the FDIC.
5. Other regulatory requirements along with subsequent amendments to the sources set forth in items 1 - 3 above.

II. GENERAL

Analyzing real estate collateral at the loan's inception plays an important role in our loan approval process, and undue reliance should not be placed on the value of the collateral in lieu of an adequate assessment of the borrower's repayment capacity. Cash Flow and the ability to service the debt should be the primary sources of repayment. It is acknowledged that when a credit becomes troubled, the primary source of repayment generally shifts to the value of the collateral. It is necessary therefore to have good appraisal procedures, standards, data, and collateral review, to

SECTION 523**REAL ESTATE APPRAISALS****DATE: 1-20-00 PAGE 2.0**

assure minimal losses in collateral liquidation and to maintain a sound minimal risk real estate portfolio. A real estate appraisal is one of several essential components of the lending process.

Appraisals are to be performed by qualified, independent, competent, knowledgeable appraisers. In this context, "independent" means the appraiser is not involved in the lending and collection function, and has no interest, financial or otherwise, in the property. In certain cases it may be appropriate for the loan officer responsible for the credit decision to perform the appraisal. Likewise, Officers must abstain from any vote involving assets on which they have performed an appraisal. The determination of competency shall be based upon the appraisers experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered.

III. Approved Appraisers

The loan officer is to assess the property to determine the qualifications that an appraiser will need to complete the appraisal assignment and whether the transaction, due to its complexity would require a "State Certified Appraiser" vs. a "State Licensed Appraiser", MAI Appraiser, etc. (Attachment "A" to the Real Estate Appraisal Policy is attached hereto and becomes a part of this document as if written herein.

If an "Outside Appraiser" is required, the appraiser should be engaged directly by the Bank or its agent, with the appraisal to be directed to the Bank, but the fee generally paid for by the customer. As appropriate, this fee would best be paid by the customer to the Bank at the time of the application and/or engagement of the appraiser. The Bank may accept an appraisal that was prepared by an appraiser engaged directly by another institution subject to Title XI of FIRREA, if the regulated institution that accepts the appraisal has:

1. Established procedures for review of real estate appraisals;
2. Reviewed the appraisal under the established review procedures, finding the appraisal acceptable and inclusive of the scope of elements and at least the "minimum appraisal standards" required under FIRREA; and
3. Documented the review in writing.

SECTION 523**REAL ESTATE APPRAISALS****DATE: 12-16-04 PAGE 3.0****IV. WHEN AN APPRAISAL IS REQUIRED**

An appraisal should be required on a real estate collateralized loan when the value of the collateral is a material factor in determining credit quality regardless of the type of loan (e.g., commercial, real estate, consumer or agricultural). Any exceptions to policy should be fully documented, and take into account safety and soundness considerations, the borrower's individual circumstances, and the size and nature of the loan and type of collateral.

It is acknowledged that there are circumstances whereby the Bank will collateralize a loan partially or wholly at the inception of the loan — or after it is made "in the abundance of caution". In such cases the Loan Application and credit file should be fully documented to this fact (e.g., if we consider it an unsecured loan we should code it as such — rather than real estate, etc.). "Abundance of caution" — can only be considered in those circumstances where the terms of the credit have not been made more favorable than they would have been in the absence of a lien on real estate. In these cases the loan officer will attempt to document as fully as possible as if a real estate loan; however, documentation exceptions will be permitted.

V. REVIEW OF APPRAISALS

Each loan of \$250m or more supported by an appraisal of realty, will have the appraisal reviewed by the loan officer. FSB form 809 (attached as next page) is to be used for this purpose.

Loan Administration will also review these loans as part of the general loan review process. In addition, selected special reviews will be conducted on a sample of appraisals for smaller loans.

LOAN OFFICER'S APPRAISAL REVIEW CHECKLIST

NOTE # _____

BORROWER _____ APPRAISAL TYPE _____ DATE _____

PROPERTY APPRAISED _____

NAME OF APPRAISER _____ DESIGNATION _____

Y/N/NA

1. ____ Is the appraiser approved by the bank, and does the appraisal contain a statement concerning the appraiser's competency?
2. ____ Was there an engagement letter, and were its requirements met?
3. ____ Does the appraisal contain all needed information to show compliance with USPAP to include the proper definition of market value?
4. ____ Does it analyze and discuss highest and best use, neighborhood analysis, and trends?
5. ____ Does it contain both the effective valuation date and date the report was prepared?
6. ____ Did the appraiser rely and cite reliance on the "departure provision"?
7. ____ Does the appraisal identify in reasonable detail prior sales of the subject that occurred within one year for 1-to-4 unit residences, or three years for all other types of property?
8. ____ Does it set forth the information considered and the appraisal procedures followed, to include assumptions, hypothetical conditions and limiting conditions that affected the analysis, opinions and conclusions, so that the appraiser's logic, reasoning, judgment and analysis are understood by the reader?
9. ____ Is there a consideration of the value of the parts as they may affect the whole?
10. ____ Does the appraisal follow a reasonable valuation method that addresses the cost, sales comparison, and income approach to value; reconcile those approaches; and explain the elimination of any approach?
11. ____ Does it appear complete, have supporting detail, and reach a reasonable conclusion?
12. ____ Does the certification include a statement concerning the appraiser's independence and that he has no direct or indirect financial interest in the property; that he has no present or prospective interest or bias with respect to parties involved; and that the assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan and is the certification signed by the appraiser?
13. ____ Did you as loan officer provide the appraiser with all pertinent information and discuss in depth the type of report required?

 Loan Officer Signature
 FSB 809 R 12-2004

Date _____

FSB/EI 001831

RECORD 0876

SECTION 523REAL ESTATE APPRAISALSDATE: 1-20-00 PAGE 4.0VI. Title XI of the Federal Financial Institution Reform, Recovery, and Enforcement Act of 1989 (FIRREA)

This law requires certain appraisal regulations to be effective August 9, 1990. Its purpose is to provide protection for federal financial and public policy interests in real estate related transactions by requiring real estate appraisals used in connection with "federally related transactions" to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated, and whose professional conduct will be subject to effective supervision.

The definition of "federally related transactions" means any real estate related financial transaction entered into after 9/19/90 that a regulated institution engages in or contracts for, and requires the services of an appraiser. This definition, however, excepts those transactions in which:

1. A lien is placed on real property solely through an abundance of caution, or
2. The transaction value is \$250,000 or less, or
3. The transaction involves a lease that is not the economic equivalent of a purchase or sale, or
4. There is a transaction resulting from a maturing extension of credit under certain circumstances, or
5. There is an acquisition of interests in loans that complied with this regulation.

Within the full scope of this Real Estate Appraisal Policy it is our intent to comply with the Title XI Act and its appraisal regulations although the full contents of this regulation is not written within this Policy document. Because of the significance of the Minimum Appraisal Standards in this regulation, they are incorporated herein as one element of our appraisal. All "federally related transactions" shall at minimum (These minimum Appraisal Standards are taken verbatim from the 12CFR Part 323 by the FDIC published in the "Federal Register - Rules and Regulations - 8/20/90):

SECTION 523**REAL ESTATE APPRAISALS****DATE: 1-20-00 PAGE 5.0**

1. Conform to the Uniform Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation, except that the Departure Provision of the USPAP shall not apply to federally related transactions;
2. Disclose any steps taken that were necessary or appropriate to comply with the Competency Provision of the USPAP;
3. Be based upon the definition of market value as set forth in section 323.2(f) of 12 CFR Part 323 FDIC Regulations;
4.
 - (a) Be written and presented in a narrative format or on forms that satisfy all the requirements of this section;
 - (b) Be sufficiently descriptive to enable the reader to ascertain the estimated market value and the rationale for the estimate; and
 - (c) Provide detail and depth analysis that reflect the complexity of the real estate appraised.
5. Analyze and report in reasonable detail any prior sales of the property being appraised that occurred within the following time periods:
 - (a) For 1 to 4 family residential property, one year preceding the date when the appraisal was prepared; and
 - (b) For all other property, three years preceding the date when the appraisal was prepared;
6. Analyze and report data on current revenues, expenses, and vacancies for the property if it is and will continue to be income-producing;
7. Analyze and report a reasonable marketing period for the subject property;
8. Analyze and report on current market conditions and trends that will affect projected income or the absorption period, to the extent they affect the value of the subject property;
9. Analyze and report appropriate deductions and discounts for any proposed construction, or any completed properties that are partially leased or leased at other than market rents as of the date of the appraisal, or any tract developments with unsold units;

SECTION 523REAL ESTATE APPRAISALSDATE: 1-20-00 PAGE 6.0

10. Include in the certification required by the USPAP an additional statement that the appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan;
11. Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the market value reported;
12. Include a legal description of the real estate being appraised, in addition to the description required by the USPAP;
13. Identify and separately value any personal property, fixtures, or intangible items that are not real property but are included in the appraisal, and discuss the impact of their inclusion or exclusion on the estimate of market value;
14. Follow a reasonable valuation method that addresses the direct sales comparison, income, and cost approaches to market value, reconciles those approaches, and explains the elimination of each approach not used.
15. Unavailability of Information — If information required or deemed pertinent to the completion of an appraisal is unavailable, that fact shall be disclosed and explained in the appraisal.

SECTION 523**REAL ESTATE APPRAISALS****DATE: 1-20-00 PAGE 7.0****VII. REAL ESTATE APPRAISAL REQUIREMENTS**

Generally, our policy for the requirement for appraisals on real estate loans is summarized as follows (see Attachment "B" for specifics):

1. All loans of \$250,000 or under, whether 1 to 4 family residential or non-residential, Bank may use "In-House" appraisers.
2. All loans secured by 1 to 4 family residential properties of over \$250,000 — must be Licensed or Certified appraisers as specified in Attachment "B".
3. All loans secured by non-residential properties of over \$250,000 must use Licensed or Certified Appraisers as specified in Attachment "B".

Attachment "B" addresses those requirements for various types and sizes of loans. It also presents several "Title XI FIRREA" definitions.

VIII. REAPPRAISALS

The need for reappraisals should be given particular attention in the case of loan renewals, extensions or modifications, and problem credits. Should economic conditions in an over built area create concerns about values of present collateral held in that area, the bank may desire to do some reappraisals to determine other action needed on even amortizing nonproblem credits.

Consistent with Title XI "FIRREA" while the loan officer can have the option to do so, we will not as policy require an appraisal to renew or modify a loan for which the borrower(s) has made all scheduled payments under the note, no new funds are advanced, the borrower remains credit worthy, and the market conditions and collateral have not significantly deteriorated.

When loans are renewed, or extended more than one year beyond the original maturity date of the loan, a new appraisal must be obtained if it has been three years since the last appraisal unless it can be clearly demonstrated that the cash flow of the borrower(s) and or partners, guarantors, etc. adequately services all debts and the loan officer has looked at the market and project status and has concluded that the last appraisal remains valid.

When a loan of \$250,000 or more is internally moved to a nonperforming category or classified by Examiners as Substandard, Doubtful or Chargeoff, a new appraisal should be secured if the original appraisal is one year old or more.

SECTION 523REAL ESTATE APPRAISALSDATE: 1-20-00 PAGE 8.0IX. AGE OF APPRAISALS

Commercial loan appraisals must be dated within one year or less of the loan date, and consumer loan appraisals must be dated within two years or less of the loan date. All must be either prepared by a State Certified or State Licensed Appraiser as specified in Attachment "B" to Real Estate Appraisal Policy ("In-House" appraisals are not included in this requirement).

X. CONFIDENTIALITY OF APPRAISALS

Regulation B (ECOA) requires that the bank offer to furnish loan applicants with copies of real estate appraisal reports on the following application types:

- Any application for a loan to be secured by a 1 – 4 family residential structure
- Mobile homes, manufactured or modular homes, condominiums, or cooperatives as collateral
- First and second liens
- Consumer and business loans

Applications for loans secured by 5+ family units or raw land are exempt from this requirement.

The appraisal rule covers both in-house and outside appraisals.

The lender is responsible for providing a copy of the appraisal report upon the request of the loan applicant. The applicant may make this request in writing at any time during the application process and up to 90 days following final disposition of the loan. A copy must be provided within 30 days of receipt of the request.

Copies of appraisals may be obtained by contacting the Consumer Loan Administrator, or the Loan Operations Department.

This regulation does NOT include BUSINESS loans secured by NON-RESIDENTIAL property.

SECTION 523

REAL ESTATE APPRAISALS

DATE: 08/23/05 PAGE 9.0

ATTACHMENT "A" TO REAL ESTATE APPRAISAL POLICY

APPROVED APPRAISERS

Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") requires that the Federal Reserve Systems Board adopt certain regulations regarding the performance and utilization of appraisals by state member banks which they have so adopted and set forth. Therefore, effective September 19, 1990, certain appraisals performed in connection with "federally related transaction" of greater than \$250,000.00 were to comply with the standards set forth in the Federal Reserve Board regulations.

"In House" or "Staff Appraiser"

On "real estate related financial transactions", either residential or nonresidential of less than \$250,000.00, the appraisal may be performed by two approved bank officers, one of whom should have no direct interest, financial or otherwise, in the property being appraised, nor should that officer participate in the credit approval process on the loan.

APPROVED IN-HOUSE APPRAISERS

Barry L. Slider	President and CEO
Timothy C. Ellis	Vice President
W. C. Lyerly III	Banking Group President
Phillip D. Mims	Area Executive
M. B. Witherspoon	Vice President
Brian A. Murdoch	Area Executive
S. Wayne Sewell	Vice President
E. Patrick Wright	Area Executive
Frank R. Callison	Senior Credit Officer
Neda K. Beal	Senior Vice President
Paul W. Schmitt	Vice President
Linda G. Walker	Assistant Vice President
Deb F. Nelson	Banking Officer
Gines Perez III	Assistant Vice President
Melinda A. Buch	Assistant Vice President

Outside Appraisers

On any "real estate related transaction" of \$250,000.00 or more, an outside independent appraiser will be required.

SECTION 523REAL ESTATE APPRAISALSDATE: 1-20-00 PAGE 10.0ATTACHMENT "B" to REAL ESTATE APPRAISAL POLICYReal Estate Appraisal Requirements

(Applicable to either 1st or 2nd Mortgages — and
based on the "transaction value" — defined as our loan amount)
(Effective July 17, 1996)

<u>Type and Loan Size</u>	<u>Type Appraisers Required</u>	<u>Appraisal Standards Required</u>
NOTE: These include Construction Loans, Amortizing/with or without balloons, and combination construction/amortizing loans.		
1. "NonComplex" 1-4 Family Residential Loan Amounts of <u>\$250,000 or under - for Bank's loan portfolio</u> (See Item 9 for Home Equity Loan of \$250,000 and under.)	Bank may use "In-House" or other outside appraisers, although they may or may not be "State Certified" or "State Licensed".	Meet current FDIC and "Interagency Appraisal Guidelines" and S.C. Banking Law and Administrative Code Requirements
2. "NonComplex" 1-4 Family Residential Loan Amounts of <u>over \$100,000 but less than \$1,000,000 for Bank's loan portfolio</u> (Includes Home Equity Loans of over \$100,000)	Bank can use a <u>State Licensed Appraiser</u> (or of course a higher qualified <u>State Certified Appraisers</u> .)	Meet or exceed "Minimum Standards" of Title XI FIRREA Act of 1989 effective 9/19/90, and S.C. Banking Law and Administrative Code Requirements.
3. "NonComplex" 1-4 Family Residential Loans of <u>any amount originated through the Mortgage Loan Dept.</u> on a pre-committed basis by end loan purchases who are to fund immediately or within a few days.	Bank to use " <u>State Licensed Appraisers</u> " or <u>State Certified Appraisers</u>	Meet or exceed "Minimum Standards" of Title XI FIRREA Act of 1989 effective 9-19-90, And S. C. Banking Law and Administrative Code Requirements.

FSB/EI 001838

RECORD 0883

SECTION 523**REAL ESTATE APPRAISALS****DATE: 1-20-00 PAGE 11.0**

4. "Complex" 1-4 Family Residential Loans of <u>under \$250,000</u> for Bank's portfolio.	Bank <u>can use a State Licensed Appraiser</u> (or of course a higher qualified <u>State Certified Appraisers.</u>)	Meet or exceed "Minimum Standards" of Title XI FIRREA Act of 1989 effective 9/19/90, and S.C. Banking Law and Administrative Code Requirements.
5. "Complex" 1-4 Family Residential Loans of \$250,000 or more for Bank's portfolio.	Bank to use " <u>State Certified</u> " Appraiser.	Meet or exceed "Minimum Standards" of Title XI FIRREA Act of 1989 effective 9/19/90, and S.C. Banking Law and Administrative Code Requirements.
6. Non-Residential Loans of \$250,000 or under.	Bank <u>may use "In-House"</u> or other outside appraisers—although they may or may not be "State Certified" or "State Licensed".	Meet current FDIC and "Interagency Appraisal GuideLines" and S.C. Banking Law and Administrative Code Requirements.
7. Non-Residential Loans of \$250,000 or more.	Bank to use " <u>State Certified</u> " Appraiser.	Meet or exceed "Minimum Standards" of Title XI FIRREA Act of 1989 effective 9/19/90, and S.C. Banking Law and Administrative Code Requirements.
8. All real estate loans of \$1,000,000 or more	Bank to use " <u>State Certified</u> " Appraiser.	Meet or exceed "Minimum Standards" of Title XI FIRREA Act of 1989 effective 9/19/90 and S.C. Banking Law and Administrative Code.
9. Residential Home Equity Loans of \$250,000 or under.	Bank <u>may use "In-House"</u> or outside appraisers—although they may or may not be "State Certified" or "State Licensed".	Meet current FDIC and "Interagency Appraisal Guidelines", and S.C. Banking Law and Administrative Code Requirements.

SECTION 523**REAL ESTATE APPRAISALS****DATE: 1-20-00 PAGE 12.0**

Real Estate Appraisal Requirements
(Applicable to either 1st or 2nd Mortgages — and
based on the "transaction value" — defined as our loan amount)

DEFINITIONS

- (a) **"Appraisal"** means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.
- (b) **"Market Value"** means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a final sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
- (1) buyer and seller are typically motivated;
 - (2) both parties are well formed or well advised, and acting in what they consider their own best interests;
 - (3) a reasonable time is allowed for exposure in the open market;
 - (4) payment is made in terms of cash in U.S. Dollars or in terms of financial arrangements comparable thereto; and
 - (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

SECTION 523**REAL ESTATE APPRAISALS****DATE: 1-20-00 PAGE 13.0**

- (c) **"Complex"** — The FRB Board has established the presumption in that appraisals of a 1- 4 family residential properties where the transaction value (loan amount) is less than \$1,000,000 are non-complex, unless we have readily available information that it should be deemed complex. Complex is defined if the property to be appraised has a "form of ownership or market value conditions which are atypical." The Bank itself makes the decision as to whether the case is "complex or noncomplex". Examples of atypical may include age of improvements, architectural style, size of improvements, size of lot, neighborhood land use, potential environmental hazard liability, leasehold interests, or other unusual factors.

First South Bank Real Estate Appraisal Policy
 (For Residential and Non-Residential Real
 Estate Loans of \$250,000 or Less)
 Effective July 17, 1996

To assure the underwriting of real estate loans with good dependable realizable values, the following appraisal programs have been approved by the Bank. In all three (3) loan types noted below, any approved bank officer may conduct the appraisals along with the Loan Officer.

1. **Home Equity Loans and Single Family Owner Occupied** — The officers are to establish the appraised value by either a Cost or Market Value Approach of the collateral (house, garage, and land only) as follows:
 - A. **Purchase Price** — The purchase price, if greater than the tax value noted in (B) below, provided the "In-House appraisers" inspect the property and concur that the property is worth at least the purchase price. The purchase price must be documented by a copy of an appropriate document such as the purchase agreement, settlement sheet, etc. In-House Residential Appraisal Form must be completed and signed by the "In-House Appraisers".
 - B. **Tax Value** — The tax value established for the assessment of property taxes, as adjusted by the Tax Assessment Conversion Factors Chart. The purchase price noted in (a) above can prevail if it meets the criteria noted above. The tax value must be documented

SECTION 523REAL ESTATE APPRAISALSDATE: 1-20-00 PAGE 14.0

by either a copy of the most recent Tax Notice or a copy of the Tax Record Card. In-House Residential Appraisal Form (FSB 609) must be completed and signed by the "In-House Appraisers".

- C. Market Value — We can use an outside appraiser for a Market Sales Comparisons approach. We would prefer they use the Uniform Residential Appraisal Report (RRAR Form 1004), have three (3) recently closed sales comparisons, etc.
2. Residential Investment Property - Nonowner Occupied — In these types of properties, the "In-House Appraisers" have the option of using the same 1 A, B, or C valuing methods above. Additionally, appropriate rental income capitalization data should be a part of our appraisal, with the appraisers making the decision of which alternative appraisal value to use (A, B, C, or Income Capitalization). The two "In-House Appraisers" should also complete our In-House Residential Appraisal Form.
3. Non-Residential — Use same valuing methods in (2) above or other methods deemed appropriate. Our In-House Residential Appraisal Form should be completed by two "In-House Appraisers".

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RECORD 0889

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RECORD 0890

SECTION 530PROBLEM LOANS1-20-00 PAGE 1.0I. PROBLEM LOANS / PAST DUES

- A. Loan losses must be strictly controlled to achieve projected profitability. Losses must be kept within reasonable tolerances determined by the bank. The bank will be cooperative with all borrowers but will pragmatically and forcefully act to promote the best interests of the bank in cases where the possibility of loss can be identified.
- B. An obligation is considered legally "past due" at the close of business on the maturity or due date of the note. Monthly payment consumer purpose notes are an exception to this policy since they will not be reported past due until more than 30 days from the payment due date. When a loan becomes past due, it is the Loan Officer's responsibility to take prompt, persistent action to see that the situation is corrected. (Because of our software, First Equity Lines are given twenty-five (25) days from the "Payment Due Date" to make the payment, and are not considered 30 (thirty) days past due until fifty-five (55) days from the "Payment Due Date.")
- C. Initial identification of past due problem loans should be made by the individual loan officer and reported to his or her immediate supervisor for subsequent communications up the chain of command as appropriate. Further identification of potential problem loans may be made during the bank's normal loan review function. All loans considered a "problem" shall be graded as a risk Grade 6 (Substandard) or below, and reported to the Loan Committee on a monthly basis under the "Watch List Program", described more fully below.
- D. Changes of any substantial nature in the terms of problem loans shall be approved only on a selective basis with the approval of the President or his representative. Such changes shall include repayment requirements, collateral, actions regarding guarantors, and other changes which might effect the timely collection of the loan.

SECTION 530**PROBLEM LOANS****1-20-00 PAGE 2.0**

- E. Problem loans will remain the responsibility of the assigned loan officer with special assistance given by his or her supervisor, and when appropriate by the President or Senior Loan Administrator. Action will be taken as required to protect the interests of the bank.
- F. The bank's policy does not permit the following practices unless there are very unusual circumstances considered as an exception by the President:
1. The extension of principal due dates without the full payment of interest due.
 2. The obtaining of separate notes in lieu of interest payments and/or as the capitalization of the interest by refinancing the old principal and the past due interest.

II. NON-ACCRUAL CREDITS, CHARGE-OFFS AND RECOVERIES

- A. Credits which are past due 90 days or more in interest or principal will automatically be added to the Non-Accrual List unless they are: well secured/guaranteed by a financially solid party(ies); and in the process of collection; AND approved by Loan Administration. Some loans may be placed on nonaccrual earlier than 90 days at the discretion of Loan Administration. Interest will be reversed if already accrued, and future interest recorded only when received. Other credits which are deteriorating may be placed on nonaccrual basis and interest recorded only when received, if circumstances dictate.
- B. Charge-offs will be made on credits when available facts indicate collection is improbable in the foreseeable future. The Board of Directors should, as a rule, approve all loan charge-offs before the actual charge-off action, and such approval should be so noted in the Minutes of the Board.

SECTION 530PROBLEM LOANS1-20-00 PAGE 3.0

- C. Payments on charged-off loans should be applied in the following order: to any uncharged-off principal, charged-off principal, and, if additional funds are available, to interest income.
- D. Once a credit is charged off, a file should be maintained and periodically reviewed for further collection prospects until the note, interest and charges have been paid in full (or it is deemed to have no more collectibility).
- E. Decisions involving nonaccruals, charge-offs, and recoveries should involve appropriate line officers, Senior Loan Administrator, and the President.

III. WATCH LIST

The Loan Committee will maintain a "watch list" of loans identified by management as warranting special attention for a variety of reasons bearing on ultimate collectibility. The following actions will be required:

- (1) Monthly, these loans will be reviewed by the Loan Committee, and quarterly, as of calendar quarter ends, by the Board of Directors along with data as to actions taken by management.
- (2) Typically all loans given a Risk Grade 6 (substandard), or 7 (doubtful) will be placed on the Watch List along with non-accruals. At times, some Risk Grade 5 (special) may be included.

IV. LOAN LOSS RESERVE

An appropriate Loan Loss reserve will be recommended monthly to the Board by the Loan Committee. The size recommendation for the reserve will be determined from a review of the Note Risk Grades as of the month end dates, Watch Loan listings, and specific potential loss designations determined via the loan review process.

1849

27

FSB/EI 001849

RECORD 0894

1850

#28

RECEIVED

FSB/EI 001850

RECORD 0895

SECTION 541LETTERS OF CREDIT5-16-01 PAGE 1.0

NOTE: Documentary (or International) Letters of Credit may be requested by FSB customers, but are issued through certain of our correspondents. Their prescribed forms are to be used in these instances. The FSB C A S form should also be completed for approval and forwarded to Loan Adm. with copies of those items sent to our correspondent. The amount of the L/C is to be considered as a loan for approval authority purposes.

I. STANDBY LETTERS OF CREDITA. DEFINITION & CHARACTERISTICS

A standby letter is one of the two main types of L/Cs. It is an obligation of the bank to guarantee in dollars the performance of the account party, (usually our customer). Draws are not usually made against these unless the account party defaults on a specified undertaking.

While many may view these as contingent liabilities that will never materialize, the bank must be prepared at any time to fund drafts properly presented for payment, thereby converting them to actual account party liabilities. Experience has shown that draws are usually made only under the most unfavorable credit circumstances from the standpoint of the bank. Therefore, the watchword is if you are not prepared to loan the account party the amount of the L/C, then do not issue the L/C.

B. COMMON USAGES1. Bid Bonds

L/Cs are frequently substitutes for bid bonds in lieu of cash deposits or cashiers checks. If the successful bidder fails to sign the contract, the beneficiary may draw against the L/C, forfeiting the bidder's funds.

2. Performance Bonds

Standby L/Cs are also used as performance bonds in transactions such as construction projects, fulfillment of a contract, etc.

3. Loan Guarantee

In many cases, L/Cs are used to guarantee payment of a loan or other obligations where the strength of the account party needs enhancement.

SECTION 541LETTERS OF CREDIT5-16-01 PAGE 2.0II. FSB POLICYA. APPROVALS

FSB personnel with lending authority may recommend the issuance of L/Cs. ALL letters of credit, regardless of size and terms, are to be documented with a Credit Approval Summary, and such other documentation as may be required for a loan of identical size, collateral, and approval authority, HOWEVER, an additional requirement is:

ALL LETTERS OF CREDIT ARE TO BE COUNTERSIGNED BY ONE OF:
THE FSB PRESIDENT, A REGIONAL PRESIDENT, OR SENIOR LOAN
ADMINISTRATOR. (See also manual Section 503 III B)

B. EXPIRATIONS

L/Cs should normally be held to as short a term as possible, and generally no longer than one year. For longer terms, it is recommended that one year terms with possible extensions be tried. Alternatively, for our most credit worthy customers, L/Cs may be issued on an automatically renewable basis. These are recommended to be secured, and should be avoided whenever possible.

C. FEES

As with loans, risk varies with size, time to expiration, financial strength of the account party, and quality of collateral. Fees should be assessed to reflect risk. Generally, a fee in the range of at least 1% to 2% per annum should be charged, with a minimum charge of \$250.

D. LIMITATION OF LIABILITY

Letters of credit issued by FSB must be for a specifically stated maximum amount of US Dollars.

SECTION 541LETTERS OF CREDIT5-16-01 PAGE 3.0E. BASIS OF PAYMENT

In issuing an L/C, (FSB-810), the bank is engaging to act in strict accordance with the literal instructions of the Letter of Credit. If we are presented with documents which are prepared exactly per our L/C, we must pay. If there is a dispute over quality, completion, etc. arising from the underlying transaction that yielded the L/C, our customer, (account party) for whom we issue the L/C, is still bound to reimburse us, and must work out his differences with the beneficiary on his own. The bank is legally bound to never interfere or negotiate in any business transaction between the beneficiary and account party. This is a strict rule with no exceptions. Only by court injunction are we able to refrain from paying if documents are complete and correct.

F. REIMBURSEMENT

FSB customers must have an unqualified obligation to reimburse the bank on the same condition as the bank has paid. This must be set forth and acknowledged in writing by the account party from whom FSB is to be repaid.

This is accomplished by having the account party execute a Letter of Credit Application & Agreement, (FSB-809); and also an FSB promissory note for the full maximum amount of the L/C. The note should be dated the same as the L/C, be drawn on demand, and be signed by the appropriate makers. The note will be held in Loan Administration in the L/C file, and will be input on the loan system as an unfunded/blocked line with the appropriate port number. The interest rate should be a function of risk. The loan will be activated only in the event that draws under the L/C are made which are not immediately reimbursed by our account party/customer.

G. EQUIVALENCY OF LOANS

FSB policy is to assume that all L/Cs will ultimately be drawn down for the full amount. Therefore, each L/C should be viewed as a LOAN and be analyzed and documented on that basis. L/Cs will also be considered as loans with regard to computation of officer loan authority, legal lending limits, "Insider" transactions, etc. and must be disclosed on "C A S" forms when other credit is being requested.

FSB/EI 001853

SECTION 541**LETTERS OF CREDIT****5-16-01 PAGE 4.0****III. PROCEDURES**

1. Complete a "C A S" form detailing the transaction, terms, expiration, collateral, guarantors etc. and obtain authorizing officer approval signatures.
2. Complete an Application and Agreement for Standby Letter of Credit (FSB-809) including the specific wording governing payment of drafts signed by the account party.
3. Complete an FSB promissory note for the amount of the L/C signed by the account party.
4. When the actual original L/C is completed, (FSB-810), a copy is to be reviewed, and signed for language approval by our account party/customer for Loan Administration files.
5. The original L/C is to be signed by a bank loan officer, and countersigned by either the President, a Regional President, or Senior Loan Administrator. Loan Administration will provide the L/C number to be assigned, and is to receive a fax copy of the L/C as soon as it is activated.
 - a. Appropriate additional documentation such as Guarantee Agreements, collateral documentation, and other appropriate items are to be obtained.
 - b. A package containing all documentation (to include the L/C copy signed by the account party) is to be forwarded within 3 business days of issue to Loan Administration for review and custody. The review package should also contain copies of general ledger tickets for the fee charged.
 - c. Loan Administration will review each L/C for credit underwriting and documentation as for a loan. All associated papers will be maintained in an envelope with appropriate general ledger entries. The L/C will be entered on the system under the appropriate port number as a blocked line of credit with alerts for any trigger dates.

FSB/EI 001854

SECTION 541**LETTERS OF CREDIT**5-16-01 PAGE 5.0**IV. SUMMARY OF FORMS/DOCUMENTATION****STANDBY LETTERS OF CREDIT****Originating Loan Officer:**

1. C A S form detailing transaction with approval signature.
 2. Application and Agreement for Standby Letter of Credit (FSB 809)
 3. Properly executed FSB promissory note for L/C amount.
 4. Copy of L/C, (FSB 810), with account party approval signature.
 5. Authorization and countersignature affixed to original L/C.
 6. Fax copy of L/C to Loan Administration when issued.
 7. Documentation package to Loan Administration within 3 days.
 8. Collect L/C fee and make GL fee entries, copies to Loan Adm.
(G/L #425401 for Spartanburg; #425403 for Columbia)
(see sample entries on next page)
-

Loan Administration:

9. Loan Adm. review, underwriting, and custody.
10. Entry to GL, and on system as blocked line of credit with alerts.

6

CREDIT GENERAL LEDGER
ACCOUNT TITLE

ACCOUNT NUMBER

DATE

425401

5-16-01

FBS-140

DESCRIPTION	AMOUNT
Letter of Credit Fee	
customer name	
L/C # 90001	
CONTRA ENTRY	
DRAWN BY	
APPROVED BY employee	
TOTAL	1000.00

400

DDA DEBITS - REGULAR DEMAND DEPOSIT TRANSACTIONS

ACCOUNT NAME

DATE

Customer name

5/16/01

PREPARED BY

employee

ACCOUNT NUMBER

TRAN CODE

AMOUNT

1111000

045E\$

1,000.00

REGULAR DEMAND DEPOSIT TRANSACTIONS

- 024 - INTEREST ACCRUAL DECREASE
- 035 - FEDERAL WITHHOLDING
- 043 - OFFICER APPROVED CHECK
- 044 - LOAN PAYMENT
- 045 - PAY FIRST CHECK
- 052 - PAY LAST CHECK
- 053 - MANUAL SERVICE CHARGE
- 061 - CLOSING WITHDRAWAL

(7)

Letter of Credit No. _____ Date: _____

Dear Sir / Madam:

We hereby open our irrevocable letter of credit in your favor in the amount of _____ This credit is available upon your draft on ourselves at sight in the amount stated above for the account of _____

Each draft must be signed by you and must bear upon its face the terms:

"Drawn under Letter of Credit No. _____ dated _____ issued by First South Bank."

Drafts must be presented during normal banking hours and must be accompanied by the original letter of credit and a written statement signed on behalf of _____ stating that:

_____ hereby certify to First South Bank that either is entitled to draw the sums which are being drawn pursuant to the annexed draft."

Upon receipt of the required draft and certificate, the undersigned issuer shall pay the draft without further inquiry.

The expiration date of this letter of credit is _____ and under no circumstances will a draft be honored after said date, unless this letter is extended by the undersigned in writing.

This credit is subject to the Uniform Customs and Practices for Documentary Credits, as currently revised, International Chamber of Commerce, Publication 500, and is governed by Article 5 of the Uniform Commercial Code.

We hereby agree with you that a draft under and in compliance with the terms of this letter of credit will be duly honored by us on delivery of the documents required if presented at this office on or before the expiration date stated above.

This credit is transferable to the successors and assigns of _____

Very truly yours,

FIRST SOUTH BANK

By: _____
Its: _____
(Authorized Officer)

FIRST SOUTH BANK

By: _____
Its: _____
(Countersigned)

ACKNOWLEDGEMENT

By: _____
(Account Party)

FSB-810

6/8/01

FSB/EI 001857

1858

First South Bank
Commercial Loan Department
Post Office Box 1928
Spartanburg, SC 29304

APPLICATION AND AGREEMENT FOR STANDBY LETTER OF CREDIT

Date: _____

Gentlemen:

Please issue an irrevocable Standby Letter of Credit in accordance with this application for our account (or for the account of the party indicated in Special Instructions) in favor of the Beneficiary. In issuing the Standby Letter of Credit you are expressly authorized to make such changes from the terms set forth below as you in your sole discretion may deem advisable.

Applicant

Beneficiary (s) LOC #:	Maximum Amount: In Words: In Figures: Expiration Date:

Any drawings must be accompanied by the following document(s):

☐ Beneficiary's draft(s) drawn at sight on First South Bank

☐ Beneficiary's signed statement reading: _____

☐ Other:

Multiple Drawings: Multiple drawings are not permitted unless the following box is checked ☐. If multiple drawings are permitted, the unused balance of the Letter of Credit will remain available until the Expiration Date.

Special Instructions:

Delivery of Letter of Credit: When issued, the Letter of Credit is to be delivered to ☐ Applicant at the address above
☐ the Beneficiary at the address above ☐

other: _____

 by: ☐ U.S. Mail ☐ Overnight Courier ☐ Other


 FSB-809

5/10/01

FSB/EI 001858

RECORD 0903

(4)

**TERMS AND CONDITIONS OF
APPLICATION AND AGREEMENT FOR STANDBY LETTER OF CREDIT**

To induce the issuance of the Letter of Credit, we agree to the provisions set forth on the first page hereof and as follows:

1. (a) To pay you, in lawful United States Funds at your office, the amount of each draft under the Letter of Credit (the "Credit"), on demand or, at your request, in advance.

(b) To pay you at your office the equivalent in lawful United States funds of the amount of each draft under the Credit, on demand, at your then selling rate of exchange for cable transfers to the place of payment in the currency of the draft. In the absence of such current exchange rate, we will pay you, on demand, lawful United States funds sufficient, in your sole judgement, to meet your obligations, to be applied thereto or, at your opinion, held as security therefor, and also any additional amount necessary for settlement thereof, however and whenever made, including interest where chargeable at a rate per annum equal to your Prime Rate. As used herein, "Prime Rate" refers to that interest rate so denominated and set by your from time to time as an interest rate basis for borrowings. The Prime Rate is but one of several interest rate bases used by you, and you lend at rates above and below the Prime Rate.

(c) To pay to you, on demand, your commissions, all charges and expenses paid or incurred by you (including expenses of collection hereunder, or of exercise of your rights hereunder as to security or otherwise, and reasonable attorneys' fees), any correspondents' charges, and interest where chargeable at a rate per annum equal to your Prime Rate.

Telegraphic or mail advice from your correspondents of payments or other action effected under the Credit shall be presumptive evidence of the facts therein stated and of our liability to you hereunder.

2. (a) Except as otherwise provided herein or as you and we may otherwise agree with regard to and prior to issuance of the Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce, Paris, France, which is in effect on the issue date of the Credit shall in all respects be deemed a part hereof as fully as if incorporated herein and shall apply to the Credit.

(b) You and your branches, affiliates and/or correspondents shall not be liable or responsible in any respect for any (i) error, omission, interruption or delay in transmission, dispatch or delivery of any one or more messages or advises in connection with the Credit, whether transmitted by cable, radio, telegraph, mail or otherwise and despite any cipher or code which may be employed, (ii) errors in translation or errors in interpretation of technical terms or consequences arising from causes beyond your or their control, (iii) action, inaction or omission which may be taken or suffered by your or them in good faith or through inadvertence in identifying or failing to identify any beneficiary(ies) or other wise in connection with the Credit. Or (iv) any failure by you or them to pay any draft under the Credit resulting from any censorship, law, control or restriction rightfully or wrongfully exercised by any de facto or de jure domestic or foreign government or agency or from any cause beyond your or their control.

(c) To indemnify and hold you harmless from all loss, damage, liability or expense by reason of any act or omission pursuant to our instructions or otherwise arising from or in connection with the Credit, and the occurrence of any one or more of the contingencies set forth in 2(b) above shall not affect or impair your rights and powers hereunder or our obligation to reimburse you hereunder.

3. (a) To pledge, and do hereby pledge to you as security for any and all obligations hereunder any and all of our property or the property of any one or more of us, now or at any time hereafter in your possession or control (inclusive of such property as may be in transit by mail or carrier to or from you), or that of any third party acting in your behalf, whether for the express purpose of being used by you as collateral of for safekeeping or any other different purpose, a lien being hereby given you upon any and all such property for the aggregate amount of such obligation. You are hereby authorized, at your option, and without obligation to do so, to transfer to and or register in the name(s) of your nominee(s) all or any part of the property which may be held by you as security at any time hereunder, and with or without notice to us or any of us. We hereby authorize you, acting in your discretion at any time and whether or not any property then held by you as collateral security hereunder is deemed by you to be adequate, to hold as additional collateral security any and all monies now or hereafter with you on deposit or otherwise to the credit of or belonging to us or any one or more of us, and then or thereafter to apply, in whole or in part, the monies so held upon all or any of the aforesaid obligations.

(b) At any time and from time to time, on demand, to assign and deliver to you, as collateral (or additional collateral) for any and all of the liabilities of us hereunder and all other liabilities of us to you, direct or contingent, joint, several or independent, now or hereafter existing, due or to become due, whether created directly or acquired by assignment or otherwise, additional collateral of a type and value satisfactory to you or to make such cash payment as you may require.

(c) The word "property" as used in this agreement includes goods and merchandise (as well as any and all documents relative thereto), securities, funds, monies (whether United States Currency or otherwise), choses in action and any and all other forms of property, whether real, personal or mixed and any right or interest which we, or any one of us, have therein or thereon. You are authorized at your option to file financing statement(s) without our signature with respect to any of the property and we agree to pay the cost of any such filing and to sign upon request any instruments, documents or other papers which you may require to perfect your security interest in the property.

(d) Whenever you deem it necessary for your protection, or after an Event of Default specified in Section 4, or other default, you may realize upon (by sale, assignment, setoff, application or otherwise) all or any part of such security, in each case without advertisement, notice to, tender, demand or call of any kind upon us or any other person. Any such sale or assignment may be public, private or upon any broker's board or exchange, for cash, on credit or for future delivery, and at such price and upon such term and conditions as you deem appropriate. You may acquire all of any part of such security. The purchaser of such security shall hold same free from any equity of redemption or other claim or right on our part, which are hereby specifically waived and released. You may discount, settle, compromise or extend any obligations constituting such security, and sue thereon in your or our name. Any demands, tenders, calls or notices to us shall be deemed duly made or given as of the time delivered to our last known address, or mailed, telegraphed, telephoned, or otherwise sent to such address. No advertising, notice, tender, demand or call at any time given or made shall be a waiver of your right to proceed in the same or other instances without any further action.

(e) Proceeds of any such security shall be applied, without any marshalling of assets, in such manner or order as you may deem proper, to any one or more of our obligations, whether or not due, and you may retain any amounts necessary, in your sole judgement, to meet any contingent obligations.

(f) No receipt of, realization upon, release or substitution of, or other dealing with, any such security shall affect your rights or liens hereunder.

FSB-809

5/10/01

FSB/EI 001859

4. If we fail to perform any of our obligations, if we fail to comply with a demand by you pursuant to 3(b) above to provide collateral; if any of our representations or warranties made to obtain credit or any extension thereof are or appear to you to be false; if we default under any evidence or indebtedness issued, assumed or guaranteed by us or any agreement with respect thereto; if we suspend transaction of our usual business or expelled or suspended from any exchange; if any judgement creditor applied for an order directing you to pay over or deliver property; if we die or dissolve; if we become insolvent or commit any act of insolvency or bankruptcy, or make a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by or against us; if a petition or proceeding is filed or instituted by or against for relief under any bankruptcy, insolvency, reorganization, readjustment of debt or other law for relief of debtors, or for dissolution or liquidation; if any governmental authority takes possession of any substantial part of our property or assumes control of our affairs or operation; or if a receiver, trustee or liquidator is appointed for any part of our assets or a writ or order of attachment or garnishment is issued against us; then, unless you shall otherwise elect, in any such event (herein called an "Event of Default") all our obligations shall become due and payable without presentment, demand, protest or other notice of any kind, all of which we hereby expressly waive.

5. You may assign or transfer this Agreement or any instrument(s) evidencing all of any of the aforesaid obligations and, or liabilities, and may deliver all or any of the property then held as security therefor, to the transferee(s), who shall thereupon become vested with all the powers and rights in respect thereto given you herein or in the instrument(s) transferred, and you shall thereafter be forever relieved and fully discharged from any liability or responsibility with respect thereto, but you shall retain all rights and powers hereby given with respect to any and all instrument(s), rights or property not so transferred.

6. Failure to exercise and or delay in exercising on your part, any other right, power or privilege hereunder or under any trust receipt or security agreement (including the right to accounting) shall not constitute a waiver thereof, nor shall any single or partial exercise of any thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No provision hereof shall be deemed to have been waived unless you or your authorized agent shall have signed such waiver in writing, nor shall any such waiver, unless otherwise expressly stated therein be applicable to any matters occurring subsequent to the date thereof or to any continuance of the matters waived after such date. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

7. In case of any extension or renewal of the Credit, increase or other modification of its terms, or the further financing or refinancing for us of any transaction effected under the Credit as, for example, on a temporary advance, banker's acceptance, loan or other financing basis, with or without further documentation or agreement, this agreement shall continue to be binding upon us in all respects with regard to the Credit as so extended, increased, or modified and to any transaction so financed or refinanced.

8. This agreement shall be binding upon us, our heirs, executors, administrators, successors and assigns, and shall inure to the benefit of and be enforceable by you, your successors, transferees and assigns. If this agreement should be terminated or revoked by operation of law as to us, or any of us, we will indemnify and save you harmless from any loss which may be suffered or incurred by you in acting hereunder prior to the receipt by you, or your transferees or assigns, of notice in writing of such termination or revocation. If this agreement is signed by two or more parties, it shall be the joint and several agreement of such parties and whenever used herein, the singular number shall include the plural, and the plural the singular. This agreement shall be governed by and construed in accordance with the laws of the state in which you have your principal office.

9. We hereby certify that transactions in any merchandise covered by the application forming part of this agreement are not prohibited under the Foreign Assets Control or Cuban Assets Control Regulations of the United States Treasury Department and that any importation covered thereby conforms in every respect with all existing United States Government regulations and executive orders.

10. If, as a result of any law, regulation, treaty or directive, or any change therein, or in the interpretation or application thereof or your compliance with any request or directive (whether or not having the force of law) from any court or governmental authority, agency or instrumentality, any reserve, premium, special deposit, special assessment or similar requirements against your assets, deposits with you or for your account or credit extended by you are imposed, modified or deemed applicable and you determine that, by reason thereof, the cost to you of issuing or maintaining the Credit is increased, we agree to pay you upon demand (which demand shall be accompanied by a statement setting for the basis for the calculation thereof) such additional amount or amounts as will compensate you for such additional cost. Determinations by you for purposes of this Section of the additional amounts required to compensate you in respect of the foregoing shall be conclusive, absent manifest error. We further agree to pay any applicable levies or other taxes imposed in connection with the Credit other than net income taxes payable by you, and otherwise comply with all domestic and foreign laws and regulations applicable to all transactions under or in connection with the Credit.

11. This letter of credit is secured by:

Applicant:

By: _____

By: _____

GUARANTOR FOR:

By: _____

Guarantor

FSB-809

5/10/01

FSB/EI 001860

1861

#29

COPIED

FSB/EI 001861

RECORD 0906

1862

#30

RECEIVED

FSB/EI 001862

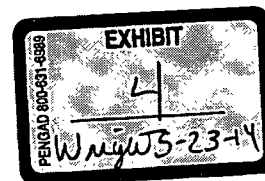
RECORD 0907

1863

#31

FSB/EI 001863

RECORD 0908



January 9, 2006

Mr. John E. Rosenberg
Mr. Philip J. Brust
Ecological Investments, LLC
Hilton Head Island, South Carolina

Dear Mr. Rosenberg and Mr. Brust:

First South Bank (hereinafter referred to as "Bank"), is pleased to commit to Ecological Investments, LLC (hereinafter referred to as the "Borrower") a loan commitment (hereinafter referred to as the "Loan"), subject to the following terms and conditions:

Borrower: Ecological Investments, LLC

Principal Amount: Up to \$2,600,000. This is a revolving commitment. Principal may be advanced, re-paid, and re-advanced, until the maturity date stated below, provided that (a) aggregate outstandings at any one time do not exceed the principal amount stated above, (b) Borrower has complied with advance procedures of any loan agreement or other loan document, and (c) no event of default exists

Purpose: Proceeds shall be used as follows: (1) refinance existing debt of approximately \$2,200,000; (2) provide additional funds for interest payments over the 24-month term of the Loan of up to \$350,000; and (3) fund up to \$50,000 in expenses such as property taxes and other nominal expenses.

Fee, Rate and Terms:

Borrower may choose one of the following two interest rate options:

1. The interest rate shall be fixed at 7.00% for the term of the Loan, and interest will accrue and will be due and payable on any outstanding principal balance and be due and payable on a monthly basis.
2. Interest will accrue and will be due and payable on any outstanding principal balance at the Prime Rate (as published in the Wall Street Journal), as that rate may change from time to time with said changes being made as and when the Prime Rate changes, and with all accrued but unpaid interest being due and payable on a monthly basis.

The legal maturity shall be twenty-four (24) months from the date of closing, at which time all outstanding principal plus any accrued but unpaid interest, fees, and other charges, shall be due and payable.

A one-time origination fee of \$5,000 shall be payable upon the closing of the Loan.

Primary Collateral: The Loan shall be secured by a title insured, first mortgage security interest in the real property known as 82.68 acres located near Exit 8 on Interstate 95 and U.S. Highway 278 in Jasper County, South Carolina, also known as the Butterfly Kingdom PUD, all of which shall be more fully described in collateral documents between Bank and Borrower. The Loan shall be further secured by an assignment of leases, rents and profits.

P. O. Box 6508 ■ Hilton Head Island, South Carolina 29938 ■ (843) 706-3900 ■ Fax (843) 706-3901

FSB/EI-001222

The Bank's lien shall be primary and ahead of the lien held by the members of the LLC, which lien shall not be more than \$350,000 during the term of this Loan

Guarantor: Payment of the Loan shall be unconditionally guaranteed, jointly and severally, by John E. Rosenberg and Philip J. Brust, hereinafter the "Guarantors."

Insurance: Borrower shall provide to Bank satisfactory evidence of insurance coverage on all collateral pledged, to Bank's satisfaction and with Bank named mortgagee or loss payee, which may include but not be limited to requirements for casualty, flood, liability, business interruption, and title insurance, throughout the life of the Loan.

Appraisals: Bank shall order and pay for appraisals on all collateral pledged prior to closing of the Loan, and may order and pay for any reappraisals it deems necessary throughout the life of the Loan, and Borrower agrees to prepay Bank or to reimburse Bank for any such payments at closing or within 20 (twenty) days of written notice by Bank. This commitment is contingent upon receipt of an appraisal ordered by, addressed to and satisfactory to the Bank indicating an "as-is" market value of the collateral property of no less than \$4,200,000.

Environmental Compliance: The Borrower warrants and represents, to the best of its knowledge, that no portion of the Collateral is contaminated with hazardous or toxic materials or has ever been used as a disposal site for the same. Upon request by Bank, Borrower shall complete an environmental questionnaire provided by Bank, and/or obtain from a firm approved by Bank an environmental site assessment. Bank reserves the right to cancel this commitment if not satisfied in its sole discretion with the environmental condition of the property.

Deposit Relationship: Borrower and Guarantors agree to maintain a primary deposit relationship with Bank throughout the life of the Loan.

Conditions Precedent to Closing: Receipt and satisfactory review of current personal financial statements, copies of recent statements of Guarantors' liquid investment accounts, and Federal Tax Returns for the Guarantors listed above as well as the 2004 federal tax return or other satisfactory financial information on the Borrower.

Financial Information and Requirements: Borrower and Guarantors agree, as a condition of the Loan and until the Loan has been fully repaid, to:

1. Furnish to Bank copies of signed Federal tax returns of Borrower within 30 days of filing.
2. Furnish to Bank annually personal balance sheet and income information, on Bank's standard personal financial statement form completed in its entirety, and complete personal income tax returns, on the Guarantors.

Prepayment: Borrower may prepay all or any portion of the Loan at any time.

Assignability: Borrower cannot assign the commitment without Bank's prior written approval, nor shall any third party rely hereon or be deemed a party beneficiary hereby.

Material Adverse Change: This commitment is conditioned upon there having occurred no act, omission or undertaking which would, singly or in aggregate, have a materially adverse effect upon the business, assets, liabilities, financial condition, results of operations or business prospects of the Borrowers, or of any guarantor, or of any collateral, or upon the ability of the Borrower to perform any material obligations arising under the Loan Documents.

Further, this commitment is contingent upon receipt and verification of certain financial statement and income information on the Guarantors in form and content satisfactory to the Bank.

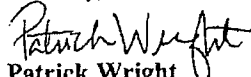
Closing Requirements: Closing requirements for a loan of this nature shall apply, to be determined at the discretion of Bank and its counsel, and can be furnished to you or your attorney upon acceptance of this commitment. All fees and expenses of Bank in connection with the negotiation and closing of the Loan, including but not limited to attorney fees, appraisal fees, environmental assessment fees, and other direct fees shall be paid by Borrower. In connection with the closing, Borrower's counsel shall provide an opinion letter to Bank as to the validity and enforceability of the Loan documents and such other matters as Bank may reasonably require.

You may indicate your acceptance of the terms and conditions offered by signing below and returning the original copy of this letter to Bank. If not accepted by January 12, 2006, and if a resulting loan is not closed by January 31, 2006, then this commitment will expire and neither Bank nor Borrower will be obligated hereunder.

Should you accept this commitment, then it is hereby agreed between Bank and Borrower that it shall survive the closing, that it shall become an integral part of the Loan documents, and that its terms, conditions, and agreements shall become terms, conditions, and agreements of the Loan. Should there be any inconsistencies between any term of the Note, security documents, or Loan Agreement and any term of this commitment letter, then the term of the Note, security documents, or Loan Agreement shall prevail; remaining terms, conditions, and agreements shall not be affected.

It is a pleasure to extend this financing offer. We look forward to hearing from you and having the opportunity to continue to provide you with the financial services of First South Bank.

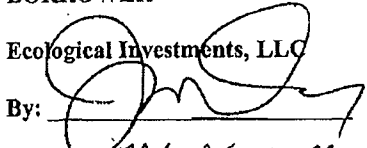
Sincerely,


Patrick Wright
Senior Vice President

Accepted and Agreed to:

BORROWER

Ecological Investments, LLC

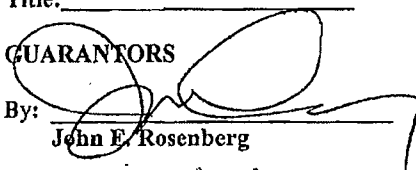
By: 

Title: MARGARET MORRISON

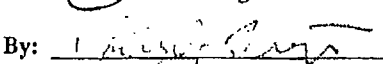
Attested: _____

Title: _____

GUARANTORS

By: 

John F. Rosenberg

By: 

Philip J. Brust

FSB/EI-001224

RECORD 0911

JAN-11-06 12:55 FROM: first south bank

6437069901

T-498 P.002/007

F-881

First South BankPatrick Wright
Senior Vice President

January 10, 2006

Finger and Andrews, PA
Attn: Terry A. Finger, Attorney at Law
11 Palmetto Parkway
Suite 101
Hilton Head Island, SC 29928

Re: Loan Closing for Ecological Investments, LLC

Dear Mr. Finger:

\$2,600,000.00

First South Bank ("Bank") has committed to Ecological Investments, LLC ("Borrower") a loan in the amount of ~~\$2,600,000.00~~ collateralized by a first real estate mortgage on real property being approximately 82.68 acres in Jasper County, SC; Parcel 042-00-05-042 also known as the Butterfly Kingdom PUD located at the end of Red Dam Road approximately 1.6 miles from its intersection with US Highway 278 in Hardeeville, South Carolina. We need to schedule a loan closing date with your office at your convenience. Please contact me to coordinate a closing date and time.

Should you accept this request to handle the subject loan outlined herein, First South Bank expects it to be closed according to the instructions and terms, specifically outlined herein. Your acceptance of this closing engagement letter is so indicated by your signature which is to be affixed at the end of this letter. Our closing instructions are detailed as follows:

PRIOR TO CLOSING

You or your designated agent will be responsible for obtaining and delivering the following information to First South Bank prior to closing as follows:

1. Signed/Executed Copy of this Closing Instruction Letter. The closing attorney must sign, date and return (via mail or fax or courier) this closing instruction letter.
2. An Insured Closing Letter. First South Bank must be in receipt of an Insured Closing Letter issued by a title insurance company deemed acceptable to the Bank.
3. Title Insurance Binder is to be provided to the bank no less than 24 hours prior to closing. The Title Insurance Binder shall have no exceptions (including any exceptions as to matters of a current survey) that are deemed unacceptable to First South Bank, as may be determined in its sole discretion.
4. Settlement Statement. You are to fax a copy of the proposed settlement statement, at least 24 hours prior to the closing date, to the Bank for its review and approval.

Post Office Box 6508 • Hilton Head, South Carolina 29928 • 843-706-3900 • Fax 843-706-3801

FSB/EI-001225

JAN-11-06 12:55 FROM:First south bank

8437063901

T-499 P.002/007 F-881

• Page 2

January 10, 2006

5. **Fees and Expenses to be Collected and Disbursed at Closing:** You are responsible for collecting and disbursing to the appropriate party, the following fees and expenses associated with this closing:
- Payoff on subject real estate payable to Sun Trust Bank, the current first mortgage holder. Please contact them directly for an accurate payoff amount.
 - An origination fee of \$6,000.00 payable to First South Bank.
 - An appraisal fee of \$1,800.00 payable to Gary Beaver.
 - Your attorney fees, title insurance premiums, recording fees, and other fees incurred by your office in conjunction with this closing.
6. **Documents to be Drafted by Your Office:** The Bank will require your assistance in drafting or providing the following closing documents:
- Legal description of the property securing this mortgage, to be used in conjunction with the recorded mortgage.
 - Assignment of all leases and rents associated with the subject property, to be recorded at closing.
 - Copy of Articles of Incorporation and Operating Agreement for Ecological Investments, LLC

PRIOR TO FUNDING:

Before any loan proceeds are disbursed, the closing attorney must be prepared to unconditionally represent and warrant to First South Bank the following:

- Prior Security Lien Interest:** First South Bank has a legally binding and recorded first lien security interest in the following:
All real property and any and all improvements known as approximately 82.88 acres in Jasper County, SC; Parcel 042-00-05-042 also known as the Butterfly Kingdom FUD located at the end of Red Dam Road approximately 1.5 miles from its intersection with US Highway 278 in Hardeeville, South Carolina.
- Fully Executed Promissory Note:** Upon execution, please fax a complete copy of all pages of the Promissory Note to the Bank at (843) 708-3901. Loan proceeds are *not* to be disbursed until this requirement has been met.

POST CLOSING:

Once the loan has been closed and funded, First South Bank expects the following documents and/or items to be delivered as follows:

- Original Closing Documents:** The signed, original closing documents (other than recorded documents, identified below) will be returned to the bank no more than two business days following the loan closing.
- Recorder's Receipt** or a copy of "Clocked-in" recorded mortgage is to be provided with original closing documents.
- Recorded Real Estate Mortgage(s).** An executed copy of the original instrument(s) will be provided to the Bank at closing. The recorded original document(s) must be received by the bank within thirty (30) days of closing.
- Final Title Insurance Policy.** The original final title insurance policy will be issued and delivered to First South Bank within 90 days of closing.

FSB/EI-001226

01/17/08 18:46 FAX 1 843 681 8602

FINGER & ANDREWS, P.A.

004

JAN-11-08 12:55 FROM-first south bank

8437068901

T-498 P.004/007

F-881

• Page 3

January 10, 2008

Once all pre-closing requirements have been met, Loan Closing Documents will be sent from First South Bank to your office. A loan proceeds check will be sent to your office via courier or other authorized representative on the day of closing. Upon completion of the closing and execution of the loan documents please forward the original documents and checks for appropriate fees to:

First South Bank
Post Office Box 8508
Hilton Head Island, SC 29928
Phone: 843-706-3900

A copy of the commitment letter from First South Bank to Ecological Investments, LLC is enclosed for your review.

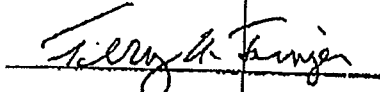
Thank you in advance for your assistance with this closing. If you have any questions, please call Christie Herling or myself at 843-706-3900.

Sincerely,



Patrick Wright
Senior Vice President

BY SIGNATURE AFFIXED BELOW, I HEREBY ACKNOWLEDGE RECEIPT OF CLOSING INSTRUCTIONS AND AGREE TO REPRESENT THE FIRST SOUTH BANK'S INTERESTS AS OUTLINED HEREIN UNLESS PRIOR APPROVAL IS RECEIVED FROM BANK. PLEASE RETURN VIA FACSIMILE TO 843-706-3901.



By: Terry A. Finger, Attorney at Law

Date

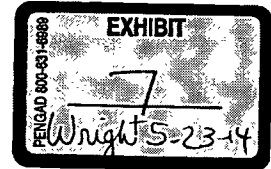
~~1-13-06~~ 1-13-06

FSB/EI-001227

RECORD 0914

CREDIT NARRATIVE - ECOLOGICAL INVESTMENTS, LLC

January 31, 2006



Borrower Description and Nature of Business

Ecological Investments, LLC, is a SC limited liability company formed in 2001 to hold and develop commercial real estate in a project originally known as the Butterfly Kingdom. It has over 12 members with the controlling interests being represented by John Rosenberg (26.5%) and Philip Brust (14.7%) – more about these two LLC members who are also our two guarantors is found below and in some of the attachments. John Rosenberg is the managing member of the partnership and is authorized to conduct all normal business affairs. All other members have less than ten percent individual ownership. This LLC owns 82.68 acres of unimproved property in Hardeeville, Jasper County, SC, less than two miles from the intersection of US 278 and Interstate 95 known as SC Exit 8 off of I-95. US 278 is the main four-lane traffic artery connecting I-95 with Bluffton and Hilton Head Island, SC. More about the property is detailed in the collateral section. FSB was introduced to this financing opportunity based on our relationship with John Rosenberg through his new company, Airpro Cooling and Heating Company that he owns jointly with Nickey Maxey, also a FSB client. During our recent renewal and increase of a LOC to Airpro, Rosenberg relayed to the writer that the existing loan on this 82.68 acres was maturing at Sun Trust, and asked if FSB would be interested in bidding on the refinance. After several weeks of negotiations involving FSB and three other banks, FSB was awarded the financing based on our competitive credit structure.

Our comfort with this Borrower lies in the financial strength and liquidity of guarantors Rosenberg and Brust, comfortable LTV ratio of 50%, and the anticipation of a significant deposit relationship with Rosenberg as a result of this financing. Our two year loan is within policy for interest only loans, and it is the intention of the Borrower to liquidate a portion of the acreage to pay down all or a significant part of the loan over this time period.

Purpose and Repayment Sources

Our \$2,600M will be used to payoff the existing \$2,200M loan at SunTrust, fund approximately \$325M in interest carry over the two year loan, and fund other property-related expenses such as taxes, etc.

Given this structure, our primary repayment source will be the monthly draws from the loan to cover interest. On a secondary basis, Rosenberg and Brust collectively have over \$500M in surplus personal cash flow representing a strong repayment source. This information is found in their TaxAnalysis recaps that are attached to this document. The comfortable LTV ratio of 50% also provides a solid tertiary cash flow position in the event of property liquidation to repay our loan.

Although our primary repayment source is a draw on the note for monthly interest payments, as noted on the CAS, the guarantors have a minimum cash flow surplus of \$500M to service annual interest payments of \$182M (based on the full \$2.6MM being drawn), yielding a DSC ratio of 2.75x.

FSB/EI-001217

Collateral Description, Valuation, Terms, Structure

Our loan is secured by a FREM on a vacant 82.68 acre land parcel with its west property boundary being Interstate 95 Right of Way which results in significant visibility of this parcel from the interstate. The access road is currently a two lane road which also serves the Sergeant Jasper Park and the new Jasper County High School which is presently under construction. There is an agreement for Jasper County to construct two additional lanes with no cost assessment to the subject property. The subject property is within the Hardeeville, SC, town limits and is served with water, sewer, natural gas, electric and phone services. The parcel has heavy tree cover (with an estimated value of \$100-150M if harvested) and has minimal wetlands relative to its size.

The 82.68 acres was divided from the approximate 441 acre Sergeant Jasper State Park which was owned by Jasper County. The County sold this tract to our Borrower for \$4,000 per acre in February 2001 and worked in conjunction with the Town of Hardeeville to establish entitlements and extend services to this tract. The LLC funded this purchase and took back a mortgage, which is still in place today, which will be junior to our FREM. The amount of the mortgage is approximately \$420M.

The subject land received PUD zoning (the first such zoning ordinance enacted by Jasper County) to allow for tourism, entertainment, a botanical garden and facility, an IMAX Theatre complex, restaurants and hotels. The Town of Hardeeville agreed to construct a four-lane road and provide services to this land with the Borrower contributing a minimum of \$250M for these utility costs. The incentive to the County and to Hardeeville was to create economic activity with about 145 new jobs and a minimum of \$10MM in construction costs for the facilities.

According to the Borrower, upon the occurrence of the 9-11 tragedy later in 2001, the original group of investors (which included larger corporate investors as well as the individuals when considering the significant scope of the overall project) disbanded as the economy spiraled downward and the ultimate decision was to table the Butterfly Kingdom project.

Although no construction has occurred relative to the original Butterfly Kingdom project, the entitlements created under the PUD and the utility commitments from the Town and County remain in effect. It should be noted, however, for the purposes of the appraisal, the property was valued as vacant land and in an "as-is" condition.

More information can be obtained from the appraisal dated December 11, 2005, by Gary Beaver ordered by and performed for First South Bank.

The "as-is" value of the property as of December 11, 2005, is \$5,200M yielding a LTV of 50%. When considering the junior mortgage held by the LLC in an amount of \$420M, the overall LTV is 58%.

Lastly, FSB was provided with an Environmental Site Assessment – Phase I – performed for Borrower by HSA Engineers and Scientists in Bluffton, SC, dated June 2000. The conclusions noted no Recognized Environmental Conditions (RECs) and no additional assessment activities were recommended. While this data is somewhat dated, no construction or development has occurred on or within a reasonable proximity to the site, and the writer recommends acceptance of this report for the purposes of this loan extension. A copy of the referenced Phase I shall be placed in the credit file.

Financial Information

As the Borrower is a LLC, it prepares an annual tax return. A breakdown of the Borrower's 2004 return is as follows:

Ecological Investments, LLC

<u>Assets</u>		<u>Liabilities</u>	
Cash	\$12M	Mtgs Payable	\$2,277M
Inventory	4M		
		Total Liabilities	\$2,277M
Land	1,026M		
FF&E	157M		
Less: Acc. Depre.	(142M)	Net Worth	(\$338M)
Net FA	15M		
Other Invest.	881M		
Total Assets	\$1,938M		

Of particular note on the balance sheet is the land carried at a fraction of its market value. The difference in the tax return value and the market value is \$4,174M.

Income Statement

Income	\$0M
Expenses:	
Payments to Partners	\$65M
Rent	17M
Taxes and Licenses	15M
Interest	84M
Depreciation	18M
Other (Consulting, Legal, Acct)	103M
Total	\$302M
Net Loss	(\$302M)

It is not unusual for a corporate entity to run a large amount of expenses through its income statement for tax purposes, and in this case, there is no income to offset these expenses.

From a repayment perspective, FSB is funding the interest reserve via our line of credit structure on the two year loan. This is mitigated by the low LTV, the quality of the collateral due to its location, and the financial strength and liquidity of the two guarantors detailed in the comments below and on the attached statements and TaxAnalysis documents.

Guarantor Analysis

John Rosenberg

John Rosenberg is a local entrepreneur with business interests in residential development and part owner and general manager of Airpro Cooling and Heating. He was introduced to FSB by Nickey Maxey who is a co-owner of Airpro. As the primary bank for Airpro, FSB was brought in to bid on the refinance of the Ecological Investments transaction as one of four banks. Rosenberg's primary income sources are his salary from Airpro and his distributions from Oakview Group, a LLC that both Rosenberg and Brust hold interests in. This LLC was formed to hold and develop 40 acres of marsh front property on HHI and began selling lots in 2004. As noted on his 2004 return and validated through the K-1, Rosenberg received a cash distribution of over \$750M from this LLC. It is anticipated that he will receive another significant distribution in 2005. While the Oakview property will sell out over time, Rosenberg's statement shows significant liquidity with over \$800M in marketable securities and a modest level of debt.

Please refer to the attached Tax Analysis PFS and Cash Flow for 2004 on Rosenberg for more information. Rosenberg's PFS is slightly out of date and an updated PFS will be provided by February 8, 2006. An amendment to this document will be provided with his updated financial information.

Philip Brust

Philip Brust is a retired pilot with American Airlines and an investor in Ecological Investments, LLC along with Oakview Group with Rosenberg. He adds excellent liquidity and financial strength to this credit request with his personal guaranty. Please refer to the attached PFS and Cash Flow Tax Analysis along with statements on his retirement and equities accounts for additional information. Brust's PFS is dated December 21, 2005.

Summary and Recommendation

The overall financial strength (liquidity and income) of the guarantors and the comfortable LTV on the property in the event of liquidation present the strongest case for this credit extension. FSB will also obtain personal and business deposits with Rosenberg as a result of this loan.

Based on these factors along with the comments contained within this credit memo, I recommend approval of the credit as presented.

Patrick Wright
Senior Vice President
843-706-8644

Attachments

FSB/EI-001221

GUARANTY

E.A. 10045

109263

BLUEFTON
(City)

SOUTH CAROLINA
(State)

FEBRUARY 02, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce FIRST SOUTH BANK, BLUEFTON (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of ECOLOGICAL INVESTMENTS, LLC

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following:

and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this ☒ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ UNLIMITED (if unlimited or if no amount is stated, the Undersigned shall be liable for all indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

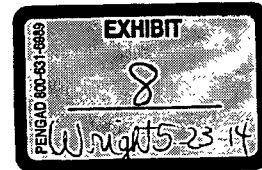
This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____; ☐ secured by _____.

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

Philip J. Brubaker by John E. Rosenberg, Attorney
Philip J. Brubaker, in Fact

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.



ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from me to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and dischargee of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to Indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. The Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

2/00 Finger, Fraser & Andrews, P.A.
 Attorney at Law
 P.O. Box 24005
 Hilton Head Island, S.C. 29925-4005

200600000474
 Filed for Record in
 JASPER COUNTY
 PATSYE M. GREENE
 02-06-2006 At 02:13 PM.
 POWER ATTY 15.00
 Volume 337 Page 218 - 219

STATE OF SOUTH CAROLINA)
) SPECIFIC LIMITED POWER OF ATTORNEY
~~ATTORNEY~~
 COUNTY OF JASPER)

KNOW ALL MEN BY THESE PRESENTS, that I, Philip J. Brust of Cornelius, NC do hereby make, constitute and appoint Terry A. Finger or John E. Rosenberg, of Hilton Head Island, South Carolina, as my true and lawful attorney, to appear for me, and in my name, place and stead, to execute any and all documents, and to perform any lawful act or to execute or amend any document, instrument, or thing, which may be involved in the financing of real property located in the State and County aforesaid, known as 82.68 acres, Sgt. Jasper State Park, Jasper County, South Carolina, including, but not necessarily limited to, the power to execute as my act and deed any document, instrument, contract, Note, Mortgage, agreement, assignment, affidavit, disclosure, etc. and to pay sums on my account, or to execute any such other documents as may be necessary to close the loan with First South Bank in the original principal sum of \$2,600,000.00.

I hereby vest my Attorney in Fact with all authority needed and necessary to accomplish the above-captioned purpose, with full power of substitution, as fully as if I might do the same in my own capacity at any time subsequent to the date hereof and prior to my revocation.

I hereby declare that any act or deed lawfully performed by my Attorney in Fact pursuant to the within Specific Limited Power of Attorney shall be binding upon me and my heirs, legal and personal representatives and assigns.

I hereby indemnify and hold my Attorney in Fact harmless against any and all claims, damages, suits or injury whatsoever, including reasonable attorneys fees, arising out of his exercise of the within granted powers.

IN WITNESS WHEREOF, I have herunto set my hands and seal to the within Specific Limited Power of Attorney this 25 day of January, 2006.

IN THE PRESENCE OF:

2) Barbara W. Hooper
 (witness)

1) Philip J. Brust
 Philip J. Brust

3) Sherry Coyle
 (notary)



200600000474
 FINGER, FRASER AND ANDREWS PA
 PO BOX 24005
 HILTON HEAD, SC 29925-4005

Record 1st

Instrument Volume Page
200600000494 339 219

STATE OF NORTH CAROLINA

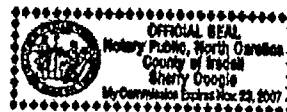
County of Mecklenburg PROBATE

PERSONALLY appeared before me 4) BARBARA W HOOPER who
on oath, says that s/he saw the within named Philip J. Brust, sign the within Power of
Attorney, and as his free act and deed deliver the same, and that s/he with 5)
SHERY COOGLE witnessed the execution thereof.

6) X Barbara W. Hooper
Non-notary witness

SWORN to before me this 25
day of January, 2006.

7) Sherry Coogle (SEAL)
Notary Public for North Carolina
My Commission Expires: 11/23/07



DEED BOOK 339 PAGE 0049
DATE 2-10-06
Harold Hulme
AUDITOR JASPER COUNTY SC

CONFIDENTIAL



First South Bank

Personal Financial Statement

AS OF DEC 21, 2005



NAME PHILIP J. BRIST DATE OF BIRTH 1-25-38

SOCIAL SECURITY NO. [REDACTED]

ADDRESS 20348 CHRISTOPHE DR
CORNELIUS NC 28031 RESIDENCE PHONE 704-655-9736

POSITION OR OCCUPATION RETIRED

BUSINESS NAME _____ BUSINESS PHONE _____

This is a(n) ☒ Individual financial statement. ☐ Joint financial statement with spouse. If joint, complete the following.

SPOUSE'S NAME _____ DATE OF BIRTH _____

SOCIAL SECURITY NO. _____

POSITION OR OCCUPATION _____

BUSINESS NAME _____

BUSINESS ADDRESS _____ BUSINESS PHONE _____

YOU MAY APPLY FOR CREDIT INDIVIDUALLY OR JOINTLY WITH ANOTHER PARTY.

If you are applying for joint credit with another party (other than your spouse), the joint applicant must complete a separate financial statement. Reflect in this statement your personal financial condition as well as the financial condition of your spouse if:

1. You are applying for credit jointly with your spouse, or
2. You are relying on your spouse's income or assets in requesting credit, or
3. You are providing this statement to support previously extended joint credit with your spouse.

FSB/EI-000241

RECORD 0924

SCHEDULE 4 - CLOSELY-HELD INTERESTS (PARTNERSHIPS AND CORPORATIONS)

NAME OF BUSINESS ENTITY	OWNERSHIP IN NAME OF	YOUR % OWNERSHIP	TOTAL BOOK VALUE	ANNUAL STATEMENT DATE	CURRENT MARKET VALUE	PERSONALLY LIABLE FOR DEBT? (Y OR N)
ECOLOGICAL INVEST	PHILIP J. BRUST	15%	310,000	12-31		Y
TOTAL			310,000			

SCHEDULE 5 - VEHICLES, MACHINERY, AND EQUIPMENT

DESCRIPTION (INCLUDE YEAR, MAKE, AND MODEL)	YEAR ACQUIRED	COST	PRESENT MARKET VALUE	LOAN BALANCE	LOAN PAYABLE TO	HOW PAYABLE
01 OLDS AVIVA	01	32600	13,000	0	0	\$ 0 per
						\$ per
						\$ per
						\$ per
						\$ per
						\$ per
TOTAL			13,000	0		

SCHEDULE 6 - REAL ESTATE

LOCATION & DESCRIPTION OF PROPERTY (INCLUDE DIMENSIONS OR ACRE)	TITLE IN NAME OF	COST YR. ACQUIRED	PRESENT MARKET VALUE	MORTGAGE BALANCE	MORTGAGE PAYABLE TO HOW PAYABLE
HOME 20348 CHRISTOPHER DR CORNELIUS	PHILIP BRUST	620,000			
	CYNTHIA STRAY	2,003	640,000	0	\$ per
C208 40 FOLLY FIELD RD HHI SC	PHILIP BRUST	29,500	200,000	0	\$ per
		97			
C107 90 WELLSMAN WAY HHI SC	PHILIP BRUST	240,000	250,000	0	\$ per
	CYNTHIA STRAY	25			
TIME SHARES		28,321	30,000	0	\$ per
					\$ per
					\$ per
TOTAL			1,890,000		

SCHEDULE 7 - OTHER LOANS PAYABLE

NAME AND ADDRESS OF LENDER	TYPE OF LOAN AND COLLATERAL	ORIGINAL DATE	ORIGINAL AMOUNT	LOAN BALANCE	HOW PAYABLE
					\$ per
					\$ per
					\$ per
					\$ per
					\$ per
					\$ per
TOTAL				0	

FSB/EI-000243

SOURCES OF INCOME		CONTINGENT LIABILITIES																																							
FOR YEAR ENDED <u>DEC 31</u> , <u>197005</u> (You may attach a copy of your most recent Income Tax Return.)		Are you indirectly liable for obligations of others? If the obligation is for an individual, list the name(s) and amount(s). If the obligation is for a business or if you need additional space, list and describe on Attachment A. (First South Bank Schedule of Contingent Liabilities form)																																							
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Salaries - Yours <u>RETIREMENT</u></td> <td style="width: 30%; text-align: right;">51,157</td> </tr> <tr> <td>- Your Spouse's, if applicable</td> <td></td> </tr> <tr> <td>Bonuses & Commissions</td> <td></td> </tr> <tr> <td>Dividends / Interest</td> <td style="text-align: right;">22,783 / 22,055</td> </tr> <tr> <td>Capital Gains</td> <td style="text-align: right;">2,000</td> </tr> <tr> <td>Personal Distributions (to) / from:</td> <td></td> </tr> <tr> <td> Rental Property (Net)</td> <td></td> </tr> <tr> <td> Partnerships</td> <td></td> </tr> <tr> <td> Joint Ventures</td> <td></td> </tr> <tr> <td>Other Income: (Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.)</td> <td></td> </tr> <tr> <td><u>SOCIAL SECURITY</u></td> <td style="text-align: right;">14,052</td> </tr> <tr> <td>TOTAL</td> <td style="text-align: right;">112,047</td> </tr> </table>		Salaries - Yours <u>RETIREMENT</u>	51,157	- Your Spouse's, if applicable		Bonuses & Commissions		Dividends / Interest	22,783 / 22,055	Capital Gains	2,000	Personal Distributions (to) / from:		Rental Property (Net)		Partnerships		Joint Ventures		Other Income: (Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.)		<u>SOCIAL SECURITY</u>	14,052	TOTAL	112,047	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center;">PERSONAL INFORMATION</th> </tr> <tr> <td style="width: 50%;">Number of Dependents <u>0</u></td> <td style="width: 50%;">Ages _____</td> </tr> <tr> <td colspan="2">Are you obligated to pay alimony, child support or separate maintenance payment? If so, provide details. <u>NO</u></td> </tr> <tr> <td colspan="2">Are you a defendant in any suits or legal actions? If so, describe. <u>NO</u></td> </tr> <tr> <td colspan="2">Have you ever declared bankruptcy or had any judgement recorded against you? If so, explain circumstances. <u>NO</u></td> </tr> <tr> <td colspan="2">Do you have a will? If so, who is the executor? <u>YES</u></td> </tr> <tr> <td colspan="2">Do you have disability insurance? If so, what is the monthly amount? What years are covered? <u>NO</u></td> </tr> </table>		PERSONAL INFORMATION		Number of Dependents <u>0</u>	Ages _____	Are you obligated to pay alimony, child support or separate maintenance payment? If so, provide details. <u>NO</u>		Are you a defendant in any suits or legal actions? If so, describe. <u>NO</u>		Have you ever declared bankruptcy or had any judgement recorded against you? If so, explain circumstances. <u>NO</u>		Do you have a will? If so, who is the executor? <u>YES</u>		Do you have disability insurance? If so, what is the monthly amount? What years are covered? <u>NO</u>	
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REPRESENTATIONS AND WARRANTIES

The information contained in this statement is provided to induce First South Bank to extend or to continue the extension of credit to the undersigned or to others upon the guaranty of the undersigned. The undersigned acknowledge and understand that First South Bank is relying on the information provided herein in deciding to grant or continue credit or to accept a guaranty thereof. Each of the undersigned represents, warrants, and certifies that the information provided herein is true, correct, and complete. Each of the undersigned agrees to notify First South Bank immediately and in writing of any change in name, address, or employment and of any material adverse change (1) in any of the information contained in this statement or (2) in the financial condition of any of the undersigned or (3) in the ability of any of the undersigned to perform its obligation to First South Bank. In the absence of such notice or a new and full written statement, this should be considered as a continuing statement and substantially correct. If the undersigned fail to notify First South Bank as required above, or if any of the information herein should prove to be inaccurate or incomplete in any material respect, First South may declare the indebtedness of the undersigned or the indebtedness guaranteed by the undersigned, as the case may be, immediately due and payable. First South Bank is authorized to make all inquiries it deems necessary to verify the accuracy of the information contained herein and to determine the creditworthiness of the undersigned. The undersigned authorize any person or consumer reporting agency to give First South Bank any information they may have on the undersigned. Each of the undersigned authorizes First South Bank to answer questions about First South Bank's credit experience with the undersigned. As long as any obligation or guaranty of the undersigned to First South Bank is outstanding, the undersigned shall supply annually an updated financial statement. This personal financial statement and any other financial or other information that the undersigned give First South Bank shall be First South Bank's property.

THE UNDERSIGNED HAVE READ AND FULLY UNDERSTAND THE FOREGOING REPRESENTATIONS AND WARRANTIES.

12-21-05
DATE

Philip J. Burt
YOUR SIGNATURE

DATE

SPOUSE'S SIGNATURE (If Joint financial Statement)

This statement received by _____

Date _____ Branch _____

FSB/EI-000244

CONFIDENTIAL



First South Bank

Personal Financial Statement

AS OF APRIL 30, 2007

NAME PHILIP J. BRUST DATE OF BIRTH 1-25-38

SOCIAL SECURITY NO. [REDACTED]

ADDRESS 20348 CHRISTOPHER DR RESIDENCE PHONE 704-655-9436

CONNELLY NC 28031

POSITION OR OCCUPATION RETIRED

BUSINESS NAME _____ BUSINESS PHONE _____

This is a(n) ☒ Individual financial statement. ☐ Joint financial statement with spouse. If joint, complete the following.

SPOUSE'S NAME _____ DATE OF BIRTH _____

SOCIAL SECURITY NO. _____

POSITION OR OCCUPATION _____

BUSINESS NAME _____

BUSINESS ADDRESS _____ BUSINESS PHONE _____

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If you are applying for joint credit with another party (other than your spouse), the joint applicant must complete a separate financial statement. Reflect in this statement your personal financial condition as well as the financial condition of your spouse if:

1. You are applying for credit jointly with your spouse, or
2. You are relying on your spouse's income or assets in requesting credit, or
3. You are providing this statement to support previously extended joint credit with your spouse.

FSB/EI-000261

RECORD 0928

SCHEDULE 4 - CLOSELY-HELD INTERESTS (PARTNERSHIPS AND CORPORATIONS)

NAME OF BUSINESS ENTITY	OWNERSHIP IN NAME OF	YOUR % OWNERSHIP	TOTAL BOOK VALUE	ANNUAL STATEMENT DATE	CURRENT MARKET VALUE	PERSONALLY LIABLE FOR DEBT? (Y OR N)
ECOLOGICAL INVEST	PHILIP J BRUST	15%	310,000	12-31		Y
TOTAL			310,000			

SCHEDULE 5 - VEHICLES, MACHINERY, AND EQUIPMENT

DESCRIPTION (INCLUDE YEAR, MAKE, AND MODEL)	YEAR ACQUIRED	COST	PRESENT MARKET VALUE	LOAN BALANCE	LOAN PAYABLE TO	HOW PAYABLE
02 Olds	01	32,000	13,000			\$ per
						\$ per
						\$ per
						\$ per
						\$ per
						\$ per
TOTAL			13,000			

SCHEDULE 6 - REAL ESTATE

LOCATION & DESCRIPTION OF PROPERTY (INCLUDE DIMENSIONS OR ACRE)	TITLE IN NAME OF	COST YR ACQUIRED	PRESENT MARKET VALUE	MORTGAGE BALANCE	MORTGAGE PAYABLE TO HOW PAYABLE
1401 E 20344 CHRISTOPHER DR CAMELTON, NC	PHILIP BRUST CATHERINE SHELCH	620,000 2009	675,000		\$ per
C208 40 BOLLY FIELD RD HALL, SC	PHILIP BRUST	295,000 1991	170,000		\$ per
E107 70 HELMSTON WAY HALL, SC	PHILIP BRUST CATHERINE SHELCH	240,000 2005	255,000		\$ per
7114 S HARRIS		122,780	107,780		\$ per
					\$ per
					\$ per
TOTAL			2107,780		

SCHEDULE 7 - OTHER LOANS PAYABLE

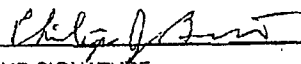
NAME AND ADDRESS OF LENDER	TYPE OF LOAN AND COLLATERAL	ORIGINAL DATE	ORIGINAL AMOUNT	LOAN BALANCE	HOW PAYABLE
					\$ per
					\$ per
					\$ per
					\$ per
					\$ per
					\$ per
TOTAL					

SOURCES OF INCOME		CONTINGENT LIABILITIES	
FOR YEAR ENDED <u>DEC 31</u> , ²⁰⁰⁶ 19 (You may attach a copy of your most recent Income Tax Return.)		Are you indirectly liable for obligations of others? If the obligation is for an individual, list the name(s) and amount(s). If the obligation is for a business or if you need additional space, list and describe on Attachment A. (First South Bank Schedule of Contingent Liabilities form)	
Salaries - Yours <u>PENSION</u>	<u>51157</u>	PERSONAL INFORMATION	
- Your Spouse's, if applicable		Number of Dependents _____ Ages _____	
Bonuses & Commissions		Are you obligated to pay alimony, child support or separate maintenance payment? If so, provide details.	
Dividends / Interest	<u>55568</u>	Are you a defendant in any suits or legal actions? If so, describe.	
Capital Gains		Have you ever declared bankruptcy or had any judgement recorded against you? If so, explain circumstances.	
Personal Distributions (to) / from:		Do you have a will? If so, who is the executor?	
Rental Property (Net)		Do you have disability insurance? If so, what is the monthly amount? What years are covered?	
Proprietorships			
Partnerships			
Joint Ventures	<u>(29569)</u>		
<u>SOCIAL SECURITY</u>	<u>15594</u>		
Other Income: (Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.)			
TOTAL			

REPRESENTATIONS AND WARRANTIES

The information contained in this statement is provided to induce First South Bank to extend or to continue the extension of credit to the undersigned or to others upon the guaranty of the undersigned. The undersigned acknowledge and understand that First South Bank is relying on the information provided herein in deciding to grant or continue credit or to accept a guaranty thereof. Each of the undersigned represents, warrants, and certifies that the information provided herein is true, correct, and complete. Each of the undersigned agrees to notify First South Bank immediately and in writing of any change in name, address, or employment and of any material adverse change (1) in any of the information contained in this statement or (2) in the financial condition of any of the undersigned or (3) in the ability of any of the undersigned to perform its obligation to First South Bank. In the absence of such notice or a new and full written statement, this should be considered as a continuing statement and substantially correct. If the undersigned fail to notify First South Bank as required above, or if any of the information herein should prove to be inaccurate or incomplete in any material respect, First South may declare the indebtedness of the undersigned or the indebtedness guaranteed by the undersigned, as the case may be, immediately due and payable. First South Bank is authorized to make all inquiries it deems necessary to verify the accuracy of the information contained herein and to determine the creditworthiness of the undersigned. The undersigned authorize any person or consumer reporting agency to give First South Bank any information they may have on the undersigned. Each of the undersigned authorizes First South Bank to answer questions about First South Bank's credit experience with the undersigned. As long as any obligation or guaranty of the undersigned to First South Bank is outstanding, the undersigned shall supply annually an updated financial statement. This personal financial statement and any other financial or other information that the undersigned give First South Bank shall be First South Bank's property.

THE UNDERSIGNED HAVE READ AND FULLY UNDERSTAND THE FOREGOING REPRESENTATIONS AND WARRANTIES.

<u>5-23-07</u> DATE _____ DATE _____ This statement received by _____ Date _____ Branch _____	 YOUR SIGNATURE _____ SPOUSE'S SIGNATURE (If Joint financial Statement)

FSB/EI-000264

FSB013

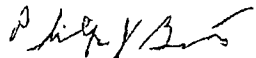
May 9, 2008
20348 Christofle Dr.
Cornelius, NC 28031

Patrick Wright
First South Bank
POB 6508
Hilton Head Is, SC 29938

Dear Mr Wright,

Enclosed are my statements of my net worth. The Sterne statement includes my net worth with Raymind James. The IRA is with PEOPLE'S Bank. I have no debt.

Yours,


Philip J. Brust

Stocks	✓ 5,154,980
Bonds	✓ 150,000
Ecological Invest.	425,000
cashnin accounts	✓ 224,587
Bank	✓ 735,805
Retire	~ 318,869
Insurance	✓ 19,297
Misc.	123,000
real estate	<u>1,200,000</u>
Total	8,435,448

FSB/EI-000272

RECORD 0932

CONFIDENTIAL



First South Bank

Personal Financial Statement

AS OF AVG 30, 2009

NAME PHILIP BRUST DATE OF BIRTH 1-25-38
SOCIAL SECURITY NO. [REDACTED]
ADDRESS 20948 CHRISTOPHER DR RESIDENCE PHONE 207-655-7430
CUMRIUS ME 28031
POSITION OR OCCUPATION RETIRED
BUSINESS NAME _____ BUSINESS PHONE _____

This is a(n) ☒ Individual financial statement. ☐ Joint financial statement with spouse. If joint, complete the following.

SPOUSE'S NAME CYNTHIA SHELLEY DATE OF BIRTH _____
SOCIAL SECURITY NO. _____
POSITION OR OCCUPATION _____
BUSINESS NAME _____
BUSINESS ADDRESS _____ BUSINESS PHONE _____

YOU MAY APPLY FOR CREDIT INDIVIDUALLY OR JOINTLY WITH ANOTHER PARTY.

If you are applying for joint credit with another party (other than your spouse), the joint applicant must complete a separate financial statement. Reflect in this statement your personal financial condition as well as the financial condition of your spouse if:

1. You are applying for credit jointly with your spouse, or
2. You are relying on your spouse's income or assets in requesting credit, or
3. You are providing this statement to support previously extended joint credit with your spouse.

FSB/EI-000276

RECORD 0933

SOURCES OF INCOME		CONTINGENT LIABILITIES	
FOR YEAR ENDED <u>20 09</u> (You may attach a copy of your most recent Income Tax Return.)		Are you indirectly liable for obligations of others? If the obligation is for an individual, list the name(s) and amount(s). If the obligation is for a business or if you need additional space, list and describe on Attachment A. (First South Bank Schedule of Contingent Liabilities form)	
		PERSONAL INFORMATION	
Salaries - Yours	51,157	Number of Dependents <u>0</u> Ages _____	
Your Spouse's, if applicable		Are you obligated to pay alimony, child support or separate maintenance payment? If so, provide details.	
Bonuses & Commissions		0	
Dividends / Interest	50,000	Are you a defendant in any suits or legal actions? If so, describe.	
Capital Gains		0	
Personal Distributions (to) / from:		Have you ever declared bankruptcy or had any judgement recorded against you? If so, explain circumstances.	
Rental Property (Net)		0	
Proprietorships		Do you have a will? If so, who is the executor?	
Partnerships		CYNTHIA SEBASTIAN	
Joint Ventures	(20,000)	Do you have disability insurance? If so, what is the monthly amount? What years are covered?	
55	16,123	0	
Other Income: (Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.)			
TOTAL	97,200		

REPRESENTATIONS AND WARRANTIES

The information contained in this statement is provided to induce First South Bank to extend or to continue the extension of credit to the undersigned or to others upon the guaranty of the undersigned. The undersigned acknowledge and understand that First South Bank is relying on the information provided herein in deciding to grant or continue credit or to accept a guaranty thereof. Each of the undersigned represents, warrants, and certifies that the information provided herein is true, correct, and complete. Each of the undersigned agrees to notify First South Bank immediately and in writing of any change in name, address, or employment and of any material adverse change (1) in any of the information contained in this statement or (2) in the financial condition of any of the undersigned or (3) in the ability of any of the undersigned to perform its obligation to First South Bank. In the absence of such notice or a new and full written statement, this should be considered as a continuing statement and substantially correct. If the undersigned fail to notify First South Bank as required above, or if any of the information herein should prove to be inaccurate or incomplete in any material respect, First South may declare the indebtedness of the undersigned or the indebtedness guaranteed by the undersigned, as the case may be, immediately due and payable. First South Bank is authorized to make all inquiries it deems necessary to verify the accuracy of the information contained herein and to determine the creditworthiness of the undersigned. The undersigned authorize any person or consumer reporting agency to give First South Bank any information they may have on the undersigned. Each of the undersigned authorizes First South Bank to answer questions about First South Bank's credit experience with the undersigned. As long as any obligation or guaranty of the undersigned to First South Bank is outstanding, the undersigned shall supply annually an updated financial statement. This personal financial statement and any other financial or other information that the undersigned give First South Bank shall be First South Bank's property.

THE UNDERSIGNED HAVE READ AND FULLY UNDERSTAND THE FOREGOING REPRESENTATIONS AND WARRANTIES.

SEPT 20 09
DATE

Philip Sebastian
YOUR SIGNATURE

DATE

SPOUSE'S SIGNATURE (If Joint financial Statement)

This statement received by Philip Sebastian
Date 9/25/09 Branch Bluffton

FSB/EI-000280

CONFIDENTIAL



First South Bank

Personal Financial Statement

AS OF APR 30, 2010

NAME PHILIP BRVST DATE OF BIRTH 1-25-38

SOCIAL SECURITY NO. [REDACTED]

ADDRESS 20948 CHMSTORFE DR RESIDENCE PHONE 704-555-9435
CARRASUS, NC 28928

POSITION OR OCCUPATION RETIRED

BUSINESS NAME _____ BUSINESS PHONE _____

This is a(n) ☐ individual financial statement. ☒ Joint financial statement with spouse. If joint, complete the following.

SPOUSE'S NAME CYNTHIA SABELY DATE OF BIRTH 9-15-49

SOCIAL SECURITY NO. 257 88 2497

POSITION OR OCCUPATION RETIRED

BUSINESS NAME _____

BUSINESS ADDRESS _____ BUSINESS PHONE _____

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1. You are applying for credit jointly with your spouse, or
2. You are relying on your spouse's income or assets in requesting credit, or
3. You are providing this statement to support previously extended joint credit with your spouse.

FSB/EI-000370

RECORD 0936

*Please attach a separate sheet if you need more space to complete a detailed schedule.

ASSETS	AMOUNT		
Deposit in Banks and Other Financial Institutions (Schedule 1)	~~309~~	303	535
Cash Value of Life Insurance (Schedule 2)	3	032	882
Notes and Accounts Receivable (Itemize)			
Marketable Stocks & Bonds (Schedule 3)	1	300	764
Closely-Held Interests (Schedule 4)		742	200
Vehicles, Machinery, & Equipment (Schedule 5)			
Real Estate (Schedule 6)	1	179	000
Other Assets (Itemize)			
MAT VISA		120	000
TOTAL ASSETS			

LIABILITIES AND NET WORTH	AMOUNT		
Accounts Payable			
Loans on Life Insurance (Schedule 2)			
Taxes Due - Income			
Taxes Due - Personal and Real Property			
Loans on Vehicles, Machinery, and Equipment (Schedule 5)			
Loans on Real Estate (Schedule 6)			
Other Loans Payable (Schedule 7)			
Other Liabilities (Itemize)			
TOTAL LIABILITIES			
NET WORTH			
TOTAL LIABILITIES & NET WORTH			

SCHEDULE 1 - DEPOSIT ACCOUNTS

NAME OF BANK, SAVINGS AND LOAN, ETC., AND LOCATION	DEMAND DEPOSITS	TIME DEPOSITS
AM	1708.00	
CU	535	
CYRILLIA SPS-PAU	169.00	
TOTAL	3035.5	

SCHEDULE 2 - LIFE INSURANCE

NAME OF PERSON INSURED	RACE AMOUNT OF POLICY	CASH SURRENDER VALUE	LOANS ON POLICY	IS POLICY ASSIGNED
PHILIP J. ALLEN	1000	18.95		
	10,000	17,700		
CYNTHIA SHAW (W)	1,500.00	1,307.00		
1ST & ST JAMES	4,400.00	1,176.73		
	TOTAL	8,032.72		

SCHEDULE 3 - MARKETABLE STOCKS AND BONDS

NUMBER OF SHARES OWNED OR MADE VALUE (BONDS)	DESCRIPTION	REGISTERED IN NAME OF	EXCHANGE SECURITY IS TRADED ON	DATE ACQUIRED	COST	PRESENT MARKET VALUE
1000 FIDELITY	STOCKS OVX ASS	PHILIP BRUNS				252,057
STOCKS FIDELITY	STOCKS	PHILIP BRUNS				164598
CEYANTIA S&P 500	RADWIN DIGITAL	CEYANTIA S&P 500				6330

TOTAL 1360,754

SCHEDULE 4 - CLOSELY-HELD INTERESTS (PARTNERSHIPS AND CORPORATIONS)

NAME OF BUSINESS ENTITY	OWNERSHIP IN NAME OF	YOUR % OWNERSHIP	TOTAL BOOK VALUE	ANNUAL STATEMENT DATE	CURRENT MARKET VALUE	PERSONALLY LIABLE FOR DEBT? (Y OR N)
ECOLOGICAL INVEST	PHILIP J. BAUST	15%	742,200	12-31	900,000	Y
TOTAL			742,200			

SCHEDULE 5 - VEHICLES, MACHINERY, AND EQUIPMENT

DESCRIPTION (INCLUDE YEAR, MAKE, AND MODEL)	YEAR ACQUIRED	COST	PRESENT MARKET VALUE	LOAN BALANCE	LOAN PAYABLE TO	HOW PAYABLE
OL. BLOS	01	72,000	8000			\$ per
						\$ per
						\$ per
						\$ per
						\$ per
						\$ per
TOTAL			8,000			

SCHEDULE 6 - REAL ESTATE

LOCATION & DESCRIPTION OF PROPERTY (INCLUDE DIMENSIONS OR ACRES)	TITLE NAME OF	COST YR ACQUIRED	PRESENT MARKET VALUE	MORTGAGE BALANCE	MORTGAGE PAYABLE TO HOW PAYABLE
HOME	PHILIP BAUST	826,000	700,000		
	CYNTHIA ST	24,200			\$ per
2208 5040 FERRY FIELD RD	PHILIP BAUST	29,110	89,000	500,000	
HILTON HISEN 15.5C		1981		MAY 21	\$ per
2109 70 PADDLE BOAT LAKE	PHILIP BAUST	246,000	255,000		\$ per
HILTON HISEN 15.5C	CYNTHIA ST	20,000			\$ per
TIME SHARERS		120,000	135,000		\$ per
		YDOLERS			\$ per
					\$ per
					\$ per
TOTAL			1,179,000		

SCHEDULE 7 - OTHER LOANS PAYABLE

NAME AND ADDRESS OF LENDER	TYPE OF LOAN AND COLLATERAL	ORIGINAL DATE	ORIGINAL AMOUNT	LOAN BALANCE	HOW PAYABLE
					\$ per
					\$ per
					\$ per
					\$ per
					\$ per
					\$ per
TOTAL					

FSB/EI-000372

SOURCES OF INCOME		CONTINGENT LIABILITIES																																										
FOR YEAR ENDED <u>APR 30</u> , 20 <u>10</u> (You may attach a copy of your most recent Income Tax Return.)		Are you indirectly liable for obligations of others? If the obligation is for an individual, list the name(s) and amount(s). If the obligation is for a business or if you need additional space, list and describe on Attachment A. (First South Bank Schedule of Contingent Liabilities form)																																										
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Salaries - Yours</td> <td style="width: 50%; text-align: center;">51,157</td> </tr> <tr> <td>- Your Spouse's, if applicable</td> <td></td> </tr> <tr> <td>Bonuses & Commissions</td> <td></td> </tr> <tr> <td>Dividends / Interest</td> <td></td> </tr> <tr> <td>Capital Gains</td> <td style="text-align: center;">6,000</td> </tr> <tr> <td>Personal Distributions (to) / from:</td> <td></td> </tr> <tr> <td> Rental Property (Net)</td> <td></td> </tr> <tr> <td> Proprietorships</td> <td></td> </tr> <tr> <td> Partnerships</td> <td></td> </tr> <tr> <td> Joint Ventures</td> <td></td> </tr> <tr> <td><u>5.5.</u></td> <td style="text-align: center;">17,440</td> </tr> <tr> <td colspan="2">Other Income: (Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.)</td> </tr> <tr><td> </td><td></td></tr> <tr><td> </td><td></td></tr> <tr><td> </td><td></td></tr> <tr><td> </td><td></td></tr> <tr> <td>TOTAL</td> <td></td> </tr> </table>		Salaries - Yours	51,157	- Your Spouse's, if applicable		Bonuses & Commissions		Dividends / Interest		Capital Gains	6,000	Personal Distributions (to) / from:		Rental Property (Net)		Proprietorships		Partnerships		Joint Ventures		<u>5.5.</u>	17,440	Other Income: (Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.)										TOTAL		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">PERSONAL INFORMATION</th> </tr> <tr> <td>Number of Dependents _____ Ages _____</td> </tr> <tr> <td>Are you obligated to pay alimony, child support or separate maintenance payment? If so, provide details.</td> </tr> <tr> <td>Are you a defendant in any suits or legal actions? If so, describe.</td> </tr> <tr> <td>Have you ever declared bankruptcy or had any judgement recorded against you? If so, explain circumstances.</td> </tr> <tr> <td>Do you have a will? If so, who is the executor?</td> </tr> <tr> <td>Do you have disability insurance? If so, what is the monthly amount? What years are covered?</td> </tr> </table>		PERSONAL INFORMATION	Number of Dependents _____ Ages _____	Are you obligated to pay alimony, child support or separate maintenance payment? If so, provide details.	Are you a defendant in any suits or legal actions? If so, describe.	Have you ever declared bankruptcy or had any judgement recorded against you? If so, explain circumstances.	Do you have a will? If so, who is the executor?	Do you have disability insurance? If so, what is the monthly amount? What years are covered?
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REPRESENTATIONS AND WARRANTIES

The information contained in this statement is provided to induce First South Bank to extend or to continue the extension of credit to the undersigned or to others upon the guaranty of the undersigned. The undersigned acknowledge and understand that First South Bank is relying on the information provided herein in deciding to grant or continue credit or to accept a guaranty thereof. Each of the undersigned represents, warrants, and certifies that the information provided herein is true, correct, and complete. Each of the undersigned agrees to notify First South Bank immediately and in writing of any change in name, address, or employment and of any material adverse change (1) in any of the information contained in this statement or (2) in the financial condition of any of the undersigned or (3) in the ability of any of the undersigned to perform its obligation to First South Bank. In the absence of such notice or a new and full written statement, this should be considered as a continuing statement and substantially correct. If the undersigned fail to notify First South Bank as required above, or if any of the information herein should prove to be inaccurate or incomplete in any material respect, First South may declare the indebtedness of the undersigned or the indebtedness guaranteed by the undersigned, as the case may be, immediately due and payable. First South Bank is authorized to make all inquiries it deems necessary to verify the accuracy of the information contained herein and to determine the creditworthiness of the undersigned. The undersigned authorize any person or consumer reporting agency to give First South Bank any information they may have on the undersigned. Each of the undersigned authorizes First South Bank to answer questions about First South Bank's credit experience with the undersigned. As long as any obligation or guaranty of the undersigned to First South Bank is outstanding, the undersigned shall supply annually an updated financial statement. This personal financial statement and any other financial or other information that the undersigned give First South Bank shall be First South Bank's property.

THE UNDERSIGNED HAVE READ AND FULLY UNDERSTAND THE FOREGOING REPRESENTATIONS AND WARRANTIES.

DATE _____

DATE _____

This statement received by _____

Date _____ Branch _____

Philip J. Smith
YOUR SIGNATURE

Cynthia Seely
SPOUSE'S SIGNATURE (If Joint Financial Statement)

FSB613

FSB/EI-000373

RECORD 0939

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

OCT 13 2015

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes, III, Special Circuit Court Judge

Appellate Case No. 2015-000035
Lower Case No. 2013-CP-07-00610

First South Bank Respondent,

v.

John E. Rosenberg and Phillip J. Brust Defendants,

Of Whom The Estate of Phillip J. Brust is Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

E. B. Gaskins

Robert E. Sumner, IV, SC Bar #71728
E. Brandon Gaskins, SC Bar #73274
Moore & Van Allen, PLLC
78 Wentworth Street
Post Office Box 22828
Charleston, SC 29413-2828
Telephone: (843) 579-7000

October 7, 2015

Charleston, South Carolina

*Attorneys for Appellant
The Estate of Phillip J. Brust*