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February 4, 2016

RECEIVED

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The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

FEB 16 2016

FEB 05 2016

SC Court of Appeals

S.C. SUPREME COURT

RE: First National Bank of the South, Successor in interest to Carolina National Bank and Trust Company, Respondent vs. James T. Callihan a/k/a James Callihan; Edward L. Williams; Frank J. Pennisi a/k/a Frank Pennisi; Dean J. Karavan a/k/a D.J. Karavan; Charles T. Walls, Jr. a/k/a Charles Walls; Robert S. Guyton; and Jeffrey H. Skelley, Defendants

Of Whom Frank J. Pennisi and Charles T. Walls are the Appellants

Appellant Case No.: 2013-001483

Dear Ms. Kitchings:

Per request from your office, enclosed is a redacted copy of the Record on Appeal (for scanning) in the above case.

Thank you for your assistance in this matter. Please let me know if you need any additional information.

Very truly yours,

NEWBY SARTIP MASEL & CASPER, LLC

*Scott Masel*

C. Scott Masel  
*Attorney for Appellant Charles T. Walls*

CSM/km  
encl.

Cc: Robert A Kerr, Esq.

RECEIVED

FEB 16 2016

THE STATE OF SOUTH CAROLINA

IN THE SOUTH CAROLINA COURT OF APPEALS

RECEIVED

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY

FEB 05 2016

SC Court of Appeals

First National Bank of the South, Successor in interest to Carolina National Bank and Trust  
Company,  
Respondent

vs.

James T. Callihan a/k/a James Callihan; Edward L. Williams; Frank J. Pennisi a/k/a Frank  
Pennisi; Dean J. Karavan a/k/a D.J. Karavan; Charles T. Walls, Jr. a/k/a Charles Walls; Robert S.  
Guyton, and Jeffrey H. Skelley,  
Defendants,

Of Whom Frank J. Pennisi and Charles T. Walls are the *Petitioners*.

Appellate Case No.: 2013-001483

The Honorable W. Jeffrey Young  
Horry County  
Trial Court Case No.: 2010CP2603170

**REDACTED RECORD ON APPEAL**

Thomas C. Brittain  
The Brittain Law Firm  
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Myrtle Beach, SC 29577  
(843) 449-8562  
*Attorney for ~~Petitioner~~ Frank J. Pennisi*

C. Scott Masel  
Newby Sartip Masel & Casper, LLC  
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Myrtle Beach, SC 29578  
(843) 449-9417  
*Attorney for ~~Petitioner~~ Charles T. Walls, Jr.*

THE STATE OF SOUTH CAROLINA  
IN THE SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM HORRY COUNTY

RECEIVED

FEB 05 2016  
SC Court of Appeals

First National Bank of the South, Successor in interest to Carolina National Bank and Trust  
Company,  
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vs.

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Pennisi; Dean J. Karavan a/k/a D.J. Karavan; Charles T. Walls, Jr. a/k/a Charles Walls; Robert S.  
Guyton; and Jeffrey H. Skelley,  
Defendants,

Of Whom Frank J. Pennisi and Charles T. Walls are the ~~Petitioners~~.

Appellate Case No.: 2013-001483

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FEB 16 2016

The Honorable W. Jeffrey Young  
Horry County  
Trial Court Case No.: 2010CP2603170

S.C. SUPREME COURT

RECORD ON APPEAL

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4593 Oleander Drive  
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(843) 449-9417  
Attorney for ~~Petitioner~~ Charles T. Walls, Jr.

Robert A. Kerr, Jr.  
Moore & VanAllen, PLLC  
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Charleston, SC 29401  
(843) 579-7000  
*Attorney for Respondent*

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STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

First National Bank of the South,  
Successor in interest to Carolina National  
Bank and Trust Company,

Plaintiff,

vs.

James T. Callihan a/k/a James Callihan;  
Edward L. Williams; Frank J. Pennisi a/k/a  
Frank Pennisi; Dean J. Karavan a/k/a  
D.J. Karavan; Charles T. Walls, Jr. a/k/a  
Charles Walls; Robert S. Guyton; and  
Jeffrey H. Skelley,

Defendants.

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NUMBER: 10-CP-26-3170

ORDER AND JUDGMENT

HORRY COUNTY  
13 JUN 28 PM 1:47  
MELANIE HUGHES-WARD  
CLERK OF COURT

Date of Hearing: May 20, 2013  
Trial Judge: Hon. W. Jeffrey Young  
Plaintiff's Attorney: Robert A. Kerr, Jr.  
Defendants' Counsel: Thomas C. Brittain, Daniel J. MacDonald, and C. Scott Masei  
Court Reporter: Henry P. Young

This matter came before the Court for a non-jury trial on May 20, 2013 in Conway, South Carolina. Based upon the pleadings and evidence before it, the Court makes the following Findings of Fact and Conclusions of Law.<sup>1</sup>

FINDINGS OF FACT

1. For value received, an entity known as Sand Dollar Cottage, LLC (the "Borrower") made, executed and delivered to Carolina National Bank and Trust Company ("CNB") a written promissory note dated November 8, 2006, as amended, modified and/or renewed by written

<sup>1</sup> The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

instrument dated December 21, 2007 and April 30, 2008 (collectively hereinafter referred to as the "Note").

2. Under the terms of the Note, the Borrower promised to pay CNB the original principal sum of \$400,000.00, together with interest on the outstanding principal balance payable upon the terms and conditions set forth in the Note with a maturity date of May 3, 2011.

3. To better secure repayment of the Note, each of the Defendants, who are members of the Borrower, executed and delivered to CNB a separate Guaranty dated November 8, 2006 (each a "Guaranty" and collectively, the "Guaranty Agreements"). The Guaranty Agreements guaranteed payment of the Note and any extensions, renewals or replacements thereof and also inured to the benefit of CNB and its participants, successors and assigns.

4. The Defendants used the proceeds of the loan to purchase real property located in the Commonwealth of the Bahamas. Such property was not pledged as collateral for the loan due to the complexities of securing real property in the Commonwealth of the Bahamas.

5. As of February 18, 2008, CNB merged with First National Bank of the South ("FNBS"), as evidenced by a certification letter dated February 25, 2008 and that certain Certificate of Merger issued by the Comptroller of the Currency Administrator of National Banks. Accordingly, FNBS was the owner and holder of the Note and Guaranty Agreements when the Note was renewed on April 30, 2008.

6. As part of the loan renewal process in 2008, the Borrower made a principal reduction payment in the amount of \$100,000.00, thereby reducing the principal balance due and owing under the Note to \$300,000.00. Defendant Pennisi and Defendant Walls funded the principal payment reduction by making a loan and separate capital contributions to the Borrower.



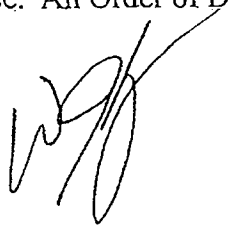
7. Thereafter, the Borrower defaulted on its obligations under the Note by failing to make timely payments of principal and interest. The Defendants were advised of the Borrower's default and the Defendants have failed to remit the sums due under the Note, as required by the Guaranty Agreements. The entire balance of the Note is due and payable together with continuing interest thereon, attorneys' fees and costs of this action. Although Plaintiff made demand on the Defendants for such amount, the Defendants failed and refused to pay the same.

8. On April 13, 2010, FNBS filed this action, alleging a default under the Note and breach of the Guaranty Agreements.

9. During the pendency of this action, the Office of the Comptroller of the Currency closed FNBS and the Federal Deposit Insurance Corporation ("FDIC") was appointed as its Receiver. By Purchase and Assumption Agreement dated as of July 16, 2010 between the FDIC, as Receiver for FNBS, and NAFH National Bank, NAFH National Bank purchased and assumed certain assets of FNBS and became the owner and holder of the Note and Mortgage by assignment.

10. Thereafter, on June 30, 2011, NAFH National Bank merged with Capital Bank, N.A., with the resulting bank title of Capital Bank, N.A. Such merger was effective as of June 30, 2011, as evidenced by a certification letter dated June 30, 2011 from the Comptroller of the Currency Administrator of National Banks.

11. On August 3, 2011, Defendant Williams filed a Voluntary Petition under Chapter 7 of the United State Bankruptcy Code (11 U.S.C. § 101 et seq.) in the United States Bankruptcy Court, District of South Carolina, identified as Case Number 11-04864-dd. Plaintiff filed a proof of claim in the bankruptcy case. An Order of Discharge was entered on March 6, 2012.

A handwritten signature in black ink, appearing to be 'WJ' or similar, is written over the bottom of paragraph 11.

12. As of May 20, 2013, the principal amount due under the Note is \$243,830.99. Accrued but unpaid interest through May 20, 2013 is \$63,935.77. Additionally, there are late charges of \$400.00. Interest accrues on the outstanding balance at the rate of \$45.72 per day.

13. Plaintiff received payment on its proof of claim in the Williams Bankruptcy in the amount of \$10,462.35. This amount was received and applied to the unpaid principal balance on June 11, 2012.

14. The total debt exclusive of attorney fees as of May 20, 2013 is \$308,166.76. Additionally, the Note and the Guaranty Agreements provide for recovery by Plaintiff of a reasonable sum as attorneys' fees from Defendants.

15. This matter was filed on April 13, 2010 -- three months before FNBS was closed. Pursuant to Rule 25 (c), SCRCF, this case has continued to be prosecuted in the name of FNBS.

#### CONCLUSIONS OF LAW

1. The Note and Guaranty Agreements are enforceable according to their terms, and they are owned and held by Capital Bank, N.A. The definition section found on page two of the Note, placed in evidence at trial, states: "You" or "your" means the Lender and its successors and assigns." (emphasis added). The evidence adduced at trial through testimony and documentary evidence shows that Carolina National Bank and Trust, the original lender, merged into FNBS effective February 18, 2008. The merger was approved by bank regulators. Under state law and federal law, the effect of a merger is the same. The property of the merged firm is vested in the surviving firm without requiring some form of transfer. <sup>2</sup>

<sup>2</sup> See S.C. Code § 33-11-106 ("When a merger takes effect ... the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment..."); and 12 U.S.C. § 215 (e) "The corporate existence of each of the consolidating banks or banking associations participating in such consolidation shall be merged into and continued in the consolidated national banking association and such consolidated national banking association shall be deemed to be the same corporation as each bank or banking association participating in the consolidation. All rights, franchises, and interests of the individual consolidating banks or banking associations in and to every type of property (real, personal, and mixed) and choses

2. The documentary evidence and testimony at trial showed that the Note, as renewed, and all Guaranty Agreements were later assigned by FDIC as Receiver of FNBS to NAFH National Bank effective July 16, 2010 when FNBS was closed by the regulators. The documentary evidence and testimony at trial also showed that NAFH National Bank and Capital Bank, N.A. merged effective June 30, 2011, with the resulting bank title, Capital Bank, N.A.
3. The record demonstrates that Capital Bank, N.A. is the owner of the Note, as renewed, and the Guaranty Agreements, and is entitled to enforce those obligations.
4. The record further shows that no guarantor was released from the obligations of their Guaranty Agreement. Each Guaranty was admitted into evidence. Each contained clear provisions concerning modification or release. A guaranty is a promise to pay a debt if the person liable in the first instance fails to make payment. *McGee v. F.W. Poe Mfg. Co.*, 175 S.C. 288, 180 S.E. 48 (1935). Here, the Note, as renewed, is in default and the Defendants each promised to pay the Borrower's debt if Borrower did not. Further, a guaranty is a personal obligation running directly from the guarantor to the creditor which is immediately enforceable against the guarantor upon default of the debtor. *Peoples Federal Savings and Loan Assoc. v. Myrtle Beach Retirement Group, Inc.*, 300 S.C. 277, 387 S.E.2d 672 (S.C. 1989). It is irrelevant whether the Plaintiff pursued the Borrower.
5. The Guaranty Agreements state that a writing signed by the bank is required for a guarantor to be released from the obligations of his Guaranty. In determining the nature of a guaranty the first consideration is the written language. *Pee Dee State Bank v. National Fiber Corp.*, 287 S.C. 640, 340 S.E.2d 569 (Cl.App.1986).

---

in action shall be transferred to and vested in the consolidated national banking association by virtue of such consolidation without any deed or other transfer."

6. Here, Defendants argue they only guaranteed the first loan from Carolina National Bank & Trust to Borrower. However, the clear language of each Guaranty Agreement defeats their argument. The Guaranty Agreement is given to the "Lender", which is defined to include participants, successors and assigns. Further, by clear terms, each Guaranty is a guaranty of Note Number [REDACTED] 8400 dated 11/8/2006 and "any extensions, renewals or replacements."

7. The Court further concludes that the case has been prosecuted by a proper party. This matter was filed on April 13, 2010 – three months before FNBS was closed. Pursuant to Rule 25(c), SCRCP, this case has been prosecuted in the name of FNBS. Rule 25(c) provides: "In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party."

8. Rule 25(c) applies to the transfer of interest from one corporation to another with which the first merged. See *Bryant v. Waste Management, Inc.*, 536 S.E.2d 380, 342 S.C. 159 (S.C.App. 2000). Further, "[u]nless the debt instrument or the instrument of guaranty prohibits assignment, an assignment does not release the guarantor, who is discharged only when the underlying debt has been paid or otherwise satisfied in full." *AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 219, 420 S.E.2d 868, 872 (Cl.App.1992).

9. Defendant Walls raised certain arguments for the first time in his post-trial memorandum. No party asserted reformation as a claim or a defense in their pleadings, and the issue was not tried by implication.

10. Having considered the nature, extent and difficulty of the services rendered, the time involved in reviewing the various documents, performing the title search, preparing the pleadings, attendance at hearings, mediation, and trial of the case, the professional standing of

counsel, the fee customarily charged for similar services and the beneficial results obtained for the Plaintiff, I find that the sum of \$50,000.00 is a reasonable fee to allow as attorneys' fees for Plaintiff's attorneys for services performed.

11. Having held that the Guaranty Agreements are enforceable according to their terms, that the underlying Note is in default, and the Note and Guaranty Agreements are owned and held by Capital Bank, N.A., it is hereby

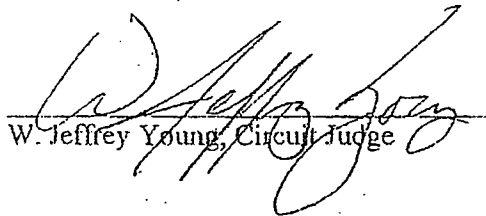
ORDERED, ADJUDGED AND DECREED THAT

a. The total debt due to the Plaintiff by Defendants, as of May 20, 2013 and exclusive of attorney fees, is \$308,166.76.

b. Plaintiff is entitled to an award of attorney fees in the amount of \$50,000.00;

c. Judgment shall be entered, jointly and severally, against Defendants James T. Callihan a/k/a James Callihan; Frank J. Pennisi a/k/a Frank Pennisi; Dean J. Karavan a/k/a D.J. Karavan; Charles T. Walls, Jr. a/k/a Charles Walls; Robert S. Guyton; and Jeffrey H. Skelley, in the amount of \$358,166.76 together with interest thereon after May 20, 2013 at the statutory post-judgment rate, in favor of Capital Bank, N.A.

IT IS SO ORDERED!

  
W. Jeffrey Young, Circuit Judge

Dated: June 21, 2013  
Sumter, South Carolina

was served 4/25/2010  
FR. DUS: 4/23/2010

STATE OF SOUTH CAROLINA

COUNTY OF Horry

First National Bank of the South,

Plaintiff(s)

vs.

James T. Callihan a/k/a James Callihan, et al.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 26-

3170

(Please Print)

Submitted By: Robert A. Kerr, Jr.

Christopher T. Colwell

Address: 654 Coleman Blvd., Suite 100

Mt. Pleasant, SC 29464

SC Bar #: Robert A. Kerr, Jr. (011981)

Christopher T. Colwell (71127)

Telephone #: 843-972-1000

Fax #: 843-972-1005

Other: rkerr@hagoodkerr.com

E-mail: ccolwell@hagoodkerr.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Contracts<br><input type="checkbox"/> Constructions (100)<br><input checked="" type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199) | <input type="checkbox"/> Torts - Professional Malpractice<br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20 -CP-<br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)                                                                                                                                     | <input type="checkbox"/> Torts - Personal Injury<br><input type="checkbox"/> Assault/Slander/Libel (300)<br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399) | <input type="checkbox"/> Real Property<br><input type="checkbox"/> Claims & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input checked="" type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)                                                                                                                                           |
| <input type="checkbox"/> Inmate Petitions<br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)                                                                                                                  | <input type="checkbox"/> Judgments/Settlements<br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)<br><input type="checkbox"/> Other (799) | <input type="checkbox"/> Administrative Law/Relief<br><input type="checkbox"/> Reinstatement Driver's License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899)                                      | <input type="checkbox"/> Appeals<br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Commission (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Special/Complex /Other<br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)                                                                                                 | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br><input type="checkbox"/> Sexual Predator (510)                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

Submitting Party Signature:

Chris T. Callihan

Date: April 12, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,  
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE  
DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note:** You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

First National Bank of the South,  
successor in interest to Carolina  
National Bank and Trust Company,

Plaintiff, )

vs. )

James T. Callihan a/k/a James Callihan;  
Edward L. Williams; Frank J. Pennisi a/k/a  
Frank Pennisi; Dean J. Karavan a/k/a  
D.J. Karavan; Charles T. Walls, Jr. a/k/a  
Charles Walls; Robert S. Guyton; and  
Jeffrey H. Skelley;

Defendants. )

IN THE COURT OF COMMON PLEAS

C/A NO.: 10-CP-26-\_\_\_\_\_

SUMMONS

FILED  
HURRY COUNTY  
APR 13 PM 3:19  
CLERK OF COURT

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you and to serve a copy of your Answer to said Complaint on the subscribers at their offices, Hagood & Kerr, PA, P.O. Box 220, 654 Coleman Boulevard (29464), Mount Pleasant, South Carolina 29465, or to otherwise appear and defend, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, or otherwise to appear and defend, within the time aforesaid, the Plaintiff in this action will obtain a judgment by default against you for the relief demanded in the Complaint.

HAGOOD & KERR, PA

*Christine T. Colwell*

Robert A. Kerr, Jr. (#011981)  
Christopher T. Colwell (#71127)  
654 Coleman Boulevard  
P.O. Box 220 (29465)  
Mt. Pleasant, SC 29464  
(843) 972-1000

ATTORNEYS FOR THE PLAINTIFF

April 12, 2010  
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY.

First National Bank of the South,  
successor in interest to Carolina  
National Bank and Trust Company,

Plaintiff,

vs.

James T. Callihan a/k/a James Callihan;  
Edward L. Williams; Frank J. Pennisi a/k/a  
Frank Pennisi; Dean J. Karavan a/k/a  
D.J. Karavan; Charles T. Walls, Jr. a/k/a  
Charles Walls; Robert S. Guyton; and  
Jeffrey H. Skelley,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 10-CP-26-\_\_\_\_\_

COMPLAINT

(Non-jury)

(Suit on Guaranty)

FILED  
HORRY COUNTY  
2016 JUN 13 PM 3:19  
CLERK OF COURT

The Plaintiff, complaining of the Defendants, alleges and says:

1. It is a lending institution organized and existing under the laws of the United States and doing business in the County of Horry, State of South Carolina.
2. Upon information and belief, Defendant James T. Callihan a/k/a James Callihan ("Callihan") is a citizen and resident of the State of South Carolina, residing in Horry County.
3. Upon information and belief, Defendant Edward L. Williams ("Williams") is a citizen and resident of the State of South Carolina, residing in Horry County.
4. Upon information and belief, Defendant Frank J. Pennisi a/k/a Frank Pennisi ("Pennisi") is a citizen and resident of the State of South Carolina, residing in Horry County.
5. Upon information and belief, Defendant Dean J. Karavan a/k/a D.J. Karavan ("Karavan") is a citizen and resident of the State of South Carolina, residing in Horry County.
6. Upon information and belief, Defendant Charles T. Walls, Jr. a/k/a Charles Walls ("Walls") is a citizen and resident of the State of South Carolina, residing in Horry County.
7. Upon information and belief, Defendant Robert S. Guyton ("Guyton") is a citizen and resident of the State of South Carolina, residing in Horry County.

8. Upon information and belief, Defendant Jeffrey H. Skelley ("Skelley") and together with Callihan, Williams, Pennisi, Karavan, Walls, and Guyton, the "Defendants") is a citizen and resident of the State of South Carolina, residing in Horry County.

9. For value received, Sand Dollar Cottage, LLC (the "Borrower") made, executed and delivered to Carolina National Bank and Trust Company a written promissory note dated November 8, 2006, as amended, modified and/or renewed by written instrument dated April 30, 2009-- (collectively hereinafter referred to as the "Note"). First National Bank of the South is the current owner and holder of the Note pursuant to its merger with Carolina National Bank and Trust Company in February, 2008. A copy of all documents comprising the Note are attached hereto as Exhibit "A" and incorporated herein by reference.

*not signed  
by minor from*

10. Pursuant to the terms of the Note, as last amended, modified and/or renewed, the Borrower promised to pay to the Plaintiff the principal sum of Three Hundred Thousand and 00/100ths (\$300,000.00) Dollars, together with interest on the outstanding principal balance payable upon the terms and conditions set forth in the Note as amended, modified and/or renewed with a maturity date of May 3, 2011.

11. Venue is proper in the Court of Common Pleas for Horry County.

12. This Court has personal jurisdiction over the parties and subject matter jurisdiction over this action.

**FOR A FIRST CAUSE OF ACTION  
AGAINST DEFENDANT JAMES T. CALLIHAN A/K/A JAMES CALLIHAN  
(Suit on a Guaranty)**

13. Plaintiff repeats and realleges the foregoing allegations as if set forth herein verbatim.

14. To better secure obligations under the terms of the Note, Callihan made, executed and delivered to Plaintiff a Guaranty dated November 8, 2006 (the "Callihan Guaranty"). A copy of the Callihan Guaranty is attached hereto as Exhibit "B" and incorporated herein by reference.

15. It is provided in the Callihan Guaranty, among other things, that Callihan unconditionally guaranteed payment to Plaintiff of all amounts due under the Note.

16. Obligations incurred pursuant to the Note are in default for failure of the Borrower to make timely payments of principal and interest as called for under the terms of the Note.

17. There is now due and owing and unpaid upon the Note the principal sum of Two Hundred Fifty Three Thousand Six Hundred Ninety Nine and 44/100ths (\$253,699.44) Dollars, together with accrued interest of Five Thousand Nine Hundred Seventy Six and 05/100ths (\$5,976.05) Dollars as of January 6, 2010, together with interest accruing after that date at the per diem rate of Forty Seven and 57/100ths (\$47.57) Dollars, together with late fees of Four Hundred and 00/100ths (\$400.00) Dollars, together with Plaintiff's attorneys' fees and other costs of collection.

18. The Callhan Guaranty has been placed in the hands of Hagood & Kerr, PA as attorneys for Plaintiff for collection.

FOR A SECOND CAUSE OF ACTION  
AGAINST DEFENDANT EDWARD L. WILLIAMS  
(Suit on a Guaranty)

19. Plaintiff repeats and realleges the foregoing allegations as if set forth herein verbatim.

20. To better secure obligations under the terms of the Note, Williams made, executed and delivered to Plaintiff a Guaranty dated November 8, 2006 (the "Williams Guaranty"). A copy of the Williams Guaranty is attached hereto as Exhibit "C" and incorporated herein by reference.

21. It is provided in the Williams Guaranty, among other things, that Williams unconditionally guaranteed payment to Plaintiff of all amounts due under the Note.

22. Obligations incurred pursuant to the Note are in default for failure of the Borrower to make timely payments of principal and interest as called for under the terms of the Note.

23. There is now due and owing and unpaid upon the Note the principal sum of Two Hundred Fifty Three Thousand Six Hundred Ninety Nine and 44/100ths (\$253,699.44) Dollars, together with accrued interest of Five Thousand Nine Hundred Seventy Six and 05/100ths (\$5,976.05) Dollars as of January 6, 2010, together with interest accruing after that date at the per diem rate of Forty Seven and 57/100ths (\$47.57) Dollars, together with late fees of Four Hundred

and 00/100ths (\$400.00) Dollars, together with Plaintiff's attorneys' fees and other costs of collection.

24. The Williams Guaranty has been placed in the hands of Hagood & Kerr, PA as attorneys for Plaintiff for collection.

FOR A THIRD CAUSE OF ACTION  
AGAINST DEFENDANT FRANK J. PENNISI A/K/A FRANK PENNISI  
(Suit on a Guaranty)

25. Plaintiff repeats and realleges the foregoing allegations as if set forth herein verbatim.

26. To better secure obligations under the terms of the Note, Pennisi made, executed and delivered to Plaintiff a Guaranty dated November 8, 2006 (the "Pennisi Guaranty"). A copy of the Pennisi Guaranty is attached hereto as Exhibit "D" and incorporated herein by reference.

27. It is provided in the Pennisi Guaranty, among other things, that Pennisi unconditionally guaranteed payment to Plaintiff of all amounts due under the Note.

28. Obligations incurred pursuant to the Note are in default for failure of the Borrower to make timely payments of principal and interest as called for under the terms of the Note.

29. There is now due and owing and unpaid upon the Note the principal sum of Two Hundred Fifty Three Thousand Six Hundred Ninety Nine and 44/100ths (\$253,699.44) Dollars, together with accrued interest of Five Thousand Nine Hundred Seventy Six and 05/100ths (\$5,976.05) Dollars as of January 6, 2010, together with interest accruing after that date at the per diem rate of Forty Seven and 57/100ths (\$47.57) Dollars, together with late fees of Four Hundred and 00/100ths (\$400.00) Dollars, together with Plaintiff's attorneys' fees and other costs of collection.

30. The Pennisi Guaranty has been placed in the hands of Hagood & Kerr, PA as attorneys for Plaintiff for collection.

FOR A FOURTH CAUSE OF ACTION  
AGAINST DEFENDANT DEAN J. KARAVAN A/K/A D.J. KARAVAN  
(Suit on a Guaranty)

31. Plaintiff repeats and realleges the foregoing allegations as if set forth herein verbatim.

32. To better secure obligations under the terms of the Note, Karavan made, executed and delivered to Plaintiff a Guaranty dated November 8, 2006 (the "Karavan Guaranty"). A copy of the Karavan Guaranty is attached hereto as Exhibit "E" and incorporated herein by reference.

33. It is provided in the Karavan Guaranty, among other things, that Karavan unconditionally guaranteed payment to Plaintiff of all amounts due under the Note.

34. Obligations incurred pursuant to the Note are in default for failure of the Borrower to make timely payments of principal and interest as called for under the terms of the Note.

35. There is now due and owing and unpaid upon the Note the principal sum of Two Hundred Fifty Three Thousand Six Hundred Ninety Nine and 44/100ths (\$253,699.44) Dollars, together with accrued interest of Five Thousand Nine Hundred Seventy Six and 05/100ths (\$5,976.05) Dollars as of January 6, 2010, together with interest accruing after that date at the per diem rate of Forty Seven and 57/100ths (\$47.57) Dollars, together with late fees of Four Hundred and 00/100ths (\$400.00) Dollars, together with Plaintiff's attorneys' fees and other costs of collection.

36. The Karavan Guaranty has been placed in the hands of Hagood & Kerr, PA as attorneys for Plaintiff for collection.

**FOR A FIFTH CAUSE OF ACTION  
AGAINST DEFENDANT CHARLES T. WALLS, JR. A/K/A CHARLES WALLS  
(Suit on a Guaranty)**

37. Plaintiff repeats and realleges the foregoing allegations as if set forth herein verbatim.

38. To better secure obligations under the terms of the Note, Walls made, executed and delivered to Plaintiff a Guaranty dated November 8, 2006 (the "Walls Guaranty"). A copy of the Walls Guaranty is attached hereto as Exhibit "F" and incorporated herein by reference.

39. It is provided in the Walls Guaranty, among other things, that Walls unconditionally guaranteed payment to Plaintiff of all amounts due under the Note.

40. Obligations incurred pursuant to the Note are in default for failure of the Borrower to make timely payments of principal and interest as called for under the terms of the Note.

41. There is now due and owing and unpaid upon the Note the principal sum of Two Hundred Fifty Three Thousand Six Hundred Ninety Nine and 44/100ths (\$253,699.44) Dollars, together with accrued interest of Five Thousand Nine Hundred Seventy Six and 05/100ths (\$5,976.05) Dollars as of January 6, 2010, together with interest accruing after that date at the per diem rate of Forty Seven and 57/100ths (\$47.57) Dollars, together with late fees of Four Hundred and 00/100ths (\$400.00) Dollars, together with Plaintiff's attorneys' fees and other costs of collection.

42. The Walls Guaranty has been placed in the hands of Hagood & Kerr, PA as attorneys for Plaintiff for collection.

FOR A SIXTH CAUSE OF ACTION  
AGAINST DEFENDANT ROBERT S. GUYTON  
(Suit on a Guaranty)

43. Plaintiff repeats and realleges the foregoing allegations as if set forth herein verbatim.

44. To better secure obligations under the terms of the Note, Guyton made, executed and delivered to Plaintiff a Guaranty dated November 8, 2006 (the "Guyton Guaranty"). A copy of the Guyton Guaranty is attached hereto as Exhibit "G" and incorporated herein by reference.

45. It is provided in the Guyton Guaranty, among other things, that Guyton unconditionally guaranteed payment to Plaintiff of all amounts due under the Note.

46. Obligations incurred pursuant to the Note are in default for failure of the Borrower to make timely payments of principal and interest as called for under the terms of the Note.

47. There is now due and owing and unpaid upon the Note the principal sum of Two Hundred Fifty Three Thousand Six Hundred Ninety Nine and 44/100ths (\$253,699.44) Dollars, together with accrued interest of Five Thousand Nine Hundred Seventy Six and 05/100ths (\$5,976.05) Dollars as of January 6, 2010, together with interest accruing after that date at the per diem rate of Forty Seven and 57/100ths (\$47.57) Dollars, together with late fees of Four Hundred and 00/100ths (\$400.00) Dollars, together with Plaintiff's attorneys' fees and other costs of collection.

48. The Guyton Guaranty has been placed in the hands of Hagood & Kerr, PA as attorneys for Plaintiff for collection.

FOR A SEVENTH CAUSE OF ACTION  
AGAINST DEFENDANT JEFFREY H. SKELLEY  
(Suit on a Guaranty)

49. Plaintiff repeats and realleges the foregoing allegations as if set forth herein verbatim.

50. To better secure obligations under the terms of the Note, Skelley made, executed and delivered to Plaintiff a Guaranty dated November 8, 2006 (the "Skelley Guaranty"). A copy of the Skelley Guaranty is attached hereto as Exhibit "H" and incorporated herein by reference.

51. It is provided in the Skelley Guaranty, among other things, that Skelley unconditionally guaranteed payment to Plaintiff of all amounts due under the Note.

52. Obligations incurred pursuant to the Note are in default for failure of the Borrower to make timely payments of principal and interest as called for under the terms of the Note.

53. There is now due and owing and unpaid upon the Note the principal sum of Two Hundred Fifty Three Thousand Six Hundred Ninety Nine and 44/100ths (\$253,699.44) Dollars, together with accrued interest of Five Thousand Nine Hundred Seventy Six and 05/100ths (\$5,976.05) Dollars as of January 6, 2010, together with interest accruing after that date at the per diem rate of Forty Seven and 57/100ths (\$47.57) Dollars, together with late fees of Four Hundred and 00/100ths (\$400.00) Dollars, together with Plaintiff's attorneys' fees and other costs of collection.

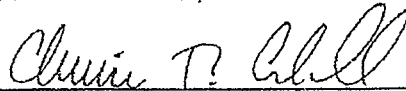
54. The Skelley Guaranty has been placed in the hands of Hagood & Kerr, PA as attorneys for Plaintiff for collection.

WHEREFORE, Plaintiff prays as follows:

For judgment against the Defendants jointly and severally in the amount of Two Hundred Fifty Three Thousand Six Hundred Ninety Nine and 44/100ths (\$253,699.44) Dollars, together with accrued interest of Five Thousand Nine Hundred Seventy Six and 05/100ths (\$5,976.05) Dollars as of January 6, 2010, together with interest accruing after that date at the per diem rate of Forty Seven

and 57/100ths (\$47.57) Dollars, together with late fees of Four Hundred and 00/100ths (\$400.00) Dollars, together with Plaintiff's attorneys' fees, costs of collection and any other applicable charges provided for under the terms of the Note, as guaranteed by the Defendants, and for such other and further relief that the Court may deem just and proper.

HAGOOD & KERR, PA



Robert A. Kerr, Jr. (#011981)  
Christopher T. Colwell (#71127)  
654 Coleman Boulevard  
P.O. Box 220 (29465)  
Mt. Pleasant, SC 29464  
(843) 972-1000

ATTORNEYS FOR PLAINTIFF

April 12, 2010  
Mt. Pleasant, South Carolina

LIST OF EXHIBITS

Exhibit "A" – Note

Exhibit "B" – Callihan Guaranty

Exhibit "C" – Williams Guaranty

Exhibit "D" – Pennisi Guaranty

Exhibit "E" – Karavan Guaranty

Exhibit "F" – Walls Guaranty

Exhibit "G" – Guyton Guaranty

Exhibit "H" – Skelley Guaranty

Exhibit "A"

Note

[See Attached]

|                                                                                         |                                                                      |                                                                                                                                             |
|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| SOUTH CAROLINA COMMERCE<br>1605 BOLEYMAN DR<br>SUITE 201<br>MYRTLE BEACH, SC 29577-0000 | Capital National Bank<br>1130 Main Street<br>Columbia, SC 29201-0000 | TAX ID NO. _____<br>Loan Number: 1400<br>Date: 11/08/2008<br>Maturity Date: 11/08/2009<br>Loan Amount: \$400,000.00<br>Interest Rate: _____ |
|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|

BORROWER'S NAME AND ADDRESS: \_\_\_\_\_  
 LENDER'S NAME AND ADDRESS: \_\_\_\_\_  
 For value received, I promise to pay to you, or your order, at your offices listed above the PRINCIPAL sum of Four Hundred Thousand

on or about 11/08/2008 the sum of 400,000.00  
 I agree to pay to you, or your order, at your offices listed above the PRINCIPAL sum of Four Hundred Thousand  
 Multiple Advances: The principal sum above is the maximum amount of principal I am borrowing under this note. On \_\_\_\_\_ I will receive the amount of \$ \_\_\_\_\_ and future principal advances are contemplated.

Condition: The condition for future advance is \_\_\_\_\_  
 Open End Credit: You and I agree that I may borrow up to the maximum amount of principal listed above and that this feature is subject to all other conditions and covenants.

I agree to pay to you, or your order, at your offices listed above the PRINCIPAL sum of Four Hundred Thousand on or about 11/08/2008 at the rate of 6.000% per year until the first rate change.

Variable Rate: This rate may change as stated below.  
 The rate may not change more than 35% (35%) over the index rate of Prime Rate as published in the Wall Street Journal.

The index for this rate will not be subject to any interest or external index. It will be set by the lender.  
 Frequency and Timing: The rate on this note may change as often as daily.

A change in the interest rate will take effect on the same day.  
 Limitation: During the term of this loan, the applicable interest rate will not be more than 36% or less than 0%. The rate may not change more than 36% over the index rate.

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.  
 FIRST MATURITY DATE: I agree to pay interest on the unpaid balance of this note every other maturity, and until paid in full, as stated below.

If the amount of each scheduled payment is less than the amount of interest due, I agree to pay a late charge of 5% of the payment at a rate equal to 10 days after it is due.

LATE CHARGES: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5% of the payment.  
 ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which I am not included in the principal amount: \$200.00 ORIGINATION FEE.

PAYMENTS: I agree to pay this note as follows:  
 Interest: I agree to pay accrued interest monthly beginning 12/01/2008.

Principal: I agree to pay the principal at maturity (11/08/2009).  
 Installment: I agree to pay this note in \_\_\_\_\_ payments of \$ \_\_\_\_\_ each, with the first payment due on \_\_\_\_\_ at the rate of \_\_\_\_\_ per year.

Impaid balance of principal and interest will be due on \_\_\_\_\_.  
 ADDITIONAL TERMS: \_\_\_\_\_

UNSECURED: This note is not secured by collateral.  
 Signature for Lender: \_\_\_\_\_  
 TERRY COOPER  
 COMMERCIAL LENDER

PURPOSE: The purpose of this loan is PERSONAL USE.  
 SIGNATURE: I agree to the terms of this note (including those on page 2). I have received a copy of this note.

Signature: \_\_\_\_\_  
 Date: 11/08/2008  
 LENDER'S NAME: CAPITAL NATIONAL BANK



|                                                                                                    |                                                                                   |                                                                                                                                               |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| SAND DOLLAR COTTAGE, LLC<br>4866 OLLAUDRICK<br>SUITE 201<br>MYRTLE BEACH, SC 29577-4001            | First National Bank<br>of the South<br>1350 N. Highway<br>Columbia, SC 29201-0000 | TAX ID NO. [REDACTED]<br>Loan Number 3400<br>Date 04/30/2008<br>Maturity Date 05/03/2011<br>Loan Amount \$ 300,000.00<br>Renewal Of 400370400 |
| BORROWER'S NAME AND ADDRESS<br>*Indicate if the borrower is a partnership, trust, or other entity. |                                                                                   | LENDER'S NAME AND ADDRESS<br>*You must list 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 Three Hundred Thousand and 00/100 Dollars \$ 300,000.00

☒ Single Advance: I will receive all of this principal sum on 04/30/2008. 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 amount of principal 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 up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 04/30/2008 at the rate of 6.750 % per year until maturity

☐ 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 interest 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 \_\_\_\_\_

☐ Limitation: 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 first payment will change.

APPROVAL 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 \_\_\_\_\_

LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5% of the payment amount, \$5.00 minimum, \$100.00 maximum.

ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: \$2000 renewal fee

PAYMENTS: I agree to pay this note as follows:

☐ Interest: I agree to pay accrued interest \_\_\_\_\_

☐ Principal: I agree to pay the principal \_\_\_\_\_

☒ Installment: I agree to pay this note in 36 payments. Each payment will be in the amount of \$ 4,808.52

and will be due 06/03/2008. A payment of \$ 4,500.52 will be due the 3rd

day of each month \_\_\_\_\_ thereafter. The final payment of the entire

unpaid balance of principal and interest will be due May 3, 2011

ADDITIONAL TERMS: \_\_\_\_\_

☐ SECURITY: This note is separately secured by (describe separate document by type and date): \_\_\_\_\_

(This section is for your records use. If you feel a separate security document does not meet the agreement, you may leave this note.)

Signature for Lender \_\_\_\_\_

R BROOK MOORE \_\_\_\_\_

COMMERCIAL BANKING EYE \_\_\_\_\_

SOUTH CAROLINA - UNIVERSAL NOTE  
© 1984, 1991 Banknote Systems, Inc., St. Louis, MO Form UN-SC 01/0001 (page 1 of 2)

**DEFINITIONS:** As used on page 1, "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, endorser, and assignee) who agrees to pay this note (regardless of whether "me" or "my" means the lender and the endorser and assignee).

**APPLICABLE LAW:** The law of the state of South Carolina will govern this note. Any term of this note 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 the terms, this note will still be enforceable under the remainder of this agreement. No modification of this agreement may be made without your express written consent. This is of the essence in this agreement.

**COMMISSIONS OR OTHER REMUNERATION:** I understand and agree that any insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve money retained by you or paid back to you as commissions or other remuneration.

**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, you will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we agree to the contrary on this note. Any partial payments 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 bear its own 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 advanced 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 here (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 loan agreement, you agree to refund it to me.

**INDEX RATE:** The index will serve only as a device for setting the rate on this note. You do not guarantee by setting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or loans to me or other borrowers.

**ADJUSTMENT METHOD:** The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

**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 (whether on page 1 of this note or the date you actually make a payment, whichever is earlier).

**SINGLE ADVANCE LOAN:** 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 below.

**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.

**PAYMENTS BY LENDER:** If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

**GET-OUT:** 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 real estate mortgage or other non-deposit 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 due date for which you properly demand payment under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right to set-off will apply to my interest in the obligation and to any other amounts I could collect on my sole account or assignment. Your right to set-off does not apply to an account of other obligation where my right is 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 of set-off.

**REAL ESTATE OR RESIDENCE SECURITY:** If this note is secured by real estate or a residence that is personal property, the extinction of a default

and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

**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; (3) I fail to pay, or keep any property, on any date of agreement I have with you; (4) any other creditor or 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 I was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) any default resulting from this note is used to a major extent for a purpose which violates applicable law; (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 if I am a producer of crops; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of cropland to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1860; and (12) I default on any other obligation to you.  
**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 charges).

(2) You may set off this debt against any right I have to the payment of money by you, subject to the terms of the "GET-OUT" 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.

By electing any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to decide on event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

**COLLECTION COSTS AND ATTORNEY'S FEES:** I agree to pay all costs of collection, including 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 all or less than all of the attorney's fees and 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) disburse payment of amounts due (prepayments);  
(2) obtain a full certification of payment (prepayments) or  
(3) give notice that amounts due have not been paid (unless or otherwise).

I waive any defenses I have based on warranty or impairment of collateral.

**OBLIGATIONS INDEPENDENT:** I understand that I must pay this note even if someone else has also agreed to pay it for, 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, assign, 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.

**NOTICE:** Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address, my current address as on page 1. I agree to inform you by writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

**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 prehearing hearing prior to seizure of any personal property which may secure this loan.

| DATE OF<br>TRANSACTION | PRINCIPAL<br>ADVANCE | INTEREST<br>DUE DATE | PRINCIPAL<br>PAYMENTS | PRINCIPAL<br>BALANCE | INTEREST<br>DUE DATE | INTEREST<br>PAYMENTS | INTEREST<br>DUE DATE |
|------------------------|----------------------|----------------------|-----------------------|----------------------|----------------------|----------------------|----------------------|
| 1                      |                      |                      |                       |                      |                      |                      |                      |
| 2                      |                      |                      |                       |                      |                      |                      |                      |
| 3                      |                      |                      |                       |                      |                      |                      |                      |
| 4                      |                      |                      |                       |                      |                      |                      |                      |
| 5                      |                      |                      |                       |                      |                      |                      |                      |
| 6                      |                      |                      |                       |                      |                      |                      |                      |
| 7                      |                      |                      |                       |                      |                      |                      |                      |
| 8                      |                      |                      |                       |                      |                      |                      |                      |
| 9                      |                      |                      |                       |                      |                      |                      |                      |
| 10                     |                      |                      |                       |                      |                      |                      |                      |
| 11                     |                      |                      |                       |                      |                      |                      |                      |
| 12                     |                      |                      |                       |                      |                      |                      |                      |
| 13                     |                      |                      |                       |                      |                      |                      |                      |
| 14                     |                      |                      |                       |                      |                      |                      |                      |
| 15                     |                      |                      |                       |                      |                      |                      |                      |
| 16                     |                      |                      |                       |                      |                      |                      |                      |
| 17                     |                      |                      |                       |                      |                      |                      |                      |
| 18                     |                      |                      |                       |                      |                      |                      |                      |
| 19                     |                      |                      |                       |                      |                      |                      |                      |
| 20                     |                      |                      |                       |                      |                      |                      |                      |

Exhibit "B"

Callihan Guaranty

[See Attached]

# GUARANTY

City \_\_\_\_\_, State \_\_\_\_\_  
(City) (State)

Date of Loan November 11, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to have in full payment of the sum of \$100,000.00 (One Hundred Thousand Dollars) to the Lender, (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 \_\_\_\_\_

SAN DIEGO COUNTY, CALIFORNIA  
(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and irrevocably 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 attached, 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 shall 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 or 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 the 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 therefor.

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 other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and including the payment of the indebtedness, and all attorney's fees, collection costs and enforcement expenses relating 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 attorney's 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 to be unsecured; I secured by a mortgage or security agreement dated \_\_\_\_\_  
I secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned this 11th day of November 2008.

*[Signature]*  
\_\_\_\_\_  
Undersigned

"Under Seal" shall mean in all instances when signed by the Undersigned and sealed.

# 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 assumption of collateral security, guaranties, 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, nonprosecution 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 indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of sale) for indebtedness, or to seek 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 forbearance 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 proceeds upon indebtedness; (x) any action 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 court 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 pension 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. Until the obligations of the Borrower to Lender have been paid in full, 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, co-borrower, 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, replevy 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 signatories and promisors herein shall be construed to be, and are hereby declared to be, joint and several in each of every part 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, and shall bind 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.

Exhibit "C"

Williams Guaranty

[See Attached]

# GUARANTEE

City

(20)

State

(14)

Date of Loan November 8, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Bank of America, National Association, 100 North Main Street, Norfolk, VA 23510

(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

Bank of America, National Association (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 debt, liability 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 relating out of the following:

Note Number 114401 dated 11/08/2006 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) on 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 the 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 incompetency 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 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 thereon.

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 other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and including the payment of the indebtedness, 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 limiting 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 debts. Such application of receipts shall not reduce, offset 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 \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written,

[Signature]  
[Printed Name]

Undersigned shall not be liable for payment of this guaranty, interest and fees.

# ADDITIONAL PROVISIONS

9. Whether or not any existing relationship between the Undersigned and Borrower has been changed or voided 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, guarantee, accommodation parties or sureties for any or all indebtedness; (ii) any amendment or renewal 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 suit, give any required notice or otherwise protect any indebtedness; (iv) any full or partial release of, payment with, or agreement not to sue, otherwise protect any indebtedness; (v) any full or partial release of, payment with, or agreement not to sue, otherwise protect any indebtedness of the Undersigned or any instrument in removal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for indebtedness, or to sue to the proper or sufficient extent and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; (vii) any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (viii) any foreclosure or enforcement of any collateral security; (ix) any transfer of any indebtedness or any evidence thereof; (x) any order of application of any payments or credits upon indebtedness; (xi) any election by the Lender under § 541(c)(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 defenses 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 through 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 portion interest and attorney's fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue in indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as through Borrower's obligations had not been discharged.

9. If any payment applied by Lender to indebtedness is thereafter set aside, recovered, reclaimed 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. Until the obligations of the Borrower to Lender have been paid in full, 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 debt, 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 him, 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 and the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, renewed, 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.

Exhibit "D"

Pennisi Guaranty

[See Attached]

## GUARANTY

\_\_\_\_\_  
 (Lender)  
 \_\_\_\_\_  
 (Borrower)

Date of Loan: November 11, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to be of full force and effect, the undersigned, known as the "Borrower", do hereby acknowledge, and to be of full force and effect, the undersigned, known as the "Lender", at his option, at any time or from time to time to make loans or extend other accommodations to or for the account of \_\_\_\_\_

(hereinafter 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:

Debt Number: \_\_\_\_\_ Date: \_\_\_\_\_ and any extensions,

amendments 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, the guaranty includes the following described debt(s):

The Undersigned further acknowledges and agrees with Lender that:  
 1. the 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 constitute the Undersigned or merely, 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 released by written notice actually received by the Lender, and such release 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 refinancing thereof. If there be more than one Undersigned, such termination shall be effective only as to the one so retiring. The death or incompetency of the Undersigned shall not release 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, in which case death;

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, until the Undersigned will forthwith pay to the Lender, the full amount of all indebtedness, whether due and payable or not, if the Undersigned voluntarily commences or there is commenced against the Undersigned a case under the United States Bankruptcy Code, the full amount of all indebtedness, whether due and payable or not, shall be immediately due and payable without demand or notice of default;

4. the liability of the Undersigned hereunder shall be limited to a principal amount of \$ 1,000,000.00 (one million dollars) or such lesser amount as may be determined by the Lender for all indebtedness, without any limitation as to amount, plus interest, taxes, costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness, including the payment of the indebtedness, and all attorneys' fees, collection costs and enforcement costs and expenses incurred, including any costs and expenses incurred in any proceeding, whether or not in excess of such principal amount, without affecting or limiting 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 judgment or decree or from any other source in payment of the debts. Such application of receipts shall not reduce, offset 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 as payment or discharge of such liability only if accompanied by a written acknowledgment 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 this guaranty, 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 hereby acknowledged and executed by a mortgage or security agreement dated \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned this day and year first above written.

\_\_\_\_\_  
 (Signature)  
 \_\_\_\_\_  
 (Name)

"I, the undersigned, shall be bound to the payment of the indebtedness, whether or not paid."

Exhibit "E"

Karavan Guaranty

[See Attached]

# GUARANTY

City \_\_\_\_\_ State \_\_\_\_\_  
(City) (State)

Date of Loan: November 2, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce \_\_\_\_\_ (Borrower) to make loans or extend other accommodations to or for the account of \_\_\_\_\_ (Lender), 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 \_\_\_\_\_

herein called "Borrower") to engage in any other transactions with Borrower, the Undersigned hereby absolutely and irrevocably 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:  
Note Number \_\_\_\_\_ dated 11/02/2006 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 contracted 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 that 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, shut up, 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.

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 other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and securing the payment of the indebtedness, and all attorneys' fees, collection costs and enforcement expenses recoverable thereon. 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, any 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.

\_\_\_\_\_  
Signature

# ADDITIONAL PROVISIONS

8. 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, guaranties, accommodation parties or sureties for any or all indebtedness; (ii) any and/or more extensions or renewals of indebtedness (whether or not for longer than the original period) or any modification of the interest rate, maturity 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 notice 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 indebtedness or the accomplishment of any instrument in renewal thereof or substitution thereof; (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 action by the Lender under §117(f)(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, duress, 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 inclosure 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.

6. 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.

5. 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.

4. Until the obligations of the Borrower to Lender have been paid in full, 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.

3. 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 to 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.

2. 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.

1. 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.

Exhibit "F"

Walls Guaranty

[See Attached]

# GUARANTY

Date of Loan: November 4, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to the order of State Street Bank and Trust Company, 1250 Lakeside Drive, Chicago, IL 60606 (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

(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: NOTE PURCHASE 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 so long 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 this 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 incompetency 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 other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and including the payment of the indebtedness, and all attorneys' fees, collection costs and enforcement expenses incurred hereunder. 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 expense. 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 \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned this day and year first above written.

*[Signature]*  
 \_\_\_\_\_  
 CHIEF OF POLICE

"Undersigned" shall include all persons who execute this guaranty.

Exhibit "G"

Guyton Guaranty

[See Attached]

Columbia (City) South Carolina (State)

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce \_\_\_\_\_, Gordon K. Kishner and Jan Kishner 111814, Street, Elmhurst, IL 60120-1000 to enter into this agreement, \_\_\_\_\_, undersigned, 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 \_\_\_\_\_

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: None  
 Note Number 3400 dated 11/09/2006 and my extensions.

The Undersigned further acknowledges and agrees with Lender that:

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 incompetency 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, or known and fact.

3. If the Undersigned shall be assigned, shall be, 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 to the Lender.

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 other costs, fees, and expenses agreed to be paid under all contracts evidencing the indebtedness, and securing the payment of the indebtedness, and all attorney's fees, collection costs and enforcement expenses, not tolerable 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 mitigate or discharge such liability only if accompanied by a written transmittal document, received by the Lender, whereby 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 warranty includes the additional provisions on page 2, all of which are made a part hereof.

Title guarantee is ☒ unsecured; ☐ secured by a mortgage or security agreement dated \_\_\_\_\_  
secured by \_\_\_\_\_

(IN WITNESS WHEREOF, this currently has been duly executed by the undersigned this day and year first above written).

**INVESTIGATION**

# 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 thereof; (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(h)(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 attorney's fees and any other amounts which Borrower is obligated to pay 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, resold 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. Until the obligations of the Borrower to Lender have been paid in full, 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 his 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.

Exhibit "H"

Skelley Guaranty

[See Attached]

# GUARANTY

Date:

(Day)

South Carolina

(State)

Date of Loan: November 9, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Bankers Systems, Inc. and its subsidiaries (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

XXXXXXXXXXXX (herein called "Borrower") or to engage in any other transactions with Borrower, the undersigned hereby absolutely and irrevocably 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: NOTE NUMBER 1400 DATED 11/09/2008 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, each revocation shall be effective only as to the one so revoking. The death or incompetency 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, shut up, 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 hereunder.

4. The liability of the undersigned hereunder shall be for 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 other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and including the payment of the indebtedness, and all attorneys' fees, collection costs and enforcement expenses thereafter incurred. Indebtedness may be created and continued in any manner, 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 proportion, 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 statement, 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 provision, 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 \_\_\_\_\_, executed by \_\_\_\_\_.

IN WITNESS WHEREOF, this guaranty has been duly executed by the undersigned this \_\_\_\_\_ day and year first above written.

XXXXXXXXXXXX

Signature of undersigned must be printed and signed by the undersigned, manually and personally.

### ADDITIONAL PROVISIONS

5. Whether or not any existing relationship between the Undersigned and Borrower has been changed or altered and whether or not the 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, guarantees, accommodations 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 notice 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 sue to the proper or sufficient extent and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, liquidation, satisfaction, waste, or loss of any collateral security; (vii) any forbearance 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 action 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, duress, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any indebtedness, or any asset available against Lender to Borrower or any such other person, whether or not an incident 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 agree that the undersigned shall be and remain obligated to pay indebtedness even though any other person obligated to pay indebtedness, including Borrower, was such obligation discharged in bankruptcy or otherwise discharged by law, "indebtedness" still includes post-bankruptcy portion interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise pertain 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.

6. 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. Until the obligations of the Borrower to Lender have been paid in full, 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 credit or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, exoneration, 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 Undesignated values 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 provisions 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

COUNTY OF HORRY

First National Bank of the South,  
successor in interest to Carolina  
National Bank and Trust Company,

Plaintiff,

vs.

James T. Callihan a/k/a James Callihan;  
Edward L. Williams; Frank J. Pennisi a/k/a  
Frank Pennisi; Dean J. Karavan a/k/a  
D.J. Karavan; Charles T. Walls, Jr. a/k/a  
Charles Walls; Robert S. Guyton; and  
Jeffrey H. Skelley,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 10-CP-26-\_\_\_\_\_

VERIFICATION

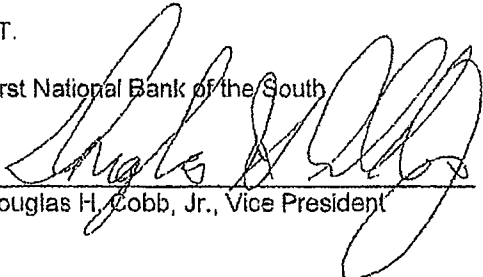
FILED  
Horry County  
2010 APR 13 PM 3:09  
MELANIE HUGGINS-NEEDS  
CLERK OF COURT

Personally appeared before me, Douglas H. Cobb, Jr., who being duly sworn, deposes and  
says as follows:

I am employed by the Plaintiff in the above referenced suit. I have read the foregoing  
Complaint in this matter, and know the contents thereof and the allegations contained therein are true  
of my knowledge (including the amount due and owing), except those matters alleged on information  
and belief, and as to those, I verily believe them to be true.

FURTHER AFFIANT SAYETH NAUGHT.

First National Bank of the South

  
Douglas H. Cobb, Jr., Vice President

Sworn to before me this  
4th day of April, 2010

  
Notary Public for South Carolina  
My Commission Expires: 1-16-11

(COPY)

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-26-03170

First National Bank of the South,  
Successor in interest to Carolina  
National Bank and Trust Company,

Plaintiff,

vs.

James T. Callihan a/k/a James  
Callihan; Edward L. Williams;  
Frank J. Pennisi a/k/a Frank Pennisi;  
Dean J. Karavan a/k/a D.J. Karavan;  
Charles T. Walls a/k/a Charles Walls;  
Robert S. Guyton; and Jeffrey H.  
Skelley

Defendants.

SUMMONS FOR  
ANSWER AND CROSSCLAIM  
(Jury Trial Demanded)

CLERK OF COURT  
JAN 28 PM 4:40  
JAN 28 PM 4:40  
JAN 28 PM 4:40

TO: THE DEFENDANTS, JAMES T. CALLIHAN a/k/a JAMES CALLIHAN;  
EDWARD L. WILLIAMS; DEAN J. KARAVAN a/k/a D.J. KARAVAN; ROBERT  
S. GUYTON AND JEFFREY H. SKELLEY, AND THEIR ATTORNEY, DANIEL  
J. MacDONALD, ESQUIRE:

YOU ARE HEREBY SUMMONED and required to Reply to the Crossclaims in this  
action, of which a copy is herewith served upon you, and to serve a copy of your Reply to the  
said Crossclaims on the subscriber at his office at 4614 Oleander Dr., Myrtle Beach, SC, 29577,  
within thirty (30) days after service hereof; exclusive of the day of such service; and if you fail to  
Reply to the Crossclaims with the time aforesaid, the filing Defendant in this action will apply to  
the Court for the relief demanded in the Crossclaims.

2010-CP-26-3170

COPY

THE BRITTAIN LAW FIRM, P.A.

By 

Thomas C. Brittain, Esq.  
4614 Oleander Dr.  
Myrtle Beach, SC 29577  
Telephone: (843) 449-8562  
Facsimile: (843) 497-6124  
Attorney for Frank J. Pennisi

November 28, 2011  
Myrtle Beach, South Carolina.

2010-CP-26-3170

COPY

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

First National Bank of the South,  
Successor in interest to Carolina  
National Bank and Trust Company,

Plaintiff,

vs. )

James T. Callihan a/k/a James  
Callihan; Edward L. Williams;  
Frank J. Pennisi a/k/a Frank Pennisi;  
Dean J. Karavan a/k/a D.J. Karavan;  
Charles T. Walls a/k/a Charles Walls;  
Robert S. Guyton; and Jeffrey H.  
Skelley

Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-26-03170

ANSWER AND CROSSCLAIMS  
(Jury Trial Demanded)

FILED  
HORRY COUNTY  
2011 NOV 28 PM 4:10  
JELANE HUGHES-WARD  
CLERK OF COURT

NOW COMES THE DEFENDANT, FRANK J. PENNISI A/K/A FRANK PENNISI, by and through his attorney, and Crossclaims against the following Defendants, James T. Callihan a/k/a James Callihan, Edward L. Williams, Dean J. Caravan a/k/a D. J. Karavan, Robert S. Guyton and Jeffrey H. Skelley.

Be it known and understood: Any and all allegations in the previously filed answer setout herein of this Defendant are hereby realleged as if setout herein verbatim.

**FOR A FIRST DEFENSE**

1. Any allegation not herein expressly admitted is denied.

**FOR A SECOND DEFENSE**

2. Defendant admits Paragraphs 1 through 8 of the Complaint.
3. As to Paragraphs 9 and 10, Defendant admits only that Borrower company made and executed the Promissory Note dated November 8, 2006 to Carolina National Bank and

Trust Company (CNB); but denies that the Borrower entered into a renewal of the note with CNB on April 30, 2009 and is without sufficient information to admit or deny the status of First National Bank of the South and therefore denies all remaining allegations.

4. Paragraphs 11 and 12 are admitted.

5. Paragraphs 13 through 18 make no allegation against this Defendant and therefore no response is required thereto; provided however, if any said paragraph is intended or construed to make any allegation against the interests of this Defendant, the same is denied.

6. Paragraphs 19 through 24 make no allegation against this Defendant and therefore no response is required thereto; provided however, if any said paragraph is intended or construed to make any allegation against the interests of this Defendant, the same is denied.

7. Defendant has already responded to the allegations of Paragraph 25. Any further or contrary allegation is denied.

8. As to Paragraphs 26 through 30, Defendant admits only that he signed the November 8, 2006 Guaranty (Exhibit D to the Complaint) and admits that the terms of his Guaranty speak for themselves and admits that the Hagood & Kerr law firm filed the lawsuit on behalf of the Plaintiff; provided however, and by further response, Defendant denies that his Guaranty applies to the second loan in the amount of \$300,000.00, denies that it applies to First National Bank of the South, denies that he is liable for the amounts claimed if any, and denies all further allegations of the Paragraphs.

9. Paragraphs 31 through 36 make no allegation against this Defendant and therefore no response is required thereto; provided however, if any said paragraph is intended or construed to make any allegation against the interests of this Defendant, the same is denied.

10. Paragraphs 37 through 42 make no allegation against this Defendant and therefore no response is required thereto; provided however, if any said paragraph is intended or construed to make any allegation against the interests of this Defendant, the same is denied.

11. Paragraphs 43 through 48 make no allegation against this Defendant and therefore no response is required thereto; provided however, if any said paragraph is intended or construed to make any allegation against the interests of this Defendant, the same is denied.

12. Paragraphs 49 through 54 make no allegation against this Defendant and therefore no response is required thereto; provided however, if any said paragraph is intended or construed to make any allegation against the interests of this Defendant, the same is denied.

#### BY WAY OF FURTHER AND AFFIRMATIVE DEFENSES

13. Defendant affirmatively states Plaintiff fails to allege facts sufficient to state a claim against Defendant and therefore this action should be dismissed.

14. Defendant affirmatively states that any claim against them is barred by the negligence, gross negligence, fraud, and misconduct of other parties.

15. Defendant affirmatively states that Plaintiffs' claims are barred by mistake and/or misrepresentation.

16. Defendant affirmatively states that any claim against them is barred by the statute of limitations, waiver, equitable estoppel, and/or laches.

17. Defendant affirmatively states that Plaintiffs' claims for injury and damage, if any, were caused by the intervening or superseding acts of other for whom the Defendants are not responsible or liable.

18. Defendant affirmatively asserts that Plaintiff's claims are barred by its unclean hands.

19. Defendant affirmatively asserts that to the extent that Plaintiff failed to satisfy all conditions precedent to declaring default and/or pursuing foreclosure, Plaintiff's claims are barred.

20. Defendant affirmatively asserts Plaintiff's claims are barred in whole or in part by virtue of the fact that Plaintiff failed to mitigate their alleged damages.

21. Plaintiffs' alleged damages, which Defendant denies, were directly and proximately caused, in whole or in part, by the intervening and superseding negligence and/or the intervening and superseding deliberate wrongful conduct of others, which negligence and/or deliberate wrongful conduct this Defendant affirmatively pleads as a complete bar to all claims against him.

22. To the extent any alleged liability is imposed on this Defendant, which alleged liability is denied, this Defendant is entitled to total or partial indemnity and/or contribution from the responsible parties in an amount in direct proportion to their relative culpability.

23. To the extent any alleged liability is imposed upon this Defendant, which alleged liability is denied, this Defendant is entitled to total and/or partial indemnity, credit, and/or contribution from the responsible parties and/or third parties in an amount in direct proportion to their relative culpability.

24. This Defendant reserves the right to raise additional defense during or after the completion of discovery in this case.

25. Defendant affirmatively states that his Guaranty relates to a party other than Plaintiff.

26. Defendant affirmatively asserts that the actions of Plaintiff and/or Borrower, or the original lender, discharged the debt and/or Defendant's responsibility under the Guaranty.

27. Defendant affirmatively asserts that to the extent that Plaintiff failed to satisfy all conditions precedent to declaring default and/or pursuing collection under the Guaranty, Plaintiff's claims are barred.

CROSSCLAIMS  
(Factual Allegations)

28. On or about November 6, 2006, Carolyn Pennisi purchased property known as Sand Dollar Cottage on White Sound Green Turtle Cay in the Bahamas for \$360,000.00 and \$40,000.00 in closing costs. On or about the same time period, Defendant Robert S. Guyton formed a company known as Sand Dollar Cottage, LLC and was the attorney for the LLC. Members of the LLC, identified in the Operating Agreement of Sand Dollar Cottage, LLC, are Edward L. Williams, Dean J. Karavan, Jeffrey H. Skelley, Frank J. Pennisi, James T. Callihan, Charles T. Walls, Jr., and Robert S. Guyton.

29. As stated above, Carolyn Pennisi owns the real estate. Sand Dollar Cottage, LLC does not own the real estate. In November of 2006, all of the individuals having an interest in the LLC took a \$400,000.00, interest only, loan from a Carolina National Bank and Trust Company, all signing as guarantors. In April of 2008, Sand Dollar Cottage, LLC and its members decided to take out a principle reduction loan, (a loan modification). The original bank, Carolina National Bank and Trust Company, merged with the First National Bank of The South and agreed to a new loan of only \$300,000.00.

30. On May 7, 2008 Charles T. Walls, Jr. and Frank J. Pennisi pre-paid their shares; Mr. Walls paying \$33,360.00 and Mr. Pennisi paying \$16,680.00. In addition, Mr. Pennisi loaned \$54,960.00 at 6.75 (%) per cent, interest only loan, to Sand Dollar Cottage, LLC and its individuals for three (3) years, maturing in July of 2011. In a meeting (referenced in the next to last paragraph of this affidavit), Mr. Pennisi agreed to compensate Mr. Walls for his pre-paid

share (\$33,360.00) at a price and time to be determined. At that meeting all of these Defendants agreed Mr. Pennisi owed nothing and was no longer a Guarantor.

31. Mr. Guyton, attorney for the LLC, handled all of the transactions. The bank knew or had reason to know that Mr. Pennisi was no longer a guarantor, that Mr. Guyton had a duty and responsibility to remove Mr. Pennisi as a guarantor as part of the refinancing of the loan, that all of the members associated with the transaction and owners in Sand Dollar Cottage, LLC knew that Mr. Pennisi had paid all of his obligations and had no responsibility to make any additional payments nor guarantee the loan.

32. In 2009, Mr. Pennisi began to receive phone calls from Bryan Tapp and Steve Waddell of The First National Bank of The South requesting "his financial information for the \$300,000.00 loan". Mr. Pennisi informed Mr. Tapp and Mr. Waddell through phone conversations and email, that he was no longer a guarantor and that he and Charles T. Walls, Jr. had pre-paid their shares and were supposed to have been removed as guarantors as part of the refinance by Mr. Guyton, lawyer for all parties. Thereafter, Mr. Tapp called at times and emailed, asking only for financials for Jeff Skelley and James Callihan. This matter was raised by Mr. Pennisi with Mr. Guyton and afterwards the bank did not call again. Mr. Guyton was aware that Mr. Pennisi was not a guarantor as was the bank.

33. Mr. Pennisi has not received any interest on his \$54,960.00 loan since 2009. Mr. Pennisi's out-of-pocket expenses with Sand Dollar Cottage, LLC total \$79,056.00, which includes interest but not attorney fees, (in which the approximate amount is \$20,000.00. Carolyn Pennisi holds title, both equitable and legal, in the underlying property however, due to the economic downturn and Hurricane Irene, the real estate value is greatly diminished.

34. Once the successor bank filed suit, the members of Sand Dollar Cottage, LLC met. Mr. Caravan, Mr. Williams, Mr. Skelley and Mr. Guyton agreed to admit the truth of these matters to the bank and inform the bank that Mr. Walls and Mr. Pennisi were not guarantors and were not supposed to be guarantors and should have been removed from any lender action to the same.

35. Plaintiff knew, or had reason to know, that Mr. Pennisi was not a guarantor. That all Defendants mislead Mr. Pennisi as to their promises and actions. That, upon information and belief, these Defendants will not step up and assume their responsibilities as they promised to do. All Defendants so named have breached their duties and promises to Mr. Pennisi.

36. Defendant Robert S. Guyton did not prepare the proper documentation to protect Mr. Pennisi as it was his duty to do.

37. That the Defendants are liable to Mr. Pennisi as set forth hereinabove for breach of contract, fraud, breach of contract accompanied by a fraudulent act and legal malpractice (as to Defendant Guyton).

**FOR A FIRST CROSSCLAIM**  
**Breach of Contract**

38. That each and every allegation in the answer and factual allegations under CROSSCLAIMS are reiterated herein as if set out herein and made a part hereof.

39. That each Defendant had a duty to pay Mr. Pennisi and admit that he was not a guarantor; that each breached those duties causing monetary damages.

**FOR A SECOND CROSSCLAIM**  
**Breach of Contract Accompanied By A Fraudulent Act**

40. That each and every allegation in the answer and factual allegations under CROSSCLAIMS are reiterated herein as if set out herein and made a part hereof.

41. That each Defendant agreed to pay Mr. Pennisi as set forth; to allow his removal as guarantor; to notify their attorney accordingly and admit same. That Mr. Pennisi relied on said representations, that he had a right so to do; that these Defendants have not honored same; that Mr. Pennisi's reliance was detrimental, producing monetary damages.

**FOR A THIRD CROSSCLAIM**  
**As to Defendant Guyton**

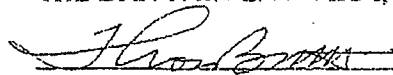
42. That each and every allegation in the answer and factual allegations under CROSSCLAIMS are reiterated herein as if set out herein and made a part hereof.

43. That Mr. Pennisi relied on Mr. Guyton to prepare necessary paperwork to remove him as a guarantor; he failed to do so; creating money damages.

WHEREFORE, Mr. Pennisi prays as follows:

- A) Dismissal of Plaintiff's actions against him
- B) Monetary damages from all Defendants under each crossclaimed cause of action as set forth above
- C) For attorney fee

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain, Esquire

4614 Oleander Drive

Myrtle Beach, SC 29577

(843) 449.8562

(843) 497.6124 (Fax)

Attorney for Frank J. Pennisi

Myrtle Beach, SC

11/28, 2011

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF HORRY ) FIFTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-26-03170

First National Bank of the South, )  
Successor in interest to Carolina )  
National Bank and Trust Company, )  
 )  
Plaintiff, )

vs )

CERTIFICATE OF MAILING

James T. Callihan a/k/a James )  
Callihan; Edward L. Williams; )  
Frank J. Pennisi a/k/a Frank Pennisi; )  
Dean J. Karavan a/k/a D.J. Karavan; )  
Charles T. Walls a/k/a Charles Walls; )  
Robert S. Guyton; and Jeffrey H. )  
Skelley, )  
Defendants. )

Marilyn G. McCormick certifies that she is an employee of The Brittain Law Firm, P.A., attorneys for the Defendant, Frank J. Pennisi a/k/a Frank Pennisi, and that she has caused to be hand delivered the documents listed below in the above entitled action to the addressee(s) below on November 29<sup>th</sup>, 2011 to Daniel J. MacDonald, Esq. and delivered by U.S. Mail to C. Scott Masel, Esq. and Christopher T. Colwell, Esq., also on November 29<sup>th</sup> 2011.

DOCUMENTS: Summons For Answer and Crossclaims  
Answer and Crossclaims

ADDRESSEE: Daniel J. MacDonald, Esquire  
Rice, MacDonald, Breeden & Hicks, P.A.  
950 48<sup>th</sup> Avenue North, Suite 200  
Myrtle Beach, South Carolina 29577

C. Scott Masel, Esq.  
NEWBY, SARTIP, MASEL & CASPER, LLC  
Post Office Box 808  
Myrtle Beach, SC 29578

Christopher T. Colwell, Esq.  
HAGOOD & KERR, P.A.  
654 Coleman Blvd.  
Mt. Pleasant, SC 29464

Marilyn G. McCormick  
Marilyn G. McCormick

SWORN to before me this, 29<sup>th</sup> day of November, 2011.

Alma D. Santos  
Notary Public for South Carolina  
My Commission Expires: 5/2/2024

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO: 2010-CP-26-03170

First National Bank of the South, )  
Successor in interest to Carolina )  
National Bank and Trust Company, )

Plaintiff, )

Vs. )

James T. Callihan a/k/a James Callihan; )  
Edward L. Williams; Frank J. Pennisi a/k/a )  
Frank Pennisi; Dean J. Karavan a/k/a D.J. )  
Karavan; Charles T. Walls a/k/a Charles )  
Walls; Robert S. Guyton; and Jeffrey H. )  
Skelley, )

Defendants. )

**ANSWER**

(on behalf of Defendant Charles Walls)

FILED  
HORRY COUNTY  
2010 APR 30 PM 4:09  
MELANIE HUGGINS-WARD  
CLERK OF COURT

Comes now the Defendant Charles T. Walls, by way of answer and response to the  
Plaintiff's Complaint, and says as follows:

**FOR A FIRST DEFENSE**

1. Any allegation not herein expressly admitted is denied.

**FOR A SECOND DEFENSE**

2. Defendant admits Paragraphs 1 through 8 of the Complaint.
3. As to Paragraphs 9 and 10, Defendant admits only that Borrower company made and executed the Promissory Note dated November 8, 2006 to Carolina National Bank and Trust Company (CNB); but denies that the Borrower entered into a renewal of the note with CNB on April 30, 2009 and is without sufficient information to admit or deny the status of First National Bank of the South and therefore denies all remaining allegations.
4. Paragraphs 11 and 12 are admitted.

5. Paragraphs 13 through 18 make no allegation against this Defendant and therefore no response is required thereto; provided however, if any said paragraph is intended or construed to make any allegation against the interests of this Defendant, the same is denied.
6. Paragraphs 19 through 24 make no allegation against this Defendant and therefore no response is required thereto; provided however, if any said paragraph is intended or construed to make any allegation against the interests of this Defendant, the same is denied.
7. Paragraphs 25 through 30 make no allegation against this Defendant and therefore no response is required thereto; provided however, if any said paragraph is intended or construed to make any allegation against the interests of this Defendant, the same is denied.
8. Paragraphs 31 through 36 make no allegation against this Defendant and therefore no response is required thereto; provided however, if any said paragraph is intended or construed to make any allegation against the interests of this Defendant, the same is denied.
9. Defendant has already responded to the allegations of Paragraph 37. Any further or contrary allegation is denied.
10. As to Paragraphs 38 through 42, Defendant admits only that he signed the November 8, 2006 Guaranty (Exhibit F to the Complaint) and admits that the terms of his Guaranty speak for themselves and admits that the Hagood & Kerr law firm filed the lawsuit on behalf of the Plaintiff; provided however, and by further response, Defendant denies that his Guaranty applies to the second loan in the amount of \$300,000.00, denies that it

applies to First National Bank of the South, denies that he is liable for the amounts claimed if any, and denies all further allegations of the Paragraphs.

11. Paragraphs 43 through 48 make no allegation against this Defendant and therefore no response is required thereto; provided however, if any said paragraph is intended or construed to make any allegation against the interests of this Defendant, the same is denied.

12. Paragraphs 49 through 54 make no allegation against this Defendant and therefore no response is required thereto; provided however, if any said paragraph is intended or construed to make any allegation against the interests of this Defendant, the same is denied.

#### **BY WAY OF FURTHER AND AFFIRMATIVE DEFENSES**

13. Defendant affirmatively states Plaintiff fails to allege facts sufficient to state a claim against Defendant and therefore this action should be dismissed.

14. Defendant affirmatively states that any claim against them is barred by the negligence, gross negligence, fraud, and misconduct of other parties.

15. Defendant affirmatively states that Plaintiffs' claims are barred by mistake and/or misrepresentation.

16. Defendant affirmatively states that any claim against them is barred by the statute of limitations, waiver, equitable estoppel, and/or laches.

17. Defendant affirmatively states that Plaintiffs' claims for injury and damage, if any, were caused by the intervening or superseding acts of other for whom the Defendants are not responsible or liable.

18. Defendant affirmatively asserts that Plaintiff's claims are barred by its unclean hands.

19. Defendant affirmatively asserts that to the extent that Plaintiff failed to satisfy all conditions precedent to declaring default and/or pursuing foreclosure, Plaintiff's claims are barred.
20. Defendant affirmatively asserts Plaintiff's claims are barred in whole or in part by virtue of the fact that Plaintiff failed to mitigate their alleged damages.
21. Plaintiffs' alleged damages, which Defendant denies, were directly and proximately caused, in whole or in part, by the intervening and superseding negligence and/or the intervening and superseding deliberate wrongful conduct of others, which negligence and/or deliberate wrongful conduct this Defendant affirmatively pleads as a complete bar to all claims against him.
22. To the extent any alleged liability is imposed on this Defendant, which alleged liability is denied, this Defendant is entitled to total or partial indemnity and/or contribution from the responsible parties in an amount in direct proportion to their relative culpability.
23. To the extent any alleged liability is imposed upon this Defendant, which alleged liability is denied, this Defendant is entitled to total and/or partial indemnity, credit, and/or contribution from the responsible parties and/or third parties in an amount in direct proportion to their relative culpability.
24. This Defendant reserves the right to raise additional defense during or after the completion of discovery in this case.
25. Defendant affirmatively states that his Guaranty relates to a party other than Plaintiff.
26. Defendant affirmatively asserts that the actions of Plaintiff and/or Borrower, or the original lender, discharged the debt and/or Defendant's responsibility under the Guaranty.

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
C/A: 2010-CP-26-3170

First National Bank of the South;  
successor in interest to Carolina  
National Bank and Trust Company,

Plaintiff,

vs.

James T. Callihan a/k/a James Callihan;  
Edward L. Williams; Frank J. Pennisi a/k/a  
Frank Pennisi; Dean J. Karavan a/k/a  
D.J. Karavan; Charles T. Walls, Jr. a/k/a  
Charles Walls; Robert S. Guyton; and  
Jeffrey H. Skelley,

Defendants.

CERTIFICATE OF SERVICE

FILED  
HORRY COUNTY  
APR 30 PM 4:09  
CLERK OF COURT  
ELANE HUGGINS-WARD

The undersigned hereby certifies that she is an employee of the law firm of NEWBY  
SARTIP MASEL & CASPER, LLC, Attorneys for Defendants Frank Pennisi and Charles Walls  
in the within matter, and that the Answer on behalf of Defendant Charles Walls,  
Interrogatories and Requests for Production in the above referenced matter were served upon  
counsel for the Plaintiff named below via Certified Mail, postage prepaid, addressed as follows:

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Karen K. Madert  
Karen K. Madert

April 29<sup>th</sup>, 2010

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS  
2010-CP-26-03170

2 COUNTY OF HORRY  
3

4  
5 FIRST NATIONAL BANK OF THE )  
6 SOUTH, ET AL, )  
7 )

8 -VS- )  
9 )

9 JAMES T. CALLIHAN, EDWARD L. )  
10 WILLIAMS, FRANK J. PENNISI, )  
11 DEAN J. KARAVAN, CHARLES T. )  
12 WALLS, JR., ROBERT GUYTON )  
13 and JEFFREY H. SKELLEY, )  
14 Defendants. )

15 May 20, 2013

16 B E F O R E:

17 HONORABLE W. JEFFREY YOUNG

18 A P P E A R A N C E S:

19 ROBERT A. KERR, Esquire  
20 Attorney for the Plaintiffs

21 THOMAS C. BRITTAIN, Esquire  
22 C. SCOTT MASEL, Esquire  
23 DANIEL J. MacDONALD, Esquire  
24 Attorneys for the Defendants

25 Henry P. Young  
Court Reporter

1 I-N-D-E-X

2 WITNESS:

3 DOUGLAS COBB

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30

1 P-RO-C-E-E-D-I-N-G-S

2 (Convened at 1:59 p.m., May 20, 2013).

3 THE COURT: All right, this is the case of  
4 First National Bank of the South, plaintiff, versus  
5 James T. Callihan, et al.

6 If everybody could introduce themselves for  
7 the record.

8 MR. KERR: I'm Robert Kerr with the  
9 Charleston office of Moore & Van Allen, I represent  
10 the plaintiff bank in this case.

11 THE COURT: All right.

12 Mr. Brittain?

13 MR. BRITTAIN: Yes, sir. Thomas C.  
14 Brittain, Brittain Law Firm, I represent Frank  
15 Pennisi.

16 MR. MASEL: And Scott Masel, I represent  
17 Charles Wallace.

18 MR. MacDONALD: Dan MacDonald, I represent  
19 Jeffrey Skelly, Robert Guyton, James Callihan and  
20 Dean Karavan.

21 If Your Honor please, the defendant Edward  
22 Williams, Mr. Williams filed bankruptcy, I believe  
23 his bankruptcy case was discharged, I did not  
24 handle it but I do not believe he is still a proper  
25 defendant under the rules at this time.

1           MR. KERR: Your Honor, for the record, when  
2 we were in the roster meeting with Judge John last  
3 month he I believe was entering a Form 4 order  
4 dismissing the case as against defendant Williams  
5 because of the bankruptcy Mr. MacDonald mentioned.

6           THE COURT: All right.

7           MR. SARTIP: Michael Sartip.

8           MR. MASEL: He is from my office, the same  
9 defendant.

10          THE COURT: Gentlemen, are there any  
11 stipulations that need to be put on the record  
12 before we begin?

13          MR. BRITTAIN: Mr. MacDonald and I have one,  
14 Your Honor, and I think Scott Masel is in on this,  
15 too. Our various defendants have cross-claims  
16 against one another and accounting issues as to one  
17 another. We have agreed to pass on those  
18 determinations until after the Court makes a ruling  
19 in this matter.

20          THE COURT: So, however I rule on this, then  
21 you all will fight it out among yourselves at that  
22 point?

23          MR. BRITTAIN: Yes, sir.

24          THE COURT: If I rule for you there is no  
25 reason to do that, if I rule for the plaintiff,

1 then of course --

2 MR. BRITTAIN: It would delay the thing,  
3 might be a couple day trial and there is no reason  
4 to go through all that, depending on what happens  
5 here, so we have agreed right now those are  
6 reserved for a later date.

7 MR. MacDONALD: Yes, Your Honor. I thought  
8 we had agreed but I'm certain we need confirmation,  
9 there is another sort of accompanying action, case  
10 number 2011-CP-26-10816, and it is entitled Sand  
11 Dollar Cottage versus Carolyn Pennisi. Sand Dollar  
12 Cottage is the LLC that all these defendants were  
13 members of.

14 THE COURT: Right.

15 MR. MacDONALD: And that action is  
16 additionally an accounting and also another  
17 equitable claim for specific performance of the  
18 agreement which relates to the property which was  
19 the genesis of this lawsuit. What I thought we  
20 were doing, if not, what we're doing we are  
21 postponing bifurcating this issue, we were going to  
22 bifurcate all the cross-claims and counter-claims  
23 between the defendants and the third-party claims  
24 and consolidating them from this action into that  
25 action and hear those at the same time because they

1 are all accounting, same facts, same circumstances,  
2 and that would give us actually some time to work  
3 those out after this hearing.

4 THE COURT: All right. That affects you in  
5 no way?

6 MR. KERR: It does not, Your Honor, thank  
7 you.

8 THE COURT: All right. Again, this is under  
9 case 2010-CP-26-3170. Gentlemen, I have two  
10 judicial observations, students who are law  
11 students, they will be observing this trial. If we  
12 have any bench conferences or anything I'm going to  
13 invite them to just listen in. Of course they  
14 understand they can't say anything outside here but  
15 it just allows them to be more of a part of the  
16 process.

17 All right?

18 MR. KERR: Your Honor, the University of  
19 South Carolina School of Law or Charleston?

20 THE COURT: Charleston School of Law.

21 All right, are you ready to call your first  
22 witness?

23 MR. KERR: Your Honor, may I make just a  
24 brief little overview to sort of set the stage?

25 THE COURT: Yes.

1 MR. KERR: Thank you very much.

2 Your Honor this matter was filed April 13,  
3 2010, it is a suit on a guaranty. Essentially  
4 seven investors got together, were all to borrow  
5 some money from a bank and they bought an  
6 investment in a house, pleasure house in the  
7 Bahamas with the proceeds of a \$400,000 loan that  
8 was made in 2006. The loan was at one time, the  
9 original making bank which was Carolina National  
10 Bank & Trust.

11 THE COURT: Then it became a \$300,000 loan.

12 MR. KERR: Between the second, first renewal  
13 and the second renewal Carolina Bank & Trust  
14 actually merged into First National Bank of the  
15 South who is a plaintiff on the pleadings.  
16 Subsequent to the filing of our pleadings, Your  
17 Honor, First National Bank of the South, the  
18 evidence will show this, I'll walk through this  
19 with our witness Mr. Cobb, but the bank was closed  
20 by the FDIC and its assets were sold to another  
21 lender, so there is a little bit of a chain of  
22 custody here that we'll have to walk through,  
23 nothing terribly extensive.

24 You are correct in your observation that  
25 there was a \$100,000 pay down. There are some

1 questions and positions with respect to the  
2 characterization of those monies, where they came  
3 from and whether it might affect some sort of  
4 release. But the crux of the matter is in 2009 the  
5 loan to Sand Dollar Cottage, LLC, the borrower,  
6 went into default, there were some discussion goes  
7 about restructuring, the loan was accelerated,  
8 demand made and then this suit filed in the spring  
9 of 2010.

10 Again, there is loan documents I think  
11 consists of notes and renewals and guaranties. No  
12 mortgage on the property that was purchased with  
13 the proceeds of the loan, the property being  
14 located in the Bahamas created some complexities  
15 that the parties thought were going to be  
16 unrealistic under the circumstances, and so we are  
17 here to collect the outstanding principal,  
18 interest, late fees and attorney fees from the  
19 guarantors.

20 THE COURT: All right. Have all the exhibits  
21 been marked.

22 MR. KERR: No, sir.

23 MR. BRITTAIN: We did not premark them.

24 THE COURT: Is there anything that is  
25 objected to by anybody, so they will come in pretty

1 quickly once this starts?

2 MR. BRITTAIN: Yes.

3 THE COURT: All right.

4 MR. MASEL: We'll do them as they start.

5 THE COURT: Mr. Brittain?

6 MR. BRITTAIN: Yes, sir. I represent Frank  
7 Pennisi and this is something you may not see that  
8 often, this is a hotly contested guaranty case.

9 THE COURT: Actually I had a very exciting  
10 one back in October down in Georgetown.

11 MR. BRITTAIN: Well, I mean, a lot of times  
12 these things seem to to be matters of fact. This  
13 is extremely different. We don't think the bank  
14 has handled this properly from the start especially  
15 in connection with this transaction. And they did  
16 receive guaranties. Mr. Williams was one of the  
17 ones who signed a guaranty, he has been let out of  
18 the lawsuit because of bankruptcy, this bank never  
19 pursued anything in bankruptcy against him. He is  
20 the only person that signed the new note, nobody  
21 here today that is a defendant signed a new note  
22 and I haven't seen an operating agreement in the  
23 documents I have received to establish that. We  
24 fight every part of this.

25 Now, let me tell you about my client

1 individually. All those broad claims against how  
2 this was handled, and again it is nothing against  
3 Mr. Cobb and those, we were dealing with other  
4 people. My clients, when this \$400,000 note, when  
5 the bank wanted it to become a \$300,000 note which  
6 is of significant benefit to the bank for there to  
7 be a 25 percent reduction in the principal, my  
8 client paid 70 plus thousand dollars of that money.  
9 He did so with the understanding that he would no  
10 longer be a guarantor. The bank got that money to  
11 reduce the principal, along with \$33,000 from Dr.  
12 Walls.

13 Now, the documents that would have affected  
14 that aren't like we would like to see. You would  
15 prefer that he had a lawyer and got all that taken  
16 care of like he should. We don't have that. Here  
17 is what I've got. I've got the fact the money was  
18 paid, that it went to the principal reduction, that  
19 the bank officers started contacting Mr. Pennisi and  
20 asking him for information about himself.

21 Well, Mr. Pennisi, way before this lawsuit  
22 was filed, engages them in conversation, "What are  
23 you contacting me for, I paid my money, I'm out."  
24 They agreed, then they go back and look and write  
25 him an email that says, "We're going to get this

1 from you and the guarantors." In other words, they  
2 don't say, "From you and the other guarantors."

3 So our position is we paid, the bank received  
4 the benefit, we discussed the issue with them and  
5 with the previous bank secured by writings, we are  
6 out, we don't owe any more money on it, we paid all  
7 of ours and anything that has accumulated since  
8 then is not our responsibility.

9 THE COURT: Would you like to make a short  
10 statement?

11 MR. MASEL: Yes, just very briefly for Dr.  
12 Walls. His position mirrors that of Mr. Pennisi  
13 and Mr. Pennisi's conversation, the writings with  
14 the bank were on behalf of both of them. Just a  
15 couple points I will bring up in addition and that  
16 is that it is our position that the second loan, it  
17 is one made by a completely different entity, it is  
18 a different bank and it has been our position that  
19 if there is going to be a new loan transaction  
20 entered into that new guaranties need to be entered  
21 into. It is a new lender on the documents, it's a  
22 new amount, there are new payment terms and we  
23 believe there should have been new guaranties  
24 signed by all of the individual guarantors.

25 We also believe that the guarantors'

1 obligation should be discharged because they did  
2 not consent to the new terms, the extension of time  
3 for the payment to be made, the new repayment terms  
4 and the new lender.

5 And finally, in addition to the bank not  
6 pursuing Mr. Williams, the bank has also not  
7 pursued as far as I know Sand Dollar, LLC, and we  
8 believe that they have waived their claim to pursue  
9 the LLC who is the principal obligor because the  
10 Statute of Limitations has now expired, and since  
11 the bank is waiving their claim as to the primary  
12 obligor they are also waiving their claim against  
13 the guarantors.

14 THE COURT: Thank you.

15 Mr. MacDonald?

16 MR. MacDONALD: I will just go on record  
17 agreeing with Mr. Masel's last point, his argument.  
18 My clients did not contribute additional funds but  
19 they do believe that certain actions by the bank  
20 have constituted a waiver or a satisfaction of  
21 their guaranty.

22 THE COURT: Thank you.

23 Mr. Kerr, you may call your first witness.

24 MR. KERR: Thank you, Your Honor. I would  
25 like to call Doug Cobb to the stand.

1 DOUGLAS C. COBB, JR., after being first duly sworn,  
2 testified as follows:

3 THE CLERK: State your name for the Court,  
4 spell your last name, please.

5 THE WITNESS: Douglas C. Cobb, Jr., C-o-b-b.

6 MR. KERR: We have about 14 exhibits, I think  
7 the closer I am the better it will be and we only  
8 have a small audience here.

9 DIRECT EXAMINATION BY MR. KERR:

10 Q Mr. Cobb, where do you live?

11 A Moore, South Carolina.

12 Q Is that near Spartanburg?

13 A Yes.

14 Q Who do you live there with?

15 A My wife and my two daughters.

16 Q All right, sir. Tell the Court a little bit  
17 about your background and education.

18 A I went to Winthrop University in Rock Hill,  
19 graduated 1993. Went to work for a company called  
20 Star Paper Tubes shortly after, and in 1999, I  
21 believe it was, I went to work for Springs Mortgage  
22 Corporation as default manager for real estate  
23 mortgages, and in the course of that we began a  
24 relationship with Carolina First Bank in Greenville  
25 and I transitioned into a job with them and

1 relocated to the Spartanburg area to go to work for  
2 them, specialized in software, worked for them  
3 about four years, and went to work for First  
4 National Bank of the South in the summer of 2009 in  
5 the same building, different bank.

6 Q All right, sir. Who is your current employer  
7 of record?

8 A Capital Bank.

9 Q That is Capital Bank, NA?

10 A That's correct.

11 Q Did you have an interruption in your  
12 education to do a stint in the Armed Services?

13 A I did.

14 Q What branch of the Service?

15 A Army.

16 Q Were you honorably discharged?

17 A Yes.

18 Q Okay. Now, what is your current title at  
19 Capital Bank?

20 A Vice-President and special assets officer.

21 Q All right. Now, in your capacity as a  
22 vice-president and special assets officer, Capital  
23 Bank, are you familiar with the loan file and the  
24 related documents concerning a loan made by  
25 Carolina National Bank & Trust to Sand Dollar

1 Cottage, LLC, and the guaranties of the defendants  
2 in this case?

3 A Yes.

4 Q All right. Let's talk about how you are  
5 familiar with that file and how that file comes to  
6 reside in your custody. When you went to work for  
7 First National Bank of the South had it already  
8 merged with Carolina National Bank & Trust?

9 A Yes.

10 Q And did you handle files for Carolina  
11 National Bank & Trust in your capacity as special  
12 assets officer of First National?

13 A Files that were in that part of that merger,  
14 yes.

15 Q Are you familiar with the date of the merger  
16 between Carolina National Bank & Trust and First  
17 National Bank of the South?

18 A Yes.

19 Q Okay. What date was that merger effective  
20 on?

21 A It was in 2008, early 2008.

22 Q All right.

23 MR. BRITTAIN: Your Honor, I can't hear him.

24 THE COURT: If you can, speak into the  
25 microphone.

1 THE WITNESS: I pushed back in this chair,  
2 sorry.

3 MR. KERR: Mark this P-1.

4 THE COURT: Any objection from the defendant?

5 MR. BRITTAIN: None from Mr. Pennisi. We  
6 have already seen this document.

7 THE COURT: All right, Plaintiff's Exhibit  
8 Number 1 is admitted without objection.

9 (Merger documents marked and received in  
10 evidence as Plaintiff's Exhibit Number 1).

11 BY MR. KERR:

12 Q Mr. Cobb, is that the documents you referred  
13 to when you talked about the merger of the banks?

14 A Yes.

15 Q All right. And upon merger of the banks what  
16 efforts did First National itself make in  
17 connection with loans that had been made by  
18 Carolina National Bank & Trust?

19 MR. BRITTAIN: Your Honor, I would object  
20 unless he knows of his own personal knowledge. He  
21 has testified he wasn't even working with the bank  
22 then. Now, I don't have a problem with the  
23 documents that are maintained in the regular course  
24 of business but he shouldn't be allowed to testify  
25 as to what happened to loans with the bank, he

1 would have heard it from somebody else, he wasn't  
2 working there.

3 THE COURT: Mr. Kerr?

4 MR. KERR: Your Honor, he testified that when  
5 he went to work for First National Bank he worked  
6 on loans that were previously Carolina National  
7 Bank & Trust loans.

8 THE COURT: Overruled. Proceed.

9 BY MR. KERR:

10 Q Did you help to collect some of the Carolina  
11 Bank & Trust loans?

12 A Yes.

13 Q All right. Now, did you have any connection  
14 with the Sand Dollar loan once First National Bank  
15 of the South was involved with that loan?

16 A It was assigned to me to work.

17 Q All right. And was First National Bank of  
18 the South the owner and holder of that loan and  
19 related documents?

20 A Yes.

21 Q Okay. Are The Sand Dollar loan file  
22 documents that fall within that file contained  
23 therein?

24 A Yes.

25 Q Are all those documents kept in the ordinary

1 course of business?

2 A Yes.

3 Q And were they made in the ordinary course of

4 business?

5 A Yes.

6 Q Does that file contain the kind of documents

7 you expect a loan file in your experience to

8 contain?

9 A Yes.

10 Q All right. I want to ask you --

11 MR. KERR: Your Honor, this is again kind of

12 a chain of custody.

13 Q You were employed in 2010, July of 2010 with

14 First National, correct?

15 A That's correct.

16 Q All right. Are you familiar with the

17 regulatory actions that occurred during that month?

18 A Yes.

19 Q What happened in July of 2010 to First

20 National Bank of the South?

21 A It was put into FDIC receivership.

22 Q All right. And did First National Bank of

23 the South continue to operate?

24 A It did.

25 Q How did it continue to operate?

1 A On the same day it was sold to North American  
2 Financial Holdings otherwise known as NAFH.

3 Q Who were the employees that continued to  
4 operate the bank?

5 A All the employees at the time.

6 Q Did you become an employee of NAFH?

7 A I did.

8 MR. KERR: I would like to mark Plaintiff's  
9 2.

10 THE COURT: Any objection.

11 MR. BRITTAIN: Your Honor, I don't have any  
12 objection.

13 THE COURT: Any objections?

14 MR. MacDONALD: No, sir.

15 THE COURT: Without objection.

16 (Merger approval between NAFH and Capital  
17 Bank marked and received in evidence as  
18 Plaintiff's Exhibit Number 2).

19 THE COURT: All right, you may proceed.

20 BY MR. KERR:

21 Q I was going to show you a copy of what is  
22 marked as Exhibit 2. Do you recognize that  
23 document?

24 A Yes.

25 Q And what does that document do?

1 A It approves the merger between NAFH and  
2 Capital Bank.

3 Q And who was your employer of record after  
4 that?

5 A Capital Bank North America.

6 Q NAFH Bank?

7 A Yes.

8 MR. KERR: I would like to mark this as  
9 Exhibit 3.

10 THE COURT: Any objection?

11 MR. BRITTAIN: I haven't seen this one  
12 before. As long as he testifies as he has with  
13 proper foundation I don't think I will have an  
14 objection.

15 THE COURT: All right.

16 MR. KERR: Your Honor, for the record, this  
17 is a self authenticating certified true and correct  
18 public recorded document. It is an instrument  
19 201100041360, recorded in deed book 3517 at page  
20 2217 in the Horry County Register of Deeds,  
21 certified true copy, therefore self authenticating  
22 and no foundation needed.

23 THE COURT: All right. This will be admitted  
24 as Plaintiff's Exhibit 3.

25 (Power of Attorney marked and received in

1 evidence as Plaintiff's Exhibit Number 3).

2 BY MR. KERR:

3 Q I want to show you what has been marked  
4 Exhibit 3. Are you familiar with this document?

5 A Yes.

6 Q What is that document used for?

7 A The listed individuals, the authority to sign  
8 on behalf of the FDIC with power of attorney to  
9 effect the transfer of documents or other matters  
10 as deemed necessary.

11 Q In connection with the failure of First  
12 National Bank and the sale and assumption agreement  
13 from the FDIC, did you see a lot of these documents  
14 with various loans?

15 A Quite a few.

16 Q All right, sir.

17 MR. KERR: And that is in as 3?

18 THE COURT: Yes.

19 Q I'm going to show you what is marked as  
20 Plaintiff's 4.

21 THE COURT: Any objection, gentlemen?

22 MR. BRITTAIN: No, sir.

23 MR. MacDONALD: None, Your Honor.

24 THE COURT: Number 4 is admitted without  
25 objection.

1 MR. KERR: All right, thank you.

2 (NAFH loan documents marked and received in  
3 evidence as Plaintiff's Exhibit Number 4).

4 BY MR. KERR:

5 Q What is the purpose of the document?

6 A It transfers the documents for the specific  
7 loan to the new bank.

8 Q The specific loan at issue is which loan?

9 A Sand Dollar Cottage.

10 Q And other related documents?

11 A Correct.

12 Q Including the guaranties?

13 A Yes.

14 Q Now, what is NAFH Bank?

15 A Generally speaking, NAFH was a group of  
16 investors made up of a few ex-Bank of America  
17 employees for the purpose of buying failed banks  
18 and they operated as North American, NAFH National  
19 Bank and worked with the FDIC and other banks to  
20 explore opportunities to continue that process in  
21 buying banks and growing regionally in the  
22 southeast.

23 Q Explain to the Court how NAFH National Bank  
24 transformed, what is NAFH now?

25 A It's now a publically traded company whereas

1 before it was a group of investors that made it up.

2 Q What is the current name of the bank that you  
3 work for?

4 A Capital Bank.

5 Q And is that a successor to NAFH?

6 A It is.

7 Q Explain that succession.

8 A There was a merger between NAFH National Bank  
9 and Capital Bank and the powers that be thought  
10 Capital Bank was a little bit more of an acceptable  
11 name to operate under so that is the reason for it  
12 operating under Capital Bank, NA.

13 Q So, based on your knowledge of the file, the  
14 merger activity, the chain of custody, who is the  
15 owner and holder of the Sand Dollar note and the  
16 related guaranties?

17 A Capital Bank, NA.

18 MR. KERR: Your Honor, one second to confer  
19 with counsel.

20 THE COURT: Yes, sir.

21 MR. KERR: Just on the exhibits.

22 MR. BRITTAIN: Your Honor, we're agreeing as  
23 to admissibility.

24 THE COURT: Right, you still have an  
25 opportunity to cross examine.

1           MR. BRITTAIN: He has the note and the  
2 guaranties. No objection.

3           MR. KERR: Your Honor, I came into possession  
4 of certain other documents today and there are some  
5 personal identification numbers, social security  
6 numbers on these documents.

7           THE COURT: If you would like you can submit  
8 redacted copies to the Court.

9           MR. KERR: Yes. Should I redact the  
10 originals or redact copies?

11          THE COURT: You all aren't objecting to the  
12 authenticity?

13          MR. BRITTAIN: No.

14          THE COURT: Just replace them with ones that  
15 have that personal information redacted if you have  
16 a copy.

17          How many do you have?

18          MR. KERR: It's seven guaranties, the  
19 original note and two renewals.

20          THE COURT: Okay.

21          MR. KERR: Your Honor, I will throw myself on  
22 the spikes here, the practice note for the lawyers  
23 in law school that want to do this work was always  
24 pre-mark your exhibits so the judge --

25          THE COURT: That is why I asked, I would have

1 given you time to pre-mark them. In fact, if you  
2 want to take a short break --

3 MR. KERR: It will just take about two  
4 minutes.

5 THE COURT: That's fine.

6 MR. KERR: Your Honor, if may come right up  
7 here and make this a little easier.

8 THE COURT: You may.

9 BY MR. KERR:

10 Q Mr. Cobb, we have marked as exhibits the  
11 original note, or a note and the note renewals and  
12 they have been admitted into evidence. I don't  
13 want to go through any terms or conditions, they  
14 are self explanatory in a nonjury type matter.

15 THE COURT: Plaintiff's 6 through 16 are  
16 admitted without objection.

17 (Note documents and guaranties marked and  
18 received in evidence as Plaintiff's Exhibits  
19 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16).

20 BY MR. KERR:

21 Q I will cut to the chaff. You are familiar  
22 with a principal pay down that was made to the bank  
23 on behalf of Sand Dollar?

24 A Yes.

25 Q And this check which is 15 -- I'm sorry,

1 Judge.

2 THE COURT: All right.

3 MR. KERR: Is that 15?

4 THE COURT: Yes.

5 BY MR. KERR:

6 Q Is this a copy of the check that represents  
7 the principal pay down and a renewal fee?

8 A Yes.

9 Q All right. Why does the bank charge a  
10 renewal fee?

11 A At the time of renewal if it's deemed  
12 appropriate.

13 MR. BRITTAIN: Excuse me, one point, Your  
14 Honor, and I might be confused. I don't have a  
15 problem with this coming into evidence if it is  
16 maintained in the normal course of business. I  
17 don't believe Mr. Cobb, you weren't working for  
18 them back at the time?

19 THE COURT: Hold on. Ask me the question.

20 MR. BRITTAIN: I'm sorry. If he wasn't  
21 working for the bank I don't believe he can testify  
22 as to what these writings were on this document.  
23 It can come into evidence maybe as a business  
24 document.

25 THE COURT: That is what I thought they did

1 come in as.

2 MR. KERR: I believe he is the custodian of  
3 the records.

4 THE COURT: He's custodian of the records. I  
5 mean, I don't see any annotation on it, it is just  
6 a check with some receipts and stuff. They're in  
7 evidence.

8 MR. KERR: All right, sir.

9 THE COURT: 15 is in evidence.

10 BY MR. KERR:

11 Q With respect to 15 which we are looking at,  
12 are you familiar with any other payment made by any  
13 other person to pay down principal of this loan?

14 A No.

15 Q All right. And if you will look at Exhibit  
16 16, which is the loan ledger, is there any  
17 indication on the loan ledger that any payments  
18 were made on this loan other than those which would  
19 have been regularly scheduled up to the point of  
20 default?

21 A No.

22 Q When did the loan go into default?

23 A I don't have the exact date in front of me  
24 but it is my recollection it was in late 2009.

25 Q Did you contact or were you contacted by

1 anybody at that time in connection with the Sand  
2 Dollar loan?

3 A Yes. When we issued demand letters I was  
4 contacted by Mr. Guyton.

5 Q And who is Mr. Guyton?

6 A Mr. Guyton was representing, as I was told,  
7 the members of the LLC, Sand Dollar Cottage.

8 Q And at that time was there any conversation  
9 about releasing any guarantors?

10 A There were discussions about renewal terms  
11 that could potentially result in that happening.

12 Q Was any such agreement ever struck?

13 A No.

14 Q Based on your knowledge of the loan file is  
15 there any writing in that file signed by the bank  
16 that releases any of the original guarantors of the  
17 loan?

18 A No.

19 Q Is there any writing in the file that could  
20 be a revocation of a guaranty by any of the  
21 guarantors?

22 A No.

23 Q I don't have the numbers, Your Honor. The  
24 original note and the two renewals.

25 THE COURT: Five is the original note which

1 was from November 8, 2006. Would that be the  
2 original note?

3 MR. KERR: That's correct.

4 BY MR. KERR:

5 Q On November 6, November, 2006 -- what is the  
6 loan number of the loan?

7 A [REDACTED] 8400.

8 Q And that loan matured by its terms when?

9 A November the 8th, 2007.

10 Q And what is the loan number of the first  
11 renewal loan?

12 A [REDACTED] 8400.

13 Q Is that the same loan number as the first,  
14 the original loan?

15 A Yes.

16 MR. KERR: Your Honor, I'm having him look at  
17 the second renewal.

18 THE COURT: That would be Plaintiff's Exhibit  
19 Number 6.

20 Q Plaintiff's Exhibit 6, what is the loan  
21 number on that document?

22 A [REDACTED] 8400.

23 Q Is that the same number as the first renewal?

24 A Yes.

25 Q Is it the same number as the original loan?

1 A Yes.

2 Q Does the document that you're holding now,  
3 Exhibit 6, indicate, is it a new loan?

4 A No, it is not.

5 Q What does, what kind of loan is it?

6 A It's a renewal of the existing loan after the  
7 principal reduction of a hundred thousand dollars.

8 Q All right, sir.

9 THE COURT: I think I stated that wrong. You  
10 have the original, just for the record, to make  
11 sure we're straight, the original loan, Plaintiff's  
12 Exhibit Number 5, the renewal on 12/21/2007,  
13 Plaintiff's Exhibit 6, and the renewal of that one  
14 on 4/30/2008 is Plaintiff's Exhibit Number 7.

15 MR. KERR: Thank you, Your Honor.

16 BY MR. KERR:

17 Q So, Mr. Cobb, the status of the loan is what?

18 A It was defaulted and we initiated the suit  
19 that this matter is in reference to.

20 Q All right. Based on, based on your records  
21 do you have the outstanding principal balance that  
22 is due and payable at this time?

23 A I've got the payoff that we provided your  
24 office, yes.

25 Q Is there something that I can show you that

1 would help you?

2 THE COURT: Any objection to the document,  
3 not that you're agreeing with it?

4 MR. MacDONALD: Yes, we don't agree with it  
5 being, his position about renewal but they are all  
6 admissible documents.

7 THE COURT: I'll make that determination.

8 MR. MacDONALD: Yes.

9 BY MR. KERR:

10 Q All right. Will this refresh your  
11 recollection as to the outstanding principal  
12 balance of the loan?

13 A Yes.

14 Q All right. And what is that outstanding  
15 principal balance?

16 A \$243,830.99.

17 Q All right, sir. And is there additional  
18 accrued interest?

19 A As of April 22nd, 2013, the accrued interest  
20 is \$62,655.66 with a per diem of \$45.70.

21 Q And there are late charges also that are  
22 recoverable under the loan documents?

23 A In the amount of \$400, yes.

24 Q All right. Since April 22nd, 2013, is there  
25 additional accrued interest?

- 1 A Yes.
- 2 Q And what is that sum?
- 3 A Total sum of that is \$1,280.11.
- 4 Q All right. Now, in connection with some of
- 5 those statements made here today, what did the bank
- 6 do in connection with the bankruptcy case of Edward
- 7 Williams, one of the guarantors, party to this
- 8 suit?
- 9 A We filed a claim against the bankruptcy
- 10 estate as instructed by the bankruptcy court.
- 11 Q All right, sir. And did the bank recover
- 12 anything from that bankruptcy trustee?
- 13 A Yes. A check was received in the amount of
- 14 \$10,462.35 which was deposited against the
- 15 principal balance of the loan.
- 16 Q Does the principal balance as you have
- 17 testified here reflect that credit from the
- 18 Williams bankruptcy estate?
- 19 A Yes.
- 20 Q All right. So, what is the total debt
- 21 exclusive of the attorney fees as of today that you
- 22 are seeking a judgment against the guarantors for?
- 23 A \$308,166.76.
- 24 Q All right. And that is an amount that is
- 25 exclusive of the attorney fees, is that correct?

1 A Yes, sir.

2 Q Are you seeking an award of your attorney  
3 fees?

4 A Yes.

5 Q All right.

6 MR. KERR: Your Honor, if I can review my  
7 notes very quickly, I might be done.

8 THE COURT: Yes.

9 BY MR. KERR:

10 Q Mr. Cobb, from the loan file and the loan  
11 documents that you're familiar with do you know  
12 what the purpose of the original \$400,000 loan was  
13 to Sand Dollar?

14 A It was for the purchase of the house in the  
15 Bahamas.

16 THE COURT: Speak up.

17 A To purchase the house in question.

18 Q Does the loan file contain documentation as  
19 to who was authorized to sign on behalf of Sand  
20 Dollar?

21 A Yes.

22 Q All right, and who was the manager who  
23 executed documents on behalf of Sand Dollar?

24 A Mr. Williams.

25 Q All right. Did he execute the renewal notes

1 as well?

2 A Yes.

3 MR. KERR: Your Honor, no further questions  
4 for him on direct.

5 THE COURT: Why don't we take a ten minute  
6 recess before cross-examination. The Court will be  
7 in recess until 3:00 o'clock by that.

8 I remind you you're still on the stand, so  
9 you can't discuss your testimony.

10 THE WITNESS: Yes, Your Honor.

11 (Recessed at 2:47 p.m.).

12 (Resumed at 3:01 p.m.).

13 THE COURT: Mr. Brittain.

14 MR. BRITTAIN: Your Honor, could co-counsel  
15 review the file I brought with me today while I  
16 cross-examine?

17 MR. KERR: We would like to review the file.  
18 Your Honor, we have not scrubbed this file for  
19 attorney-client privilege.

20 THE COURT: I think you have to have an  
21 opportunity to scrub it.

22 MR. BRITTAIN: Sure, all right. I will go  
23 ahead and do this and he can be scrubbing it.

24 THE COURT: We have had plenty of time to do  
25 discovery and everything like that.

1 MR. BRITTAIN: Yes, we really have.

2 MR. MacDONALD: Your Honor, it is not for  
3 discovery, he has been testifying about things that  
4 are in the file.

5 THE COURT: Well, he has been testifying  
6 about things that have been put in evidence.

7 MR. MacDONALD: He has testified about  
8 resolutions and documents.

9 THE COURT: I'm looking at what is in  
10 evidence.

11 MR. MacDONALD: Yes, sir.

12 CROSS EXAMINATION BY MR. BRITTAIN:

13 Q Mr. Cobb, I'm Tommy Brittain, I met you this  
14 morning, I was in the Army, too, and we have a  
15 Spartanburg connection, I was chairman of the Board  
16 of Wofford for several years.

17 I want to be fair with you and ask you  
18 questions. If I ask you a question you don't  
19 understand please ask me to repeat it and I will be  
20 happy to do so.

21 A All right.

22 Q Now, I really promise you I couldn't hear  
23 very well at the beginning of your direct  
24 examination. I would like to go back over with you  
25 which banks you were with. One of the crucial

1    dates is the loan was in November of 2006.    Where  
2    were you working then?

3    A        Carolina First Bank.

4    Q        Carolina First Bank?

5    A        Yes.

6    Q        Okay.    And what was their involvement with  
7    that loan in 2006?

8    A        Carolina First had no involvement.

9    Q        No involvement in it, you had no involvement  
10   in it, is that correct?

11   A        That's right.

12   Q        All right.    Now, at some point in time there  
13   was a hundred thousand dollars paid by Sand Dollar  
14   Cottages, LLC.    Is that correct?

15   A        Yes, sir.

16   Q        Okay.    Do you recall what date that was?

17   A        It would have been, I believe it was May of  
18   2008.

19   Q        May of 2008?

20   A        Yes, sir.

21   Q        Where were you working at that time?

22   A        Carolina First Bank.

23   Q        Okay.    Did Carolina First Bank have any  
24   involvement with that note at that time?

25   A        No, sir.

1 Q Okay. So, just for purposes of the record,  
2 any conversation or decisions that involved that  
3 note or the second note, the payment of that money,  
4 all happened without any knowledge on your part at  
5 that time?

6 A Yes, sir, that's correct.

7 Q Okay, all right, sir. Do you know a man by  
8 the name of Steve Waddell?

9 A I'm familiar with him.

10 Q Do you know a man by the name of Bryant Tapp?

11 A I don't know Mr. Tapp.

12 Q You agree with me, don't you, they worked for  
13 the bank that was involved in the notes and the  
14 reduction of the principal in 2006 and 2008?

15 A That isn't my understanding regarding Mr.  
16 Tapp. I know for a fact Mr. Waddell didn't.

17 Q Where does Mr. Waddell work now, do you know?

18 A Still with Capital Bank.

19 Q Let me get this straight. Mr. Waddell at  
20 this time is still a fellow employee of yours?

21 A That's correct.

22 Q Okay. Do you know whether or not he had any  
23 conversation with Frank Pennisi or any other of the  
24 guarantors on the Sand Dollar Cottage, LLC, loan?

25 A I have no knowledge of any direct

1 conversations.

2 Q Okay. All right. You have been in charge,  
3 so to speak, or familiarizing yourself with the  
4 documents that the bank had in connection with this  
5 matter since what date?

6 A Since the date, certainly after the point I  
7 became employed with First National Bank.

8 Q And about what time was that?

9 A That would have been in August of 2009.

10 Q August of 2009?

11 A Yes, sir.

12 Q Okay. Have you ever been given any  
13 information in the form of an affidavit from Frank  
14 Pennisi concerning this matter?

15 A In what regard?

16 Q Let me show you, just to see if you can  
17 identify this document. I will give you a chance  
18 to look at it

19 MR. BRITTAIN: Mark that for identification,  
20 Mr. Court Reporter.

21 (Letter from Brittain to Clerk of Court and  
22 affidavit of Frank Pennisi was marked as  
23 Defendant's Exhibit Number 1).

24 BY MR. BRITTAIN:

25 Q I'm going to show you what has been marked

1 for identification Defendant's Exhibit Number 1 for  
2 ID, okay?

3 A All right.

4 Q All right. And we'll look at it together.  
5 The first page, there is a copy of a letter I sent  
6 to the Clerk of Court here in Horry County, Miss  
7 Huggins. You wouldn't know her but just take it at  
8 my word she's the Clerk of Court, all right?

9 The second page, and this is dated August 24,  
10 2011, is notice and provision of affidavit of Frank  
11 J. Pennisi.

12 The third page begins the body of that  
13 affidavit. Have you your received that affidavit  
14 or seen it?

15 A I don't recall reading it, no.

16 Q Okay. And it never made it into the file  
17 that you have at the bank, you don't remember  
18 seeing Defendant's Exhibit for Identification  
19 Number 1?

20 A I don't recall looking at it but it could  
21 have been something that was in the mail traffic  
22 between our attorney and ourselves.

23 Q Did you ever hear or learn that there were  
24 allegations by Mr. Penissi that Mr. Waddell and Mr.  
25 Tapp had been informed of the fact that he paid

1 money to reduce this note and had no further  
2 responsibility in connection with the note?

3 A I don't know of any direct conversations  
4 between those individuals. It is my understanding  
5 Mr. Penissi did feel he was no longer obligated  
6 under the loan.

7 Q And were you aware he had conversations with  
8 Steve Waddell and Bryant Tapp?

9 A I was not.

10 Q You never talked to Steve Waddell about it?

11 A I have not.

12 Q But you knew that Mr. Pennisi was claiming he  
13 had conversations with Steve Waddell?

14 A I knew he was claiming he had conversations  
15 with the bank individuals, I did not know who those  
16 people were.

17 Q Is Mr. Waddell here today?

18 A No, he is not.

19 Q Is he going to testify in this matter?

20 A Not to my knowledge.

21 Q You don't have any information about this  
22 conversation?

23 A I do not.

24 Q Let's go back to Defendant's Exhibit Number 1  
25 and let me take you to the last page of that

1 document which is attached to the affidavit of Mr.  
2 Pennisi and ask you, this says Bryant Tapp with  
3 First National Bank?

4 MR. KERR: Your Honor, objection. I don't  
5 know if the document is going to be admitted into  
6 evidence but before he should be reading from it he  
7 should move for its admission.

8 THE COURT: Are you going to move it into  
9 evidence?

10 MR. BRITTAIN: I am.

11 THE COURT: Do you object to that?

12 MR. KERR: I object to the affidavit.

13 THE COURT: He's available to testify,  
14 objection sustained.

15 BY MR. BRITTAIN:

16 Q Well, let me just ask you a few questions.  
17 You say Bryant Tapp did work for First National  
18 Bank?

19 A I have never met Mr. Tapp.

20 Q Okay. So, you don't know whether or not he  
21 had any responsibility for this?

22 A I have never met Mr. Tapp.

23 Q I understand you never met him. I'm asking  
24 you a different question. Well, you don't deny  
25 that Mr. Tapp was involved in this loan, do you?

1 A I'm not denying anything, sir.

2 Q Well, in fact --

3 THE COURT: Wait a minute. Let him answer  
4 the question.

5 Q Did he work for the bank?

6 A I have no knowledge one way or the other, I  
7 have never met Mr. Tapp.

8 Q I know you have never met him and here again  
9 like I said I want to be fair.

10 A I understand.

11 Q Are you telling me you don't have any  
12 knowledge as to whether or not he ever worked for  
13 the bank?

14 A I have never had any conversations with or  
15 never had any dealings with Mr. Tapp. At the time  
16 when he apparently may have been working with the  
17 bank I was an employee of another institution.

18 Q Okay. So, his name would never appear in the  
19 loan file that you are in charge of?

20 A It is not in the file I created when I took  
21 over the loan, no.

22 Q So, the file you brought with you is one you  
23 created?

24 A With information from the original file,  
25 that's correct.

1 Q Okay. So, part of the original file you did  
2 not bring with you?

3 A The normal file in its entirety is in that  
4 folder.

5 Q Okay. And Mr. Tapp's name does not appear  
6 there anywhere?

7 A I have not read lately, all probably six or  
8 seven hundred pages. It may be but again I have no  
9 knowledge of Mr. Tapp.

10 Q Okay. But in fairness you don't deny that he  
11 worked for the bank?

12 A No, I do not.

13 Q All right. Now let's talk about the  
14 transition of the original National Bank and the  
15 note, moving forward and through to -- it's Capital  
16 Bank today, is that correct?

17 A Capital Bank, NA, yes, sir. The importance  
18 of that distinction, there was another Capital Bank  
19 in South Carolina.

20 Q A fair comment, no problem with that. The  
21 original bank was named exactly what?

22 A The original bank when the loan --

23 Q When this note took place.

24 A That would be Carolina -- I'm sorry.

25 Q That's okay.

1 A Carolina National Bank, Carolina National  
2 Savings Bank.

3 Q All right. Now, were you involved in any of  
4 the merger issues associated with the combination  
5 of these banks?

6 A No, sir. That happened in 2008, I was  
7 employed with another institution.

8 Q All right, sir. Were the assets purchased by  
9 the successor or was there a merger of all assets  
10 and liabilities or do you know?

11 A I wouldn't know the distinction there but  
12 First National Bank purchased the assets of  
13 Carolina National and those assets then became  
14 their possession and they were taxed with normal  
15 business operations going forward.

16 Q In connection with that process there is an  
17 evaluation of assets of the bank, the bank that is  
18 being either merged into another or being, or have  
19 their assets purchased, is there not?

20 A I would think that would be a good idea.

21 Q All right. And the price or the exchange of  
22 consideration is often based on the quality, for  
23 lack of a better term, a generic term, of those  
24 assets, isn't that correct?

25 A That may be the case. I'm not involved in

1 that decision making.

2 Q But isn't it a fact that the surviving bank  
3 purchased this loan at a deeply discounted figure  
4 based on the circumstances surrounding it, at least  
5 by the time you became an employee of the bank?

6 A I can neither confirm nor deny that.

7 Q Okay. But you understand that is part and  
8 parcel of the transactions that are taking place?

9 A I do not understand that's necessarily part  
10 of it. My understanding of that type of  
11 transaction is an offer is made and it's approved  
12 by the UCC and if that offer is accepted then the  
13 transaction is consummated.

14 Q Does the Bank Merger Act have any disclosure  
15 requirements to guarantors in connection with the  
16 transfer of one asset base to another bank?

17 A With regard to the ongoing business  
18 transactions there would need to be some  
19 information transferred to the, not to the  
20 guarantors individually, but to the borrower with  
21 regard to where one would be making their payment  
22 going forward.

23 Q There is no question, is there, that these  
24 guaranties could be modified, isn't that correct?

25 A Could be modified?

1 Q Yes.

2 A As in the normal course of business, whether  
3 it's a good business decision to make a decision  
4 along those lines, if a bank were approached and  
5 discussions were made with regard to that type of  
6 transaction it is possible.

7 Q What was Mr. Waddell's position while he was  
8 employed with the original bank?

9 A I don't have a specific -- he was a  
10 commercial lender, that's all I know. I don't know  
11 his exact title at the time.

12 Q But he works for the same bank you do?

13 A Right now he's market president for the  
14 Columbia region.

15 Q Preceding you, he worked with the  
16 originating bank, for lack of a better term, you  
17 never worked there?

18 A That's correct.

19 Q Now --

20 A Judge, may I clarify? It is my understanding  
21 that Mr. Waddell worked for First National Bank of  
22 the South. I do not have any, I do not believe and  
23 I do not have any knowledge he actually ever worked  
24 for Carolina National. I'm not certain of which  
25 bank, I know he worked for First National Bank of

1 the South. I'm not certain whether or not he ever  
2 worked for Carolina National.

3 Q But the First National Bank of the South was  
4 involved with handling this loan for a period of  
5 time. Is that correct?

6 A Yes, sir.

7 Q Okay. And he, you don't know whether he had  
8 any responsibility or not, right?

9 A No.

10 Q But he certainly could have had  
11 responsibilities for handling this note based on  
12 his employment with First National Bank of the  
13 South?

14 A It's possible.

15 Q You don't know one way or the another?

16 A No, sir.

17 Q And there is nothing in your file that would  
18 indicate he did or didn't?

19 A Not specifically that I can recall, no.

20 Q Now, you said it could be modified. It's  
21 possible under the right circumstances that a  
22 guaranty could be modified?

23 A Again, if it is a good business decision to  
24 do so it's possible.

25 Q Okay. Well, let's go to this situation where

1 there is a bank that has a note for \$400,000 with  
2 you believe seven guarantors and the bank wants to  
3 reduce the principal amount of that loan from  
4 400,000 to 300,000. You would agree with me, won't  
5 you, that that is generally a benefit for the bank  
6 to go in having \$400,000 outstanding principal, to  
7 reducing that to \$300,000?

8 A I will agree that is beneficial to have the  
9 balance of the loan reduced, yes.

10 Q Okay, all right, sir. And assume for  
11 purposes of this question that one of the  
12 guarantors contributed 75,000 or so of the amount  
13 of money that was used to reduce that note and that  
14 the bank was aware of that to start with. Just  
15 assume that for purposes of this question. I know  
16 you may disagree that we never heard this and all  
17 that but I'm just asking you to assume it and  
18 assume you have six guarantors, other guarantors on  
19 the note. Is it, would it be possible or make,  
20 possibly make good business judgment to allow that  
21 guarantor who has paid more than their  
22 proportionate share and the bank is getting a  
23 reduction, to no longer be a guarantor?

24 MR. KERR: Your Honor, I object to asking the  
25 witness to assume facts that are not in evidence.

1 THE COURT: Sustained.

2 Q The business judgment question concerning a  
3 bank's decision to release guarantors is always  
4 going to depend on economics, isn't it?

5 A Well, basically you would take the financial  
6 information of all the parties and analyze it and  
7 determine based on the information in the analysis,  
8 whatever the specifics of the transaction is, if  
9 that is deemed to be in the best interest of the  
10 bank.

11 Q As to any discussions that Mr. Pennisi or  
12 other guarantors would have had with any bank  
13 officers during the time of these various loans you  
14 don't have any knowledge of those conversations or  
15 discussions?

16 A As pertains to any guarantors being released,  
17 no.

18 Q Well, do you have knowledge of any  
19 discussions they had with bank personnel?

20 A That they had?

21 Q Yes, that Pennisi, Skelley, Karavan, any of  
22 the guarantors would have had?

23 A No, I don't, no, sir.

24 Q You don't know whether they had a  
25 conversation and if so you don't know who they had

1   them with?

2   A       That's correct.

3   Q       And if the bank said anything you don't know  
4   what they said? I know you might think what they  
5   may have said but you have no personal knowledge of  
6   it?

7   A       No, sir.

8   Q       Let me somehow, I think I have got the  
9   exhibit number right, this was an exhibit that you  
10  put in through Mr. Kerr. I have it marked as  
11  Number 3, referred to as limited Power of Attorney.

12       THE COURT: Plaintiff's Exhibit Number 3.

13  Q       Number 3, thank you, Your Honor. Let me ask  
14  you to take a look at that and refresh your memory  
15  on it. Do you remember testifying about that  
16  document?

17  A       Yes, I do.

18  Q       Explain this to me. On the second page it  
19  says page 2 of 4. It says the form which the  
20  attorney in fact shall use for endorsing promissory  
21  notes, and that is what we're talking about here  
22  with Sand Dollar, LLC, a promissory note?

23  A       That's correct.

24  Q       Okay. Or preparing, what is that,  
25  a-l-l-o-n-g-e-s, I don't know what that means. Do

1 you know what that means?

2 A Where?

3 Q Preparing allonges. What is an allonges?

4 A Well, in my experience an allonges is kind of  
5 like a document that goes along with a note,  
6 especially when you're dealing with note sales, and  
7 confirms a note.

8 Q Do we have an allonges in this case?

9 A Not to my knowledge.

10 Q Promissory note is as follows, pay to the  
11 order of, and it has a blank there, right?

12 A That's correct.

13 Q And it has a blank down at the bottom that  
14 says by and name. Is that correct?

15 A Yes, it is.

16 Q And shouldn't that be filled out?

17 A I think that refers back to here where you  
18 have these individuals.

19 Q Okay. What I'm trying to figure out is, it  
20 looks to me like, I mean, I know they put it in the  
21 first one but they have put blanks here and  
22 wouldn't they say see paragraph one or something  
23 like that? I don't understand, it looks to me like  
24 this is incomplete because of the failure to either  
25 direct you to another part of the document or fill

1 this in. Do you understand that? Do you know?

2 A. No, I don't.

3 Q Okay. There is an exhibit that was  
4 introduced and I believe His Honor referred to it  
5 as 15, which involves a check made out to First  
6 National Bank of the South for 104,419.44 and to  
7 credit general ledger entries of Carolina National  
8 Bank.

9 MR. BRITTAIN: Is that Exhibit Number 15,  
10 Your Honor?

11 THE COURT: It is.

12 Q Okay. Let me hand you my copy of it. All  
13 right, sir. This would be in the file that you  
14 have, the original file?

15 A Yes.

16 Q All right. And do you know whose handwriting  
17 appears here when it says description and these  
18 three little blanks?

19 A I do not know.

20 Q Okay. And there are two of those entries  
21 that appear to have printed handwriting there.  
22 Those aren't yours?

23 A No, they are not.

24 Q You don't know whose they are?

25 A No, sir.

1 Q Okay. And whether there is any discussion  
2 about there being a new loan or a renewal of a  
3 loan, you wouldn't have been involved in those  
4 discussions?

5 A I was not with the bank at the time, that's  
6 correct.

7 Q But you are testifying that this is a  
8 document maintained in the normal course of  
9 business?

10 A Yes, I am.

11 Q But you don't know who made those handwritten  
12 entries?

13 A No. Those are general ledger ticket stubs, I  
14 have no knowledge of who prepares them.

15 Q Do you have any emails in the bank file from  
16 Steve Waddell or Bryant Tapp to Mr. Pennisi or Mr.  
17 Guyton?

18 A I do not.

19 Q You do not?

20 A No, sir.

21 Q Okay. Would it be in a normal course of  
22 business for the bank to maintain copies of emails  
23 that its bank officers mailed to guarantors on a  
24 note like this?

25 A I'm sorry?

1 Q I'm sorry. Here again I'm trying not to be  
2 contentious, I'm just trying to get --

3

4 A With regard to emails, that's an IT issue,  
5 especially as it relates to employees that leave  
6 the institution or if there is a systems  
7 conversion, if you will, when a new bank takes  
8 over, a new infrastructure and system are put into  
9 place, the people that are responsible for the  
10 information security of the bank would maintain the  
11 control of those email streams from individuals who  
12 are no longer with the bank.

13 Q Okay. So, it could be that a customer of the  
14 bank, in this case let's make a specific, let's say  
15 the guarantors, would have an email from a bank  
16 officer that you didn't happen to have a copy of?

17 A That's possible.

18 MR. BRITTAIN: Your Honor, that is all I have  
19 at this time. Thank you, sir. Thank you, Mr.  
20 Cobb.

21 THE WITNESS: Yes, sir.

22 THE COURT: Mr. Masel.

23 CROSS EXAMINATION BY MR. MASEL:

24 Q My name is Scott Masel, I represent Mr. Walls  
25 and I'm going to take you back a little bit as well

1 and try to fill in some answers to questions that I  
2 still have.

3 Prior to the merger between Carolina National  
4 Bank and First National Bank of the South, First  
5 National Bank of the South as its own entity prior  
6 to that merger, is that correct?

7 A That's correct.

8 Q Okay. It owned its own deposits and had its  
9 own liabilities and assets, is that correct?

10 A Yes, sir.

11 Q Okay. And then I believe we looked at  
12 Exhibit, looks like it was Exhibit 1, the  
13 certificate of the merger, and I think you  
14 testified in response to Mr. Brittain's questions  
15 that that is when First National Bank of the South  
16 purchased the assets of Carolina National Bank. Is  
17 that correct?

18 A That's correct.

19 Q And so after that date First National Bank of  
20 the South became the new owner of the promissory  
21 note that was held by Carolina National Bank. Is  
22 that right?

23 A That's correct.

24 Q And it was not until after that merger that  
25 the final loan document dated April 30 of 2008 was

1   executed.  Is that correct?

2   A       That sounds right.

3   Q       And I believe we have that already marked as  
4   Plaintiff's Exhibit 7.

5           In that, what I'm talking about, just so you  
6   know, the final one where the loan amount is now  
7   \$300,000.

8   A       Yes, sir.

9   Q       Okay.  At the time that this new document,  
10   this document was entered into is there anything in  
11   your file that reflects that First National Bank of  
12   the South gave any notification to any of the  
13   guarantors in this case that this, that this  
14   obligation was being signed off on by the parties?

15   A       Was being what, now?

16   Q       Was being signed off on by the bank and the  
17   LLC?

18   A       There would have been communications to the  
19   person who was responsible for signing on behalf of  
20   the LLC that the terms that were agreed upon had  
21   been approved and then the loan was, the renewal  
22   was transacted on April 30.

23   Q       Is there anything in your file that would  
24   reflect that the bank notified the guarantors  
25   individually of this transaction?

- 1 A Not to my knowledge, no.
- 2 Q Okay. Would it be fair to say that for this
- 3 Plaintiff's Exhibit 7, the 300,000 dollar note,
- 4 that did change the date as to when the debt would
- 5 come due? Is that correct?
- 6 A The maturity date.
- 7 Q The maturity date?
- 8 A It was extended, as it would be for any
- 9 renewal.
- 10 Q Okay. And it also changed the amount of the
- 11 debt, is that correct?
- 12 A Yes.
- 13 Q It also changed the payment schedule of the
- 14 debt. Is that correct?
- 15 A That's correct.
- 16 Q And at the time this April of 2008 loan
- 17 document was prepared there were no new or
- 18 additional guaranties prepared for any of these
- 19 guarantors to sign?
- 20 A That's correct.
- 21 Q Is that correct?
- 22 A That's correct.
- 23 Q I think you testified also that you believe
- 24 the loan went into default in late 2009 sometime?
- 25 A That's correct.

1 Q And at anytime has any of these banks,  
2 Carolina National, First National Bank of the  
3 South, NAFH or Capital Bank, NA, have any of them  
4 pursued the primary obligor Sand Dollar Cottage,  
5 LLC, for payment under these loan documents?

6 A The action is against the guarantors.

7 Q There has been no suits filed against the  
8 LLC?

9 A Not to my knowledge.

10 Q Do you have the exhibits in front of you,  
11 Plaintiff Exhibit 3?

12 I'm going to hand you what we have already  
13 marked as Plaintiff's Exhibit 3 and that's the  
14 Power of Attorney we have gone over, that you went  
15 over with Mr. Brittain a little bit already. I'm  
16 going to direct you to page 2 as well, right around  
17 the same paragraph, and I'm going to direct you  
18 right to the middle of it, the same sentence you  
19 read before, "The form which the attorneys in fact  
20 shall use for endorsing promissory notes and  
21 preparing allonges to promissory notes is as  
22 follows."

23 What is endorsing a promissory note?

24 A An endorsement would most likely be in a note  
25 sale or some other transaction where the holder of

1 the note is going to be changed and that note would  
2 be endorsed over to that new entity as part of that  
3 transaction.

4 Q Okay.

5 A This basically is a templet to use, the  
6 verbiage here is a templet to use in that type of  
7 transaction.

8 Q Okay. When these loan documents were  
9 transferred, I guess from First National Bank of  
10 the South to NAFH, that would have been by and  
11 through this limited Power of Attorney. Is that  
12 right?

13 A That's correct.

14 Q Okay. And when the promissory note went from  
15 First National Bank of the South to NAFH would the  
16 promissory note have been endorsed over to NAFH?

17 A My understanding of this document is it  
18 allows for that. If you have any, in certain  
19 circumstances like when we had a loan that was  
20 secured by let's say lots and in the normal  
21 business transaction maybe that is an A and D loan  
22 where the borrower is a developer, and that loan,  
23 he sells the lots and the bank would have to  
24 release those lots from their mortgage. In order  
25 for us to be able to do that we would have to

1 assign, because that would be, we would have to  
2 assign it, that gives us the authority to sign  
3 that, to sign that document. We have to sign that  
4 mortgage or assignment of rent or whatever the  
5 document may be to that new entity to put it  
6 legally on record with the Registrar of Deeds so we  
7 could then sign that partial release of mortgage  
8 that would allow the transfer of that collateral.

9 Q I think that makes sense to me. Let me stick  
10 with the loan documents that we have in this case.  
11 When the notes were transferred from First National  
12 Bank of the South to NAFH National Bank was the  
13 promissory note endorsed over to NAFH?

14 A Not to my knowledge.

15 Q Okay. If you don't mind, take a look at the  
16 paragraph one that starts on page one and goes over  
17 to the top of page two, if you can read through  
18 that quickly for me, not outloud, read it to  
19 yourself, I'm going to ask you a question about the  
20 last sentence.

21 A Okay.

22 Q All right. That relates to when there are  
23 transfers and conveyances that include transactions  
24 such as assignments. Is that correct?

25 A That is what it reads to me.

1 Q And the power that is granted in this  
2 document is pursuant to a purchase and assumption  
3 agreement dated July 16th of 2010 between the FDIC  
4 as receiver of First National Bank of the South and  
5 NAFH National Bank. Is that correct?

6 A Yes.

7 Q Okay. So, whether or not something can be  
8 assigned or the degree to which documents can be  
9 assigned, that is pursuant to the terms of this  
10 purchase and assumption agreement, is that correct?

11 A That sounds right but in my experience with  
12 regard to similar transactions that I described  
13 earlier this document gives us the ability to  
14 transact those assignments.

15 Q Okay. And do you know what exactly the  
16 purchase and assumption agreement dated July 16th  
17 of 2010 contains?

18 A I'm familiar with the document.

19 Q With this document?

20 A Yes.

21 Q Okay. And is that the document that is in  
22 your file today?

23 A It is not in this specific file but I have  
24 emails that have copies of it from bank management  
25 where that transaction took place.

1 Q Okay. And do you have any specific  
2 recollection as to the contents of that document  
3 that provides that this particular assignment could  
4 take place in this case?

5 A There again, as I stated before, this  
6 document that we're referring to, Exhibit 3, from  
7 our experience gives us the authority to assign  
8 documents as long as the assignment is signed by  
9 one of these people who are given the attorney in  
10 fact power by the FDIC.

11 Q Mr. Brittain had asked you about your  
12 knowledge as to conversations regarding payments  
13 made by his client Mr. Pennisi. Would your answers  
14 be the same, that is, you don't have any personal  
15 knowledge of conversations regarding the payments  
16 made by Mr. Walls with regard to the renewal of the  
17 note?

18 A I believe my comments were with regard to  
19 conversations, not to payments.

20 Q Conversations?

21 A Correct.

22 Q But you have come to learn that Mr. Pennisi  
23 and Mr. Walls believe that "they have paid their  
24 share of the debt, is that correct?

25 A It is my understanding that Mr. Pennisi and

1 Mr. Walls came up with the, I'm assuming, the  
2 entire amount of the \$100,000 that was paid as part  
3 of the April 30, 2008 renewal.

4 Q Okay. So, you don't have any reason to  
5 believe that the source of that approximately  
6 \$100,000 were not from Mr. Pennisi or Mr. Walls, is  
7 that correct?

8 A The source technically from the bank's  
9 perspective is Sand Dollar Cottage as that is who  
10 the check was written out by. The gathering of the  
11 funds was an internal transaction between the  
12 members of the LLC.

13 MR. MASEL: That's all I have, Your Honor.

14 THE COURT: Mr. MacDonald?

15 MR. MacDONALD: Thank you, Your Honor. I  
16 will try not to plow old ground too much.

17 CROSS EXAMINATION BY MR. MacDONALD:

18 Q Mr. Cobb, I represent Mr. Skelly, Mr.  
19 Callihan, Mr. Guyton and Mr. Karavan. The Exhibit  
20 15 which is the credit general ledger document, I  
21 think it is Exhibit 15 which is the credit general  
22 ledger document. I just want to make sure that I  
23 understand correctly. The ticket that you  
24 indicated, which is called the credit general  
25 ledger, that is a bank document, is that correct?

1 A That's correct.

2 Q So, that would have been filled out by a bank  
3 employee, not by Sand Dollar?

4 A That's correct.

5 MR. MacDONALD: Your Honor, do you have the  
6 three notes that are involved in this case?

7 THE COURT: I do.

8 MR. MacDONALD: Could the witness have those,  
9 please?

10 THE COURT: Five, six and seven.

11 MR. MacDONALD: Thank you, Your Honor.

12 BY MR. MacDONALD:

13 Q Mr. Cobb, if you would, what is the date of  
14 making of Exhibit Number 5 which I believe is the  
15 original note?

16 A November the 8th, 2006.

17 Q And what is the maturity date?

18 A November the 8th, 2007.

19 Q Okay. And Exhibit 6, what is the making  
20 date?

21 A December the 21st, 2007.

22 Q So, at the time of the second note the first  
23 note had already matured?

24 A That is correct.

25 Q Okay. Exhibit Number 7 is the third note?

1 A Yes.

2 Q What is the making date of that note?

3 A April the 30th, 2008.

4 Q Okay. And is that after the maturity date of  
5 the second note?

6 A Yes, it is. The maturity date was March  
7 21st, 2008.

8 Q And so the note at least, Exhibit Number 7,  
9 was made after the maturity of the Exhibit Number  
10 6?

11 A That's correct.

12 Q And at the time of maturity is the note, is  
13 the note due and payable?

14 A Yes, it is.

15 Q And payment was not made?

16 A That is correct.

17 Q And so it was technically in default?

18 A That's correct.

19 Q You testified earlier about some  
20 authorization of Mr. Williams to sign the notes.  
21 Do you have a document in evidence that indicates  
22 his authorization to sign the notes?

23 A Yes. There is a copy of the LLC document,  
24 the operating agreement in the file.

25 Q Is it in evidence?

1 A Not to my knowledge.

2 Q So, you are basically testifying about a  
3 document that is not in evidence?

4 A I'm testifying about a document that I have  
5 knowledge of.

6 Q I understand but it's not in evidence, and  
7 that document would indicate what the level of his  
8 authority is, correct?

9 A That is correct.

10 Q So you don't have anything that would  
11 indicate the level of Mr. Williams' authority to  
12 sign the second or third notes?

13 A Other than the document we were provided with  
14 at origination.

15 Q And that is part of my point, is you only  
16 received a document indicating Mr. Williams'  
17 authority at the original note signing, correct?

18 A And again I was not employed with the bank or  
19 a part of that so in normal course of action you  
20 would ask if there were any changes in the LLC that  
21 would involve a need to see other documents but I  
22 don't have any knowledge of that.

23 Q What I understand, though, you do not have an  
24 authorization document in the file that indicates  
25 Mr. Williams was authorized to sign the second or

1 third notes which are Exhibits 6 and 7?

2 A Not other than the original operating  
3 agreement.

4 Q I mean, not operating agreement, we're  
5 talking about you get an authorization, correct?

6 A A borrowing resolution would be the term,  
7 that's correct.

8 Q But you don't have a borrowing resolution for  
9 this Exhibit 6 or Exhibit 7?

10 A I have not reviewed this specific document  
11 for, file for those specific documents.

12 Q And one has not been put in evidence, is that  
13 correct?

14 A That is my understanding, that's correct.

15 Q And just from, just so I'm clear, there was,  
16 Mr. Masel and Mr. Brittain went through the limited  
17 resolution and I think Mr. Masel asked you, you  
18 indicated there was no endorsement of the note when  
19 the current bank that holds the note received it  
20 from First National, is that correct?

21 A I understand, again the exhibit we went over  
22 a moment ago being my understanding that was the  
23 only document we needed in order to --

24 Q That is not my question, I'm sorry, my  
25 question is but there is no endorsement?

1 A There is no endorsement, to my knowledge,  
2 that's correct.

3 Q And there is no endorsement of the guaranty  
4 either?

5 A That's correct, to my knowledge.

6 MR. MacDONALD: That's all I have, Your  
7 Honor.

8 THE COURT: All right.

9 Mr. Kerr, redirect?

10 MR. KERR: Just a couple.

11 REDIRECT EXAMINATION BY MR. KERR:

12 Q Mr. Cobb, with respect to the lag time  
13 between maturity dates of notes and the subsequent  
14 renewals, in your experience is that unusual?

15 A Not at all.

16 Q All right. Why is that?

17 A Sometimes it's a matter of waiting on  
18 financial statements, sometimes it's a matter of  
19 not having sufficient time to be able to finalize  
20 the negotiations for terms. There could be a  
21 number of things that would delay that from  
22 happening.

23 Q And in looking at Exhibit 7 which is the  
24 April, '08, promissory note that is in front of  
25 you, that note is designated in the upper

1 right-hand corner as what?

2 A It's the renewal note of that same date for  
3 the amount of \$300,000, a renewal of the previously  
4 existing note.

5 Q All right, sir. Counsel asked you about  
6 emails in connection with a bank employee named Mr.  
7 Tapp and showed you a document. You have emails in  
8 your file?

9 A Yes.

10 Q Are you familiar with the contempt of each  
11 and every email that is in your file?

12 A No, because there are so many, unfortunately.

13 Q I'm going to show you something that I would  
14 ask if this refreshes your recollection just in  
15 connection with emails in the file.

16 MR. KERR: May I approach, Your Honor?

17 THE COURT: You may.

18 Q Let me ask you to look at that and tell me if  
19 you recognize that document?

20 A I have have seen it before.

21 Q All right. Do you see the sticker on the  
22 lower righthand corner?

23 A Exhibit B.

24 Q That was used in a deposition in this case.

25 A Yes.

1 Q All right. Did that come from the bank's  
2 file?

3 A I don't have the deposition transcript in  
4 front of me today. Whether it originated from whom  
5 you or the other one, you or the other attorneys  
6 deposed to get this information.

7 Q Go back a few pages. Can you tell me whether  
8 any of the emails originated from the bank?

9 A There are, in email traffic there are emails  
10 that came from the bank, yes.

11 Q All right. I believe I asked this question  
12 before but out of an abundance of precaution, is  
13 there anything in the bank's file where any  
14 guarantor revoked in writing their guaranty of the  
15 Sand Dollar indebtedness?

16 A The same answer as before, no.

17 MR. KERR: That's all.

18 THE COURT: Any recross based on his  
19 redirect.

20 MR. BRITTAIN: I just want to see what he  
21 showed him.

22 Did you refer to this?

23 MR. KERR: I used to it refresh him.

24 MR. BRITTAIN: How about marking that for me  
25 please, sir.

1 (Emails marked as Defendant's Exhibit  
2 Number 1).

3 RECROSS EXAMINATION BY MR. BRITTAIN:

4 Q I'm handing you what has been marked for  
5 identification as Defendant's Exhibit Number 1  
6 which I believe is a series of documents that your  
7 lawyer handed you just a minute ago?

8 A Uh-huh.

9 Q Did those documents come from the bank file?

10 A I don't know.

11 Q You don't know? So, you don't know if they  
12 were in there or not, the bank file?

13 A Not my file, I'm not sure if they were or  
14 not.

15 Q You're not sure, okay. And you don't know  
16 whether you have seen them before or not, is that  
17 correct?

18 A Not certain.

19 Q One of them looks to me like, the one I was  
20 showing you, from Bryant Tapp, do you see that,  
21 that would be the second document in the group of  
22 Defendant's 1 for identification?

23 A Okay.

24 Q Let me ask you, it's got the address of 1350  
25 Main Street, Bryant Tapp, First National Bank of

1 the South. Is that where their office was?

2 A At the time.

3 Q 1350?

4 A That's correct.

5 Q So that would be an accurate address for the

6 bank on that email?

7 A Not a corporate address but that was the

8 branch at which, where he worked.

9 Q Okay. So, that is a legitimate address?

10 A To my knowledge.

11 Q You know that, okay.

12 MR. BRITTAIN: All right, that's all I have.

13 THE COURT: All right.

14 Mr. Masel?

15 MR. MASEL: Nothing further.

16 MR. MacDONALD: Nothing further, Your Honor.

17 THE COURT: You may step down.

18 MR. KERR: Your Honor, one --

19 THE COURT: One follow-up?

20 MR. KERR: One follow-up.

21 FURTHER REDIRECT EXAMINATION BY MR. KERR:

22 Q Mr. Cobb, looking at what was marked for

23 identification --

24 THE COURT: Identification only as Defense

25 Number 1.

1 Q Defense Number 1, is there a response from  
2 the bank to Mr. Pennisi's email

3 MR. BRITTAIN: If he's going to talk about it  
4 he needs to put it in evidence.

5 THE COURT: He is just asking whether it's  
6 there or not. Overruled.

7 MR. BRITTAIN: All right.

8 BY MR. KERR:

9 Q On the first page.

10 A I'm not looking at what -- I'm going in  
11 reverse order. It looks like the initial email was  
12 from April 20th and there was a response on April,  
13 there was a response dated May 5th from Mr.  
14 Waddell, email date of May 5th from Mr. Waddell.

15 Q As part of that email from Mr. Tapp --

16 A There is an email dated Wednesday, April 15th  
17 from Mr. Tapp, another one dated the 14th of April  
18 from Mr. Tapp and another dated the 17th of April  
19 from Mr. Waddell.

20 Q And that is all 2008?

21 A 2009.

22 Q 2009, okay.

23 MR. KERR: All right, thank you, Your Honor.

24 THE COURT: Any follow-up based on that?

25 MR. BRITTAIN: Your Honor, under the

1 completeness doctrine I don't think he can testify  
2 about them.

3 THE COURT: He didn't testify as to what was  
4 in them.

5 MR. BRITTAIN: He testified what was in them,  
6 yes, being the --

7 THE COURT: No, he didn't. I'm not going to  
8 argue about it.

9 MR. BRITTAIN: I will move to introduce it.

10 THE COURT: Mr. Kerr, do you have any  
11 objection?

12 MR. KERR: I have no objection to these  
13 documents coming into evidence.

14 THE COURT: You have moved them in?

15 MR. BRITTAIN: Yes, sir, Waddell and Tapp.

16 MR. KERR: Defendant's exhibit?

17 THE COURT: Defendant's Exhibit. It will be  
18 Defense Exhibit Number 1.

19 MR. KERR: Your Honor, that is multiple  
20 copies.

21 THE COURT: You all will have to mark them A,  
22 B, C.

23 MR. KERR: Actually the original.

24 THE COURT: Okay.

25 MR. BRITTAIN: The only two I'm moving is

1 Waddell and Tapp and those are the two he testified  
2 about.

3 MR. KERR: Can I confer with counsel?

4 THE COURT: You may. Would it be easier to  
5 to make them Defense Exhibits 1 and 2?

6 MR. KERR: It is about a five email chain.

7 THE COURT: Email stream?

8 MR. KERR: Yes.

9 THE COURT: All right. Consisting of four  
10 pages.

11 MR. KERR: Four pages.

12 THE COURT: Consisting of four pages.

13 (Defendant's Exhibit Number 1 was received  
14 in evidence).

15 MR. KERR: Your Honor, the plaintiff would  
16 call Mr. Guyton.

17 THE COURT: All right, Mr. Guyton, come  
18 forward and be sworn.

19

20

21

22

23

24

25

1 ROBERT S. GUYTON, after being first duly sworn,  
2 testified as follows:

3 MR. BRITTAIN: Your Honor, could we have a  
4 side bar right quick?

5 THE COURT: Okay.

6 (Unrecorded bench conference).

7 THE CLERK: State your name for the Court,  
8 please, spell your last.

9 THE WITNESS: My name is Robert S. Guyton,  
10 G-u-=y-t-o-n.

11 THE COURT: You may proceed.

12 MR. KERR: Yes. Your Honor, some leeway as  
13 far as questioning him with leading questions as an  
14 adverse witness?

15 THE COURT: Okay.

16 DIRECT EXAMINATION BY MR. KERR:

17 Q Mr. Guyton, you are a guarantor of the loan  
18 at issue, are you not?

19 A Yes, I am.

20 Q And you don't take the position that your  
21 guaranty has been terminated or is otherwise  
22 unenforceable, do you?

23 A I do not.

24 Q All right, sir. You are also a member of  
25 this limited liability partnership?

- 1 A Yes, sir.
- 2 Q You are a registered agent of Sand Dollar  
3 Cottage, LLC,, are you not?
- 4 A Yes, sir.
- 5 Q Are you familiar with the organization Sand  
6 Dollar, LLC?
- 7 A Yes, I am.
- 8 Q Was Everett Williams the manager of the LLC?
- 9 A Yes, he was.
- 10 Q At anytime was his management or manager's  
11 status revoked or changed?
- 12 A Not that I'm aware of.
- 13 Q All right. And to change the manager under  
14 the governance documents would it require a meeting  
15 of members?
- 16 A Yes, it would.
- 17 Q Are you aware of any such meeting of members?
- 18 A I'm not.
- 19 Q The original loan for \$400,000 was used for  
20 the purchase of personal enjoyment property in the  
21 Bahamas, is that correct?
- 22 A That's correct.
- 23 Q And it consisted of a residence, is that  
24 correct?
- 25 A That's correct.

1 Q All right. And were you involved in a  
2 subsequent transaction with banks concerning  
3 renewals of loans?

4 A Typically the loan documents would be sent to  
5 my office for execution, yes.

6 Q All right. And were you involved in  
7 discussions in 2008 concerning the principal pay  
8 down the bank was requiring for renewal?

9 A Yes, I was.

10 Q All right. Is there any evidence of a  
11 release of any guarantors at that time in writing?

12 A Not that I'm aware of.

13 Q In 2008 was any new money advanced?

14 A Can you clarify what you mean by new money?

15 Q Did the bank give the Sand Dollar, LLC,  
16 borrower any new money?

17 A No, sir.

18 Q In fact Sand Dollar Cottage, LLC, made a  
19 significant principal reduction of that loan?

20 A That's correct.

21 Q The principal reduction so that the loan  
22 could be renewed was paid off on a check on a Sand  
23 Dollar account, is that correct?

24 A That's correct.

25 Q And are you familiar with the exhibit, I

1 believe it is Number 15?

2 MR. KERR: Thank you, Your Honor.

3 A Yes, sir.

4 Q Who signed that check?

5 A I did.

6 Q Are you aware of any individual guarantor  
7 providing a check to the bank as a principal pay  
8 down?

9 A I am not.

10 Q Are you familiar with the terms and  
11 conditions of your individual guaranty?

12 A Generally, yes.

13 Q Are you familiar that each of the guaranties  
14 that are in evidence are the same with the  
15 exception of signatory?

16 A I would assume so, yes.

17 Q All right.

18 THE COURT: If you're looking to see which  
19 one, Mr. Guyton's is Plaintiff's Exhibit 11.

20 MR. KERR: I was looking for the guaranty  
21 itself. Thank you, Your Honor.

22 Q Do you understand that your guaranty is in  
23 full force and effect until it is revoked by you?

24 A Yes.

25 Q Have you made any written revocation of your

1 guaranty?

2 A I have not.

3 Q Do you understand that the guaranty was in  
4 favor of the lender or its successors and assigns?

5 A Yes, I do.

6 Q Do you understand that the guaranty that you  
7 signed says that it cannot be modified or amended  
8 other than in a writing signed by the parties?

9 A Yes, I do.

10 Q And you're aware of no such writing?

11 A I am not.

12 Q At anytime in connection with the renewal  
13 notes do you believe Mr. Williams was not  
14 authorized to represent Sand Dollar Cottage, LLC,  
15 to its lender?

16 A I don't believe that he was not authorized.

17 Q All right.

18 MR. KERR: That's all I have, Your Honor.

19 THE COURT: Mr. Brittain.

20 CROSS EXAMINATION BY MR. BRITTAIN:

21 Q Mr. Guyton, Mr. Pennisi paid to Sand Dollar,  
22 LLC, 70 plus thousand dollars which reflected the  
23 significant portion of the hundred thousand dollars  
24 that reduced the note. Isn't that correct?

25 A Yes, sir.

1 Q Okay. And there were conversations back and  
2 forth about how that happened. Isn't that correct?

3 A Yes, sir.

4 Q And you weren't party to all the  
5 conversations between Frank Pennisi and people at  
6 the bank, were you?

7 A I was not.

8 Q Did you ever work with Bryant Tapp or Steve  
9 Waddell?

10 A I know I worked with Steve Waddell, I don't  
11 know about Bryant Tapp.

12 Q But there could have been emails going back  
13 and forth between those parties that you were not  
14 aware of, is that correct?

15 A Yes, sir.

16 Q All right. Other than Dr. Walls, no other  
17 members of the Sand Dollar Cottage, LLC, made a  
18 significant contribution to that hundred thousand  
19 dollars which reduced the loan amount, did they?

20 A That's correct.

21 Q And technically speaking these loans weren't  
22 renewed, they were already in default when the  
23 second note was put together, weren't they?

24 A They were matured, yes.

25 Q They were matured and they hadn't been paid?

1 A That's correct.

2 Q So, you had a new note that was for a  
3 different amount, is that correct?

4 A That's correct.

5 Q All right. And you didn't sign a new  
6 guaranty on that, did you?

7 A No, sir.

8 Q Do you know anything about how the assignment  
9 of that guaranty was done between the bank that  
10 originally had it and the bank that has ended up  
11 with it?

12 A No, sir.

13 Q You saw here today, didn't you, that the FDIC  
14 signed a formal assignment of this note and the  
15 entitlement to it over to a bank as part of the  
16 transaction chain? Did you see that?

17 A Yes, sir.

18 Q Okay. But have you seen one from this bank  
19 to National Bank of the South, have you seen one of  
20 those to First National Bank of the South, the  
21 successor?

22 A No, sir.

23 Q Do you have one of those in your file?

24 A No, sir.

25 Q And as far as you know there hasn't been an

1 endorsement that transferred or assigned this  
2 obligation, isn't that correct?

3 A Not to my knowledge.

4 Q A revocation is where one expresses to  
5 another that they no longer stand by what the  
6 original guaranty is, isn't that correct?

7 A Yes, sir.

8 Q It makes a lot more difference if they had  
9 paid a substantial amount of money as part of that  
10 process, doesn't it?

11 A I would think so.

12 MR. BRITTAIN: Thank you. No further  
13 questions.

14 THE COURT: Mr. Masel?

15 THE COURT: No questions.

16 THE COURT: Mr. MacDonald?

17 MR. MacDONALD: No, sir.

18 THE COURT: Redirect?

19 MR. KERR: No further on redirect. We  
20 reserve the right to examine the witness on  
21 cross-examination if he is presented.

22 THE COURT: All right, very well. Thank you.  
23 You may step down. .

24 (Witness excused).

25 MR. KERR: Your Honor, the plaintiff would

1 rest.

2 THE COURT: Any motions to be made at this  
3 time?

4 MR. BRITTAIN: Yes, Your Honor, I will make a  
5 few motions. We make a motion for directed  
6 verdict. Taken in a light most favorable there is  
7 a failure to establish that there has been a proper  
8 assignment of the note. There has been a  
9 concession that there has been a substantial  
10 reduction, that there was a note that had a term  
11 of, an amount of 300,000 as opposed to 400,000 that  
12 took place past the maturity date. It makes  
13 perfectly good sense that is a new note.

14 There has been a document introduced into  
15 evidence that sets forth how that is supposed to be  
16 assigned from one bank to the other. That document  
17 itself has a blank in the middle of it. It is  
18 clear to me, I think it should be clear to the  
19 Court that if that document is to be legitimate and  
20 operate properly those blanks should be filled out  
21 or they should recite or reflect a different  
22 portion of the document.

23 If you take Mr. Cobb's testimony, that  
24 document should serve as the basic document to  
25 authorize an endorsement which is necessary for the

1 assignment. There is no such endorsement. They  
2 have a document that is not filled out in the  
3 middle. Even if you take the characterization of  
4 the document that without it being filled out  
5 properly it still is the basis for the assignment,  
6 there would need to follow in addition to that as  
7 part of the official record a document that does  
8 that. We have one in evidence to show us what that  
9 looks like. It is the FDIC assignment and I'm a  
10 little off on my, I think the Court is much more  
11 familiar with the document numbers than I am, I  
12 don't know how I got off track on that, but one of  
13 the documents in evidence is a document that is  
14 from the FDIC and it is an assignment. What is  
15 missing here from the bank that is trying to  
16 collect this money from my client --

17 THE COURT: Plaintiff's Exhibit Number 4.

18 MR. BRITTAIN: All right, sir. Is that  
19 document which would be a necessary part of the  
20 chain of title, of transfer of this, quote, asset  
21 to the surviving bank or the bank that is bringing  
22 the action, so we think, I think for purposes at  
23 this stage, without getting into what Mr. Pennisi  
24 paid or how to characterize all that, that a  
25 necessary showing strictly at law is absent. They

1 haven't crossed their T's and dotted the I's, it is  
2 necessary to do so, especially as it affects the  
3 guarantors and we would ask the Court to direct a  
4 verdict against them.

5 THE COURT: Mr. Kerr?

6 MR. KERR: Thank you Your Honor, may it  
7 please the Court.

8 I apologize again for confusion with our  
9 evidence. Your Honor, it is clear the documents in  
10 evidence demonstrate a clear chain of title as to  
11 who is the holder of the loan and the guaranty. It  
12 is clear from the merger document, Exhibit Number  
13 1, that Carolina National Bank and First National  
14 Bank of the South merged. A merger is not an asset  
15 sale, it's a combination of two organizations. You  
16 get the good and you get the bad. Clearly First  
17 National got some bad here and plenty more because  
18 the next link in the chain is a transfer from First  
19 National Bank to NAFH.

20 How was that transfer effected? Counsel  
21 believes that there is something missing. The  
22 document at Exhibit 4, which is, or excuse me,  
23 Exhibit 3, pardon me, is a recorded Power of  
24 Attorney, it is a limited Power of Attorney and it  
25 confers the power on certain individuals to sign

1 documents to enable the arrangement between the  
2 FDIC as receiver and NAFH Bank, to ensure that  
3 there is a clear chain of title and ownership.

4 And, so, in Exhibit 3, the limited Power of  
5 Attorney, the FDIC says, "We grant, among others,  
6 Robert Hindleman the right to sign in our stead on  
7 our behalf certain documents over to NAFH Bank."

8 Exhibit Number 4 is an assignment. By that  
9 assignment, remember this is not a real estate  
10 loan, this is not a mortgage, this is not a  
11 recordable type of transaction, it is a contract.  
12 "By the assignment and based on the power conferred  
13 upon him in the limited Power of Attorney," which  
14 is Exhibit 3. Mr. Hindleman under that power  
15 transfers the note and related guaranties to NAFH  
16 Bank.

17 Now, the testimony is from Mr. Cobb, who was  
18 an employee, NAFH after, even after this action  
19 started, merged with another bank and the resulting  
20 bank is Capital Bank. Your Honor is certainly  
21 familiar with Rule 25(C) that says if there are  
22 changes in interest of corporations or what have  
23 you in the middle of litigation, if there is a  
24 motion the Court can direct the right party be  
25 substituted. We have elected just to continue on

1 in the name of the First National Bank of the South  
2 but very clearly the FDIC authorized Hindleman to  
3 make transfers in NAFH, and the testimony is NAFH  
4 was in another merger and the resulting bank is  
5 Capital Bank and they are the holder and have the  
6 right to enforce the guaranties.

7 So, Your Honor, we believe that the evidence  
8 before you clearly indicates who owns the note and  
9 the related guaranties and who is authorized to  
10 enforce them and that they are being properly  
11 enforced.

12 As to the argument that somehow the  
13 guaranties have been terminated or there has been a  
14 release, the language of the guaranty is clear. A  
15 guaranty is a promise to pay a debt if the person  
16 liable in the first instance doesn't pay you. And  
17 if you look at Exhibits 8 and 13 which are form  
18 documents signed by the seven guarantors in this  
19 case, in the definition section found on page one  
20 it says, it states, quote, you, close quote, or  
21 your, in quotations, means the lender in E and its  
22 successors and assigns. Here this original lender  
23 has successors and assigns and the holding and  
24 ownership has been properly, has been properly  
25 demonstrated to the Court.

1           We think that the other terms in the  
2   guaranties are very clear, that you don't have to  
3   go after the note maker. Under South Carolina law  
4   a guaranty is an independent obligation. There is  
5   no obligation for the bank to try and realize  
6   collection on the borrower. In fact here it would  
7   be impossible because the borrower doesn't have the  
8   very asset that was supposed to be purchased by  
9   Sand Dollar Cottage which the original loan  
10   provides.

11           Moreover, the State law and the document  
12   itself says we have a note, or excuse me, that only  
13   payment discharges these people. They can give a  
14   revocation which cuts off continuing liability, and  
15   the cases are clear that liability or obligation  
16   prior to some revocation is still in effect but  
17   they can cut off their continuing liability but the  
18   bank has no knowledge of any writing that would  
19   serve as a revocation. None of the guarantors ever  
20   revoked and for them to argue that somehow they are  
21   exonerated from their obligation without a  
22   revocation, without complying with the terms and  
23   conditions of the guaranty as to how to get out of  
24   it, which is have a writing from the lender --

25           THE COURT: You say if they paid a check for

1 \$400,000 that would get them out of it, a check for  
2 a hundred thousand doesn't get them out?

3 MR. KERR: Your Honor, we would take \$300,000  
4 plus some attorney fees.

5 So, Your Honor, we think that we have made  
6 out a prima facie case and that the evidence in a  
7 light most favorable to the lender is that the  
8 chain has been established, the note is in default  
9 and the lender is entitled at least at this stage  
10 to its recovery. I would also say that we had  
11 asked for attorney fees and were you to find for  
12 the plaintiff we will take that up post trial.

13 THE COURT: Okay.

14 MR. KERR: All right.

15 THE COURT: Any objection to doing it that  
16 way?

17 MR. BRITTAIN: None, Your Honor.

18 THE COURT: All right. Anything further?

19 MR. KERR: That's it, Your Honor.

20 THE COURT: All right. Taking everything in  
21 a light most favorable to the non moving party,  
22 which would be the plaintiff, I find there is  
23 sufficient evidence to go forward. The defense  
24 would certainly have opportunity to present their  
25 witnesses in this matter.

1           Now, for housekeeping, how many witnesses do  
2 you have, Mr. Brittain?

3           MR. BRITTAIN: I plan on just calling one. I  
4 have Mr. Pennisi here if there is an issue about  
5 the money having been paid.

6           THE COURT: That is really not, didn't you  
7 all say earlier that is really, that is not between  
8 you all and the banks, that it is another trial?

9           MR. BRITTAIN: You're getting ready to see  
10 some emails that may change a little bit of that  
11 but one witness is all I'm going to have.

12           MR. MASEL: Just one, Your Honor.

13           MR. MacDONALD: Your Honor, I may have none,  
14 give me a few minutes to confer with my client.

15           THE COURT: Do you all want to go ahead and  
16 try to finish it tonight?

17           MR. BRITTAIN: I would.

18           THE COURT: All right.

19           MR. KERR: Your Honor, we're at your  
20 disposal.

21           MR. BRITTAIN: Whatever the Court wants to  
22 do.

23           THE COURT: Why don't we move forward. How  
24 long do you think your witnesses will take?

25           MR. MacDONALD: If I have any they will be

1 ten minutes.

2 MR. BRITTAIN: Witness will probably be 20  
3 minutes, 25.

4 Can we take two minutes?

5 THE COURT: We'll take a recess, we'll take a  
6 15 minute recess.

7 MR. BRITTAIN: I don't need that long,  
8 whatever the Court --

9 MR. MacDONALD: Ten minutes is plenty.

10 THE COURT: We'll be back in here at 4:30.

11 MR. BRITTAIN: All right.

12 (Recessed at 4:18 p.m.).

13 (Resumed at 4:30 p.m.).

14 MR. MacDONALD: Your Honor, I think I'm going  
15 to have one or two.

16 THE COURT: Very well.

17 All right, Mr. Brittain, are you ready to  
18 proceed?

19 MR. BRITTAIN: Yes, sir.

20 THE COURT: You may call your first witness.

21 MR. BRITTAIN: I call Mr. Frank Pennisi.

22 THE COURT: Mr. Pennisi, come forward and be  
23 sworn.

24 MR. BRITTAIN: He will be our only witness,  
25 Your Honor.

1           THE COURT: All right. This may not take as  
2 long as you thought it would take.

3           MR. BRITTAIN: I don't think so.

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1 FRANK PENNISI, after being first duly sworn,  
2 testified as follows:  
3 THE CLERK: You may be seated. State and  
4 spell your last name, please.  
5 THE WITNESS: Frank Pennisi, P-e-n-n-i-s-i.  
6 DIRECT EXAMINATION BY MR. BRITTAIN:  
7 Q All right, Mr. Pennisi, how about giving the  
8 Court the benefit of your background. Where are  
9 you from, you know, not spend a lot of time but he  
10 needs to know a little bit about where you were  
11 born and raised.  
12 A I wasn't born in Conway.  
13 Q I can tell. He can, too.  
14 A I was born in New York City and I went to NYU  
15 City University, got my Bachelor's Degree in  
16 history and I got my Master's Degree in education  
17 at Brooklyn College and I started teaching in 1964  
18 in Brooklyn and I became Dean, I later on became  
19 crisis intervention supervisor for special  
20 education in New York City.  
21 Q All right.  
22 A I did that for thirty years.  
23 Q And how old are you, Mr. Pennisi?  
24 A Do I have to say that?  
25 Q Yes.

- 1 A Seventy years old.
- 2 Q Okay. So, that was your first career?
- 3 A Yes, sir.
- 4 Q And how did you become involved with our
- 5 place, Myrtle Beach?
- 6 A Also as a New York City teacher a lot of us
- 7 have second jobs and my job became in real estate
- 8 and I became a broker and I used to do seminars and
- 9 fly down on Piedmont Airlines every once in awhile
- 10 with clients for various projects they had.
- 11 Q What years were you doing that?
- 12 A I started teaching in 1964 and I retired
- 13 twenty years ago and -- you mean the real estate,
- 14 sir?
- 15 Q Yes.
- 16 A Real estate, I did it probably '82 to '87
- 17 down here.
- 18 Q And when did you move to Myrtle Beach?
- 19 A I bought a condo in '82, but permanently
- 20 moved down here about 21 years ago.
- 21 Q And your wife Carolyn was with you?
- 22 A She was.
- 23 Q And you also are an author, are you not?
- 24 A I have written three books, yes, sir.
- 25 Q And they have been published?

1 A Yes, sir.

2 Q All right. Now let me direct your attention  
3 to the matters that we're here to discuss today.

4 A And I also was mayor in our town for six  
5 years.

6 Q You were mayor of Briarcliff Acres?

7 A Correct.

8 Q Which is a political subdivision in Horry  
9 County?

10 A Correct.

11 Q Okay. And based on that you have had a good  
12 bit of experience with the legal system?

13 A Yes, I have.

14 Q All right. The matter at hand which is Sand  
15 Dollar Cottage, LLC, you were involved as a member  
16 of that LLC, were you not?

17 A Yes, sir.

18 Q All right, sir. And isn't it true that at  
19 the very beginning of that everybody, all of the  
20 members put some money into the investment to start  
21 with?

22 A Correct.

23 Q Okay. Mr. Skelley did, Mr. Williams did, Mr.  
24 Guyton, there was some money at the beginning?

25 A Not much because I believe the total note, no

1 one had to put up any substantial amount of money  
2 because it was the total amount of the note.

3 Q Okay. But there is no question but that  
4 everybody put something in?

5 A Correct.

6 Q Okay. And there was a house purchased in the  
7 Abacos, is that correct?

8 A Correct.

9 Q And technically speaking the members allowed  
10 your wife to purchase that in her name and hold it  
11 in trust for the members, isn't that correct?

12 A Correct.

13 Q All right. And that was back when the money  
14 was borrowed originally back in 2006?

15 A That's correct.

16 Q Now, did you have occasion to be present  
17 during hurricane season in the Abacos?

18 A Yes.

19 Q And did my wife happen to be present with you  
20 and your wife at that time?

21 A Unfortunately yes.

22 Q All right. And did Hurricane Ryan do  
23 significant damage to the home that was purchased  
24 as a result of this loan and other homes on Green  
25 Turtle Key?

1 A Yes.

2 Q All right. Now, during the course of these  
3 events did it come to your attention that the bank  
4 involved wanted a reduction or a note that was for  
5 less than \$400,000?

6 A Yes. It came to my attention because I  
7 believe Mr. Walls kept insisting that we, instead  
8 of doing an interest only loan like the first loan  
9 was he wanted, we wanted a principal reduction  
10 loan, I think that was the difference they would  
11 try to do.

12 Q All right. And tell us about how that came  
13 to pass and what involvement you and Mr. Walls had  
14 in changing the terms of the original note, what  
15 contribution, if any, you made?

16 A Well, what happened was the bank was not  
17 going to give them the 400,000 but the bank said,  
18 "Since that loan is over, we're going to give you  
19 300,000," so we had to come up, the LLC had to come  
20 up with a hundred thousand dollars so that they  
21 could pay off the first note and the bank was  
22 issuing another 300,000 for the second note.

23 Q And what money did you put up in connection  
24 with the new note for 300,000?

25 A Well, I put in, between Mr. Walls and I, I

1 put up about 70,000, I believe. It came to a  
2 hundred thousand between the two of us.

3 Q Okay. And one of the exhibits here today  
4 indicates that Sand Dollar, LLC, paid \$104,000 to  
5 the bank and then the new note for 300,000 came  
6 into existence. Does that sound about right to  
7 you?

8 A Yes.

9 Q Okay. Did you know anything about there  
10 being a renewal fee attached to any of those  
11 amounts?

12 A I'm sorry?

13 Q A renewal fee?

14 A I didn't know.

15 Q All right. Now, you gave in the neighborhood  
16 of \$75,000 to Chip Guyton, Robert Guyton, is that  
17 correct?

18 A Correct.

19 Q And what was your understanding at the time  
20 when you made that, gave that money to him?

21 A Well, before Mr. Walls and I gave them that  
22 money we were told that we would have no more  
23 obligations --

24 MR. KERR: Objection, Your Honor.

25 THE COURT: Sustained.

1           MR. BRITTAIN: I would like to proffer the  
2 testimony.

3           THE COURT: You may proffer it but it's not  
4 coming into evidence.

5           MR. BRITTAIN: I understand but I just want  
6 to put it down.

7 BY MR. BRITTAIN:

8 Q       Who told you that you would have no further  
9 obligations if you paid that money and it was given  
10 to the bank?

11 A       Mr. Chip Guyton.

12       MR. KERR: Continuing objection, Your Honor.

13       MR. BRITTAIN: I understand and I understand  
14 it is not in evidence. What we're doing, I'm just  
15 getting it in.

16 Q       Why would you pay 70 some odd thousand  
17 dollars to get a new note to the bank, Mr. Pennisi,  
18 what possible reason would there be for you to pay  
19 that money other than to extinguish your  
20 obligations to the bank? Are there any other ones  
21 that you can think of?

22 A       No, sir. Well, additional, we paid our  
23 portions of percentages of what we owed to the LLC  
24 and then the other additional money, the 54  
25 thousand, I gave as a loan to the LLC in addition

1 to paying my percentage and Mr. Walls' percentage.

2 Q Okay. So, you made those two payments and  
3 then you loaned more money, some \$54,000 to the  
4 LLC, is that correct?

5 A Yes. That was part of the 75, yes.

6 Q All right. And all that totaled up from your  
7 standpoint to around \$75,000?

8 A Correct.

9 Q And then Mr. Walls contributed around  
10 \$32,000, \$33,000?

11 A I believe so, something like that.

12 Q All right. And during that particular  
13 contribution cycle are you aware of anyone else  
14 putting any money into Sand Dollar, LLC, that went  
15 to the bank?

16 A At that time?

17 Q Yes.

18 A No.

19 Q Now, was there ever an occasion when it came  
20 to your attention that representatives of the bank  
21 might have taken the position that you were still a  
22 guarantor or that you were a guarantor on a  
23 \$300,000 note?

24 A Yes. We got several telephone call from Mr.  
25 Tapp, I believe it was Tapp, asking me for

1 documentation. I said, "What?" He said, "Because  
2 of the note." I said, "I'm not on a note," said,  
3 "Mr. Walls and I had an agreement, we paid up our  
4 end," and he kept, he emailed me a few times in  
5 addition to telephone calls on that.

6 Q All right, sir. And there is no question  
7 that you told him that, right?

8 A Correct.

9 Q Did he represent himself as being an employee  
10 of First National Bank of the South?

11 A Absolutely.

12 Q Okay. I want to hand you what has been  
13 marked Defendant's Exhibit Number 1 and refer you  
14 to the third page of that document and ask you if  
15 you recognize Defendant's Exhibit Number 1, page 3?

16 A This?

17 Q Yes. "My name is Bryant Tapp"?

18 Q Yes. How about publishing that, please, it  
19 is not very long.

20 A What do you mean, read that?

21 Q Yes.

22 A "My name is Bryant Tapp with First National  
23 Bank and I'm writing to get updated information  
24 from you concerning the referenced loan you have  
25 with us here at the First National Bank of the

1 South. I sent you an email about a month ago and  
2 it must have failed to reach you so I wanted to  
3 follow up with what we needed from you and the  
4 guarantors of this account. Information I need are  
5 as follows."

6 Q Okay, you don't have to read that part. Now,  
7 on that same page is there a response from you?

8 A Yes.

9 Q And read that.

10 A "Mr. Tapp. We are not on the loan for Sand  
11 Dollar, LLC. I will attempt to contact Mr. Skelly  
12 and Mr. Callihan and notify them of your request.  
13 Sincerely."

14 Q Okay. And the dates on those are April 14th,  
15 2009, and April 15th, 2009. Is that correct?

16 A That's correct.

17 Q Okay, all right. And you had conversations  
18 with Mr. Tapp, too, is that correct?

19 A I had at least two or three telephone  
20 conversations with Mr. Tapp.

21 Q All right. And did you make any other  
22 complaint about the bank taking the position that  
23 you were still a guarantor, did you involve anyone  
24 else in those discussions?

25 A Well, once I realized I got an email from Mr.

1 Waddell, I believe, asking me am I sure that I'm  
2 not on the list --

3 Q As a guarantor?

4 A -- as a guarantor I took it to our attorney  
5 Mr. Guyton. I said, "Look, I don't know what is  
6 going on but I am getting all these calls and  
7 emails from the bank," and so I gave it to him and  
8 didn't hear any more from the bank.

9 Q Or any more from Mr. Guyton?

10 A Correct.

11 MR. BRITTAIN: That's all the questions I  
12 have. That document we read from is already in  
13 evidence, Your Honor.

14 THE COURT: All right. It is Exhibit Number  
15 1.

16 MR. BRITTAIN: Defendant's Exhibit Number 1.

17 CROSS EXAMINATION BY MR. KERR:

18 Q Good afternoon, Mr. Pennisi.

19 A Good afternoon.

20 MR. KERR: I would like, Your Honor, for Mr.  
21 Pennisi to be able to see the original guaranty.

22 Q Sir, this is Exhibit 13 in evidence. You  
23 don't contest that you executed a guaranty in  
24 connection with the original \$400,000 loan, do you?

25 A That's my signature.

1 Q All right. And in connection with that  
2 guaranty did you read its contents?

3 A I have to be honest with you, you know, we  
4 basically went on our attorney's advice.

5 Q All right.

6 A I might have read part of it, yes, you know.

7 Q Well, let me ask you to look at some of the  
8 salient pieces of it. Do you see the, do you see  
9 the definition of the lender in the third line, it  
10 says for good and valuable consideration, et  
11 cetera?

12 A In the third paragraph, you're talking about,  
13 number 3?

14 Q No, the third line from the top.

15 A Oh, third line from the top, okay. Yes.

16 Q And it says to induce Carolina National Bank  
17 and Trust Company, and then it says per and herein  
18 with its participants, successors and assigns,  
19 called lender. Do you see that?

20 A Yes.

21 Q Do you understand that that means that this  
22 document could be enforced by a successor to this  
23 bank or an assignment from this bank?

24 A According to this that's what it says.

25 Q Okay. And did you understand that there were

1 certain ways that you could revoke your guaranty,  
2 based on this document?

3 A I'm not sure.

4 Q Okay. Look at paragraph two with me. It is  
5 paragraph, has the number assigned two about a  
6 third of the way down the page. It says, "This is  
7 an absolute unconditional and continuing guaranty  
8 of payment of the indebtedness and shall continue  
9 to be in full force and be binding upon the  
10 undersigned whether or not all indebtedness is paid  
11 in full."

12 THE COURT: Okay, could you just stop for a  
13 second, because that whole line which he just read  
14 is totally, is not on this.

15 MR. KERR: Okay.

16 THE WITNESS: Do you want to take a look at  
17 it?

18 MR. KERR: Okay. You're right, there is,  
19 that part has been somehow blocked, I don't know  
20 why.

21 THE COURT: Do you have the original?

22 MR. KERR: Your Honor, this is, this is, this  
23 is the evidence for him, there are additional,  
24 there are additional guaranties, they are all the  
25 same, they are all originals in the bank file.

1 That is what was contained in the bank file.

2 THE COURT: It looks like it was folded or  
3 something.

4 BY MR. KERR:

5 Q The part, Mr. Pennisi, I'm trying to get to,  
6 talking about the revocation.

7 MR. BRITTAIN: Could I see it, Your Honor?

8 THE COURT: The words are there, it's just  
9 that --

10 MR. KERR: They are squished.

11 THE COURT: They're squished.

12 BY MR. KERR:

13 Q And the words I'm trying to get to are below  
14 that, that talk to renewals, extensions and  
15 refinancing. Did you understand that in signing a  
16 guaranty that it would extend to renewals,  
17 extensions and refinancings?

18 A I believe so.

19 Q Okay. The document also requires for it to  
20 be terminated or released, for you to have some  
21 writing by the lender that discharges you from this  
22 guaranty. Do you have any writing from the lender  
23 which discharges you from this indebtedness?

24 A No, I don't.

25 Q Okay. And I understand you put additional

1 money into the LLC and you understand the LLC paid  
2 that principal reduction, correct?

3 A Correct.

4 Q And I understand that you have more skin in  
5 this game but did you seek any signed document from  
6 the bank saying that they discharged and released  
7 you from your guaranty of the indebtedness?

8 A No, I did not.

9 MR. KERR: Your Honor, the document speaks  
10 for itself. There are some additional things I  
11 could go through but that's all the questions I  
12 have.

13 THE COURT: All right, thank you.

14 Mr. Masel?

15 MR. MASEL: Just a few, Your Honor.

16 CROSS EXAMINATION BY MR. MASEL:

17 Q Mr. Pennisi, the discussions you had with the  
18 bank by email and telephone, they pertained to you  
19 and Mr. Walls together, is that correct?

20 A Correct.

21 Q And the same with regard to discussions with  
22 Mr. Guyton as far as the guaranties are concerned?

23 A Yes.

24 Q They always mentioned Mr. Walls in addition?

25 A Yes.

1 Q On the emails, one of the sentences you  
2 responded to Mr. Tapp is, "We are not on the loan  
3 for Sand Dollar, LLC," were you referring to you  
4 and Mr. Walls?

5 A Correct.

6 MR. MASEL: That's all I have.

7 THE COURT: Mr. MacDonald?

8 MR. MacDONALD: Just a couple, Your Honor.

9 CROSS EXAMINATION BY MR. MacDONALD:

10 Q Mr. Pennisi, if I understand correctly, you  
11 and Mr. Walls own combined approximately 16 percent  
12 of this LLC, is that correct?

13 A I'm not sure but it is probably around that.

14 Q 16 percent?

15 A Probably, yes.

16 Q And you have paid a hundred thousand dollars,  
17 you and Mr. Walls combined have paid a hundred  
18 thousand dollars?

19 A Correct.

20 Q For the reduction?

21 A Correct.

22 Q That far exceeds your 16 percent, pro rata  
23 share, a hundred thousand would be 25 percent of  
24 the 400,000, correct?

25 A Yes. I'm not following you on that, I'm

1   sorry.

2   Q       \$100,000 was paid to reduce the loan.

3   Correct?

4   A       Correct, yes.

5   Q       Can we agree with our education that we  
6   should have gotten, that that is 25 percent of the  
7   loan?

8   A       Okay, yes.

9   Q       Okay. But you only own 16 percent of the  
10   entity, you and Mr. Walls together, your total  
11   combined share is 16 percent?

12   A       I don't know, is that combined?

13   Q       Your eight percent.

14   A       I guess it is. Believe me, I'm not certain  
15   right now.

16   Q       If that's the case, you have paid more than  
17   your 16 percent, that is your position, correct?

18   A       Yes, because the additional was a loan to the  
19   LLC, yes.

20           MR. MacDONALD: That's all I have.

21           THE COURT: Thank you.

22           Any redirect?

23           MR. BRITTAIN: No, sir.

24           THE COURT: Thank you. You may step down.

25           (Witness excused).

1 THE COURT: Mr. Brittain, is that your only  
2 witness?

3 MR. BRITTAIN: That is our only witness.

4 THE COURT: Mr. Masel.

5 MR. MASEL: I call Mr. Walls to the stand,  
6 Your Honor.

7 THE COURT: Come forward and be sworn.

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1 CHARLES T. WALLS, JR., after being first duly  
2 sworn, testified as follows:

3 THE CLERK: You may be seated, state and  
4 spell your last name, please.

5 THE WITNESS: Charles T. Walls, Jr.,  
6 W-a-l-l-s.

7 THE COURT: You may proceed.

8 MR. MASEL: Okay

9 DIRECT EXAMINATION BY MR. MASEL:

10 Q If you can, tell us where you live and what  
11 you do for a living.

12 A I live at 205 Lake Drive in Briarcliff Acres  
13 and I'm a pathologist at Grand Strand Regional  
14 Medical Center.

15 Q How long have you been a pathologist?

16 A Since training began in 1981, since that  
17 date.

18 Q Very good. Tell us how you initially got  
19 involved in the Sand Dollar Cottage, LLC,  
20 transaction that we're here on today.

21 A Well, Frank and I have had some property  
22 relationships before and the other gentlemen in the  
23 partnership wanted to purchase property as well but  
24 they needed to have current landholders or property  
25 owners in the Abacos to buy the land, so Frank and

1 I agreed.

2 Q Okay. And what did you ultimately agree to  
3 in regard to the LLC?

4 A We agreed that we would take a minimal  
5 position in this, I think the Abacos requested that  
6 a former landowner, a property owner have a small  
7 percentage and Frank and I agreed to own the  
8 smallest percentage possible. I think that was  
9 roughly 15, 15 percent, I believe, right.

10 Q And that's between the two of you, is that  
11 correct?

12 A Yes, sir.

13 Q And why did you want it to be minimal or as  
14 small as possible?

15 A Well, I already had a piece of property, I  
16 did not need another.

17 Q When the LLC was formed did you make an  
18 initial contribution?

19 A We all did. I believe it was nominal,  
20 probably in the ballpark of five to six thousand  
21 dollars, if I recall.

22 Q And that was in and around 2006, is that  
23 right?

24 A Yes, sir.

25 Q And subsequent to that time what developments

1 took place and what did you do with regard to  
2 making additional payments?

3 A I had no other real involvement, I was  
4 passive as can be until the, I guess the new  
5 document, the loan reduction came up. Up to that  
6 point I had nominal or no involvement.

7 Q And what was your understanding as to the  
8 loan reduction?

9 A They had a \$400,000 note and if they could  
10 reduce that note it was, it would allow them, the  
11 other partners in the LLC, to lower their monthly  
12 payments so Frank and I agreed to put that money  
13 forward and with that, you know, we would be  
14 indemnified and let go of our guaranties on the  
15 property.

16 Q Okay. And that was what you believed when  
17 you made the, when the two of you made the payment  
18 of approximately \$100,000?

19 A Yes, sir.

20 Q Would you have made your portion of the  
21 payment if it was not for your understanding that  
22 you would be indemnified and also released as a  
23 guaranty?

24 A Absolutely not.

25 Q Is that the only reason you made that

1 payment?

2 A Yes.

3 Q Okay. As far as any discussions with the  
4 bank, as far as your guaranty, in making that  
5 payment, did you have any personal conversations  
6 with anyone at the bank?

7 A Just with the officer who was -- we were  
8 signing the papers, you know, I said, "This is more  
9 than a high percentage but this is what I'm willing  
10 to pay," and he said with the hundred thousand  
11 dollar reduction he felt like his bank would be  
12 satisfied and we would be, Frank and I would be  
13 therefore free of obligation.

14 Q Okay. Was it your understanding that you  
15 would be free of obligation under your guaranties?

16 A That was my understanding.

17 Q Okay. Is that why you signed off on those  
18 loan documents?

19 A Absolutely, otherwise there would have been  
20 no reason to reduce the payment the way we did.

21 Q Other than that discussion with someone from  
22 the bank, did you have any other discussions that  
23 you recall with any individuals for the bank?

24 A No, sir, never had contact with them at all.

25 Q We have heard testimony that Mr. Pennisi had

1 discussions with the bank. Are you familiar with  
2 those?

3 A Yes, sir.

4 Q And was he discussing those items with the  
5 bank with your permission?

6 A Yes, sir.

7 Q And was it your understanding that the  
8 permission you granted him was to talk to the bank  
9 if in fact you all had paid approximately a hundred  
10 thousand dollars and that was for the purpose of  
11 being released from your guaranties?

12 A Yes, sir.

13 MR. MASEL: That's all I have, Your Honor.

14 THE COURT: Thank you.

15 Mr. Kerr?

16 CROSS EXAMINATION BY MR. KERR:

17 Q Dr. Walls, did you read your guaranty?

18 A Pardon me?

19 Q Did you read your guaranties before you  
20 signed them?

21 A Not all of them.

22 Q Do you understand or did you understand the  
23 content of the guaranty at the time you executed  
24 it?

25 A I understood I was signing a guaranty for my

1 portion of a loan.

2 Q All right. Did any member, did any  
3 representative of the bank give you a document in  
4 writing releasing you from the terms of the  
5 guaranty?

6 A No, sir. It was verbal communication in  
7 conversation while signing.

8 Q All right. Are you familiar with the term if  
9 a guaranty requires any amendment or any change to  
10 the guaranty it must be in writing?

11 A Not at the time I was signing it but I have  
12 subsequently learned such.

13 Q What were you signing?

14 A I was signing what I thought was an agreement  
15 that I would guarantee my portion of that loan. I  
16 came subsequently to find out I was guaranteeing  
17 everybody's portion.

18 Q The only guaranty you signed was at the time  
19 of the original loan in 2006, is that right?

20 A Yes, sir, I believe it was 2006 and I thought  
21 when that loan ended that I would have to sign  
22 another loan agreement.

23 Q Okay.

24 A When it matured.

25 Q You were putting money into the Sand Dollar

1 Cottage, LLC,, that was done to allow for this  
2 principal reduction, is that correct, 400 to 300?

3 A I believe that was later.

4 Q That was later?

5 A Yes, sir.

6 Q Your testimony today, then, is in 2006 you  
7 understand that you were only guaranteeing your  
8 fractional interest?

9 A Yes, sir.

10 Q Okay.

11 MR. KERR: Nothing further.

12 THE COURT: Thank you.

13 Mr. Brittain.

14 MR. BRITTAIN: No questions.

15 THE COURT: Mr. MacDonald?

16 MR. MacDONALD: None, Your Honor.

17 THE COURT: Thank you. You may step down.

18 THE WITNESS: Thank you.

19 (Witness excused).

20 MR. MacDONALD: We're not going to call a  
21 witness.

22 THE COURT: All right. Since I'm not coming  
23 back down to Horry County, I am probably going to  
24 take this under advisement. Is there anything  
25 else, do you have any reply?

1 MR. KERR: I don't have any reply.

2 THE COURT: Are there any motions to be made  
3 following the defendant's presenting their case?  
4 Are there any motions at this time?

5 MR. KERR: Your Honor, the plaintiff would  
6 move for directed verdict at this time based on the  
7 fact taking the evidence in a light most favorable  
8 to these defendants they have introduced no  
9 evidence that shows they have been, that their  
10 guaranty has been amended, revoked, terminated or  
11 they have been released therefrom. The document  
12 itself, the guaranties they signed require in the  
13 document if they are going to be released they have  
14 to have a writing from the bank. The only two  
15 guarantors that testified said they have no such  
16 writing, so based on that evidence, Your Honor, we  
17 think it is clear that we're entitled to enforce  
18 the guaranties in the amount of the principal,  
19 interest, late charges and attorney fees that we  
20 can, that we can prove up to you in a form you deem  
21 appropriate.

22 THE COURT: Mr. Brittain?

23 MR. BRITTAIN: Your Honor, I believe there is  
24 sufficient evidence in the record, emails that came  
25 from the bank officers to constitute a writing

1 previously. In response to his motion, what we  
2 have here is an original note that came due, it  
3 wasn't paid and it terminated. This could never be  
4 a renewal. It is a brand new different note. I  
5 don't care what their accounting records are, and  
6 numbers, it is a new note for a different amount.  
7 They should have gone and gotten new guaranties.  
8 There is nothing in the original guaranties that  
9 would obligate these individuals to a new note.

10 Secondly, they don't have an original of my  
11 man's guaranty and the one they've got you can't  
12 read portions of it. It is ineffective. Neither  
13 do we have a chain of assignment. We've got, the  
14 bank is before you today is not even a party, is  
15 not the proper party in this trial. That has  
16 already been determined in a motion for summary  
17 judgment here in Horry County. There are two  
18 orders outstanding. Part of the grounds for  
19 granting it was there was not a proper party before  
20 this Court and it still hasn't been changed. That  
21 is a duty and obligation they have. They haven't  
22 done it. It is the wrong party.

23 And so we surely, and it is clear from an  
24 equitable standpoint that our client made this  
25 substantial contribution, the bank got a benefit

1 from it and whether there are technical legal  
2 arguments, we have discussed the problems they have  
3 with those, but this Court has the power to  
4 equitable, to balance out the responsibilities of  
5 these parties, and my client communicated this to  
6 them in the honest course of affairs.

7 THE COURT: Though it is not really before me  
8 today, you all have stipulated this is only between  
9 the defendants and the banks, what between with the  
10 defendants is not before me?

11 MR. BRITTAIN: No, sir. What I'm referring  
12 to was my client, as soon as it became clear to him  
13 that the bank was under the impression he was still  
14 on the note he communicated with the bank. He  
15 testified that those conversations, what they were,  
16 and we introduced in evidence emails back from  
17 those individuals which say to the Court my man is  
18 out of the guarantor group.

19 Also this. Keep in mind that affidavit is  
20 before you, it was filed in April of 2012. It is  
21 not refuted, what my client testified what Mr.  
22 Waddell said as a representative of the bank is not  
23 refuted, he still works for the bank, that  
24 affidavit stands, my client testified to it and  
25 they did not bring him to testify to it. Mr. Cobb

1 wasn't present, wasn't working for the bank at the  
2 time. So what we say about the conversations  
3 between the bank that are followed up by the  
4 writing have been refuted in the courtroom, my  
5 client's version of that testimony. Now, he did  
6 say he didn't have a writing in response to a  
7 question of Mr. Kerr's but his, but there is a  
8 writing, it is for the Court to determine whether  
9 based on all the facts --

10 THE COURT: I think that came into evidence.

11 MR. BRITTAIN: Yes, sir, he put it in.

12 THE COURT: The only thing that came into  
13 evidence was Defense Exhibit Number 1.

14 MR. BRITTAIN: Let me --

15 THE COURT: That is the only thing came in  
16 evidence, the other one was objected to as hearsay.

17 MR. BRITTAIN: No, sir. Let me show you what  
18 I'm talking about.

19 THE COURT: I'm saying that is the only thing  
20 in evidence from the defense.

21 MR. BRITTAIN: This is what I'm talking  
22 about.

23 THE COURT: All right.

24 MR. BRITTAIN: For those reasons we believe  
25 that we should prevail and that there has been a

1 modification based on discussions, payment, number  
2 one, a significant payment, discussions, that being  
3 a normal course of affairs and then an email which  
4 is in writing, which has been admitted as being an  
5 email that has the address of the bank on it, which  
6 tends to verify the testimony of Mr. Pennisi that  
7 he was off the loan, informed the bank, once he  
8 gave them the information they quit bothering him  
9 and he got that email indicating they were looking  
10 elsewhere for information. All that gives us what  
11 we believe is a sufficient showing to end the  
12 guaranty.

13 THE COURT: Mr. Masel?

14 MR. MASEL: Yes, Your Honor. We have the  
15 same arguments. In following up on a couple, the  
16 2008 transaction again was, was a different entity,  
17 First National Bank of the South, I think the  
18 testimony that we heard was that that bank  
19 purchased the assets of Carolina National Bank.  
20 Through that purchase of assets they allege they  
21 became the owner of the loan documents.

22 However, the chain of title does not show  
23 that those assets, particularly the loan documents  
24 in this case, were purchased, assigned, transferred  
25 or what have you from Carolina National Bank to the

1 First National Bank of the South. If there is a  
2 merger, then those assets that are purchased need  
3 to be documented properly. In this case there is  
4 no chain of title that reflects that these loan  
5 documents were transferred properly from the  
6 initial owner of the loan documents to the  
7 subsequent owner of the loan documents who  
8 purchased them or at least claimed to have  
9 purchased them.

10 We also believe that the assignment from  
11 First National Bank of the South to NAFH is  
12 questionable, that the Power of Attorney that we  
13 looked at provides that there are two ways to make  
14 the transfer using the Power of Attorney. One of  
15 them is by endorsing the promissory note, and I  
16 think the bank's testimony admitted there was no  
17 endorsement of the promissory note transferring it  
18 from one entity to the next entity.

19 And also as far as assignments go, they need  
20 to be made pursuant to and consistent with a  
21 purchase and assumption agreement dated July 16th  
22 of 2010 which is a document not in evidence and we  
23 have no idea whether or not that document gives  
24 proper authority to be executing transfers under  
25 this particular Power of Attorney. We're talking

1 about the loan documents, guaranties, making claims  
2 of payment for hundreds of thousands of dollars. I  
3 think it is critical that the T's are crossed and  
4 the I's are dotted and I think we have skipped two  
5 steps in this chain. It simply was not done. The  
6 paperwork transferring the loan from Carolina  
7 National Bank to the First National Bank of the  
8 South, the paperwork is not there. The transfer  
9 from First National Bank of the South to NAFH  
10 National Bank is not there. We don't know the  
11 document that purportedly authorizes this  
12 transaction and we know that it wasn't properly  
13 endorsed.

14           And as I mentioned in the beginning, I think  
15 discharge is proper for a number of reasons and  
16 that is that the loan was extended for the LLC  
17 without permission or consent of the guarantors.  
18. There was no notice to the guarantors as admitted  
19 by the bank, there was no guaranties executed as  
20 admitted by the bank, the loan terms were modified  
21 without the consent from the guarantors and again  
22 the statute of limitations expired as to any claim  
23 that the bank may have against the LLC. Again,  
24 they have not pursued the LLC, which acts as a  
25 waiver and release of the claim or the amount due

1 under the underlying obligation of the promissory  
2 note itself.

3 That final part of my argument, I just want  
4 to get it out so it is on the record, is something  
5 that finds its roots in Article III of the UCC and  
6 particularly Section 36-3-605. That gives, that  
7 relates to negotiable instruments and relates to  
8 sureties and accommodating parties who sign off on  
9 negotiable instruments to secure a loan.

10 Now, we don't have this here because the  
11 guarantors did not actually sign the promissory  
12 note, they didn't sign the negotiable instrument,  
13 but what the comments to that section say is that  
14 these reasons that a guarantor who signs a  
15 promissory note can get out of their obligation or  
16 is discharged from their obligation as a guarantor  
17 is consistent with and finds its roots in the  
18 common law, common law that relates to suretyship  
19 and guaranties. The comment cites to the  
20 restatement, and the restatement outlines how under  
21 the common law, not related to any negotiable  
22 instruments, the guarantor signs a separate  
23 document, they have the same ground for  
24 discharge. That is when there is loan terms are  
25 changed without consent and the Statute of

1 Limitations expires against the primary obligor.

2           The reasons the guarantors should be  
3 discharged in this case, independent separate  
4 documents mirror the reasons that they should be  
5 discharged if they had not signed off as  
6 accommodating party or surety under the promissory  
7 note.

8           THE COURT: Thank you.

9           Mr. MacDonald?

10          MR. MacDONALD: Your Honor, I will join in  
11 with Mr. Brittain and Mr. Masel. I will only add  
12 we think there is a question of fact. We would  
13 like to have the opportunity to brief whether or  
14 not when the notes matured and then a new note is  
15 signed, whether that requires signing of a guaranty  
16 because the notes are actually in default and have  
17 matured and in essence you are creating a new note,  
18 we would like to be able to brief that to the  
19 Court.

20          MR. KERR: Briefly, Your Honor. Counsel  
21 referred to two orders that disposed of an issue  
22 about who the proper parties was. I would just  
23 reiterate that Rule 25(C) allows this matter to  
24 continue in the name of the party that brought it  
25 as the plaintiff and that we are in procedural

1 posture that is perfectly appropriate.

2           Second, counsel refers to what a bank  
3 employee said, what he said, amending what he said.  
4 I will call the Court's attention to the Lender  
5 Statute of Fraud, South Carolina Code Section  
6 37-10-107, which bars certain claims and defenses  
7 relating to loans in excess of \$50,000 and we  
8 believe that that applies to require a writing, a  
9 release document signed by the bank saying  
10 affirmatively that a guarantor is released. That  
11 is an additional point of law we raise in addition  
12 to the general law of guarantyship which is,  
13 guaranty is a contract and it is enforceable by its  
14 terms.

15           A quick cite to AMA Management Corp versus  
16 Strausberger, 420 Southeast 2d 868, which is a  
17 South Carolina Court of Appeals case that stands  
18 for the proposition that if the principal  
19 obligation, the underlying loan is assignable, then  
20 assignment of debt operates as an assignment of the  
21 guaranty of the debt. We believe we have made out  
22 the chain of title, the bank that made the loan  
23 merged and we have a document from the Office of  
24 the Comptroller of the Currency saying this merger  
25 is effective. The new bank became the successor in

1 ownership by merger.

2           When the FDIC took over First National Bank  
3 of the South they authorized or conferred the power  
4 on certain individuals to make assignment on their  
5 behalf to this acquiring entity, NAFH, so the Power  
6 of Attorney is what conferred the power and the  
7 assignment is the document that changes title. So  
8 NAFH becomes owner-holder of the debt and the  
9 related obligations by assignment and by operation  
10 of law the guaranties come with it, the  
11 Strausberger case.

12           And finally, Your Honor, as the witness  
13 testified, he is familiar with the fact that NAFH  
14 merged with another bank and the resulting bank is  
15 Capital Bank and they are owner and holder of the  
16 note that is in default and these continuing  
17 guaranties which may only be revoked in writing,  
18 amended or released by writing.

19           Thank you, Your Honor.

20           THE COURT: Thank you. I still want to look  
21 at this matter, so I'll deny your motion. Because  
22 I'm not scheduled to come back to Horry County, I  
23 will go ahead and take the testimony concerning  
24 possible attorneys fees. Whether I rule for it or  
25 not, I don't know, but at least we can go ahead and

1 have it at this point. That way you all won't have  
2 to come back.

3 MR. KERR: Your Honor, may it please the  
4 Court, I'm Robert Kerr and I represent the  
5 plaintiff in this case. Under the guaranties that  
6 we're suing on there is a provision for collection  
7 of attorney fees, costs of collection in the event  
8 that the bank is successful party. Your Honor, as  
9 an officer of the court I can provide you this  
10 information or I can give you an affidavit which I  
11 have prepared.

12 THE COURT: Any objection?

13 MR. BRITTAIN: I would like to see it but I  
14 probably would agree that should he prevail,  
15 knowing him, it would be reasonable. I don't want  
16 to fight about it if I can look at it.

17 THE COURT: Show it to them, let them look at  
18 it.

19 MR. MacDONALD: Could we do this just in  
20 writing, if he puts his affidavit in?

21 THE COURT: I would rather kind of go ahead  
22 and get it done. I really want to not have a  
23 letter war after this hearing.

24 MR. KERR: Your Honor, may I approach?

25 THE COURT: Yes.

1           MR. KERR: I can quickly summarize the  
2 contents. Your Honor, we are asking for \$50,000.  
3 I have certain backup from our time and billing  
4 system but in general we have been involved in this  
5 case since just before the filing of the summons  
6 and complaint in the spring of 2010. We have  
7 brought the or filed the summons and complaint,  
8 effected service, we have had the answers from good  
9 counsel, as you have seen here today, we have taken  
10 depositions, we have exchanged paper documentary  
11 evidence, I filed a motion for summary judgment and  
12 briefed it, Judge John sent me home and we took a  
13 deposition, and because of the interlocutory nature  
14 of a Rule 56 denial we filed another one and  
15 thought we had a good shot at that, we have been  
16 back and forth for roster meetings, we have been in  
17 settlement discussions, we conducted a mediation in  
18 Georgetown. In short, this matter has taken up a  
19 significant amount of my time and the time of my  
20 associate Chris Caldwell.

21           By way of my background, I have been  
22 practicing law since the summer of 1988, I am  
23 certified as a specialist in creditor/debtor rights  
24 and bankruptcy by the South Carolina Supreme Court  
25 and have been so certified since 1995. My standard

1 hourly rate of my current law firm Moore & Van  
2 Allen is \$340 an hour, we're charging the bank \$250  
3 an hour because the matter originated from my  
4 previous law firm.

5 We have, and I'm sorry, Your Honor, I do not  
6 have the, actually don't have copies of our, of the  
7 accounting that shows time and hours, et cetera,  
8 from my old firm but at my old firm which was  
9 called Haygood & Kerr P.A., from April of 2010  
10 until December of 2012 we had 94.4 hours of time in  
11 this file, which was \$16,834.50 and expenses of  
12 \$1,845, for a total of \$18,679.65.

13 At my current firm Moore & Van Allen where I  
14 was, where I was hired and went to work in January  
15 of 2012, we have, through 2012, I have two pages  
16 here, Your Honor, where I have our bills and we  
17 have been paid and I don't have the total, I will  
18 be happy to total that up before I leave and give  
19 it to you or email it to your clerk and then I have  
20 the current amount that has been worked which is an  
21 additional \$5,247. My calculation was we had about  
22 42 or 43 thousand dollars into it before last week  
23 when we knew we had to come up here and we had to  
24 get ready and get witnesses here and travel and  
25 expend more time. So, Your Honor, my affidavit

1 requests \$50,000 in attorney fees.

2 THE COURT: Do you all have any questions for  
3 Mr. Kerr?

4 MR. KERR: I would be happy to send counsel  
5 summaries. I'm sorry about --

6 MR. BRITTAIN: I don't --

7 MR. KERR: I'm sorry about a letter writing  
8 campaign.

9 MR. BRITTAIN: I don't do a lot of this, I'm  
10 shocked at that figure. I mean, I don't agree with  
11 it, I don't know where we go from here.

12 THE COURT: What I will do, I will have him  
13 submit his affidavit, you can submit any objections  
14 to it.

15 MR. BRITTAIN: All right, thank you.

16 MR. MacDONALD: If I could just real quick,  
17 Mr. Kerr, are you saying the 50,000 is the amount  
18 that the bank has paid you or that is what you're  
19 requesting?

20 MR. KERR: Because we have not rendered a  
21 final bill at this point, I don't know what  
22 additional issues we're going to have to deal with.

23 THE COURT: What I will request you do at  
24 this point in time, go ahead and figure up time for  
25 today and then submit me an affidavit that is

1 current.

2 MR. KERR: Amended affidavit, all right, sir,  
3 I will.

4 THE COURT: That way you all can look at it.

5 All right, if you will submit that within ten  
6 days. Did you want to brief something, Mr.  
7 MacDonald?

8 MR. MacDONALD: I just wanted to brief the  
9 issue related to whether or not the timing of the  
10 new notes, because it is post maturity, whether  
11 that affects the release or requires new  
12 guaranties.

13 THE COURT: I will give you ten days to brief  
14 that and then you can respond in ten days, so we  
15 won't have a ruling for at least 20 days.

16 Do you want to brief anything?

17 MR. MASEL: I would enjoy the opportunity to  
18 supplement.

19 THE COURT: All right, you all supplement  
20 within ten days, then I will give you my ruling.

21 MR. MacDONALD: It will be short, Your Honor.

22 MR. BRITTAIN: Thank you very much.

23 THE COURT: Thank you, gentlemen, thank you  
24 for a very civil trial, this is civil but you were  
25 very civil, you upheld your civility oath and you

1 were a good example for these young law students as  
2 they start their careers. Thank you very much.

3 MR. MASEL: Thank you, Your Honor.

4 (Hearing Concluded at 5:25 p.m.).

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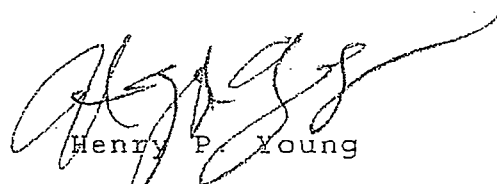
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Horry County, South Carolina, on the 20th day of May, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 8, 2013

  
Henry P. Young  
Court Reporter

Henry P. Young  
Court Reporter, Fifteenth Judicial Circuit  
704 Creekfront Road  
North Myrtle Beach, SC 29582

843 231-0697

September 20, 2013

Thomas C. Brittain  
Brittain Law Firm  
4614 Oleander Drive  
Myrtle Beach, SC 29577

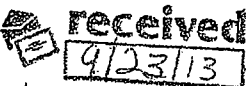
First National Bank vs. Frank Pennisi, et al  
-----

Transcript of hearing May 20, 2013, Common Pleas Court  
for Horry County.

135 pages @ 3.25 per page:

\$438.75

Henry P. Young  
SSN [REDACTED]

 received  
9/23/13  
Hand Delivered



Comptroller of the Currency  
Administrator of National Banks

Washington, DC-20219

### CERTIFICATE OF MERGER

I, John C. Dugan, Comptroller of the Currency, do hereby certify that the document hereto attached is a true and complete copy of the certificate recorded in this Office, evidencing the Merger of "Carolina National Bank and Trust Company," into "First National Bank of the South," effective as of February 18, 2008. The resulting bank title is "First National Bank of the South," Spartanburg, South Carolina, (Charter No. 23953).

IN TESTIMONY WHERE OF, I have

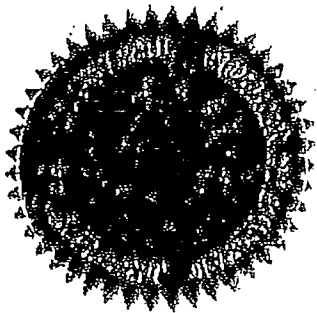
hereunto subscribed my name and caused

my seal of office to be affixed to these

presents at the Treasury Department, in the

City of Washington and District of

Columbia, this August 4, 2009



Comptroller of the Currency





Comptroller of the Currency  
Administrator of National Banks

Northeastern District Office  
340 Madison Avenue, 5<sup>th</sup> Floor  
New York, New York 10017

Licensing Division  
Telephone No.: 212.790.4055  
Fax No.: 301.333.7015

February 25, 2008

By facsimile: 864.594.5688  
and regular mail.

Ms. Laura Austill  
Assistant Vice President/Financial  
Reporting Manager  
First National Bank of the South  
215 N. Pine Street  
Spartanburg, South Carolina 29302

Re: Application to merge Carolina National Bank and Trust Company, Columbia, South  
Carolina, with and into First National Bank of the South, Spartanburg, South Carolina,  
under the title and with the charter number of the latter.  
Control No.: 2007 NE 02 032

Charter No.: 23953

Dear Ms. Austill:

This letter is the official certification of the Comptroller of the Currency ("OCC") for the merger  
of Carolina National Bank and Trust Company into First National Bank of the South, effective as  
of February 18, 2008. The resulting bank title is First National Bank of the South, and the  
charter number is 23953.

This is also the official authorization given to First National Bank of the South, the receiving  
institution, to operate the main office of the merging bank and its branches, as branches of the  
resulting bank. The former main office of Carolina National Bank and Trust Company, located  
at 1350 Main Street, Columbia, Richland County, South Carolina 29201, is authorized as Branch  
No. 141941A, and is known as the "Columbia Main Branch." Branches of a national bank target  
are not listed since they are automatically carried over to the resulting bank and retain their  
current OCC branch numbers. If any of the branches are closed, or sold to a non-national bank,  
a closing notice must be submitted pursuant to 12 U.S.C. 1831r-1, and a copy of this  
authorization must be provided to the OCC. Following the closing of the branch office, a final  
closing notice should be submitted to this office. A post-merger branch listing is attached.

Ms. Laura A. Attili  
Assistant Vice President/Financial  
Reporting Manager  
First National Bank of the South  
Columbia, SC 29101-5100

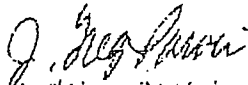
Please be advised that the OCC is also authorizing the resulting bank should the combination occur between Call Report dates, to recalculate its legal lending limit. The new lending limit should be calculated by using data from the last Call Report of the individual banks filed prior to consummating the merger, as adjusted for the combination. The resulting bank will then file a new Call Report and begin calculating its legal lending limit according to 12 C.F.R. §32.4(u) at the end of the quarter following consummation of the combination.

We understand that upon consummation, the permanent capital of First National Bank of the South will increase. Within 30 days following consummation, please provide this office with the exact dollar amount of the capital change so that we may issue our letter certifying the capital increase.

We acknowledge that the combination occurred as represented in your letter of February 6, 2008.

Please return the charter certificate for Carolina National Bank and Trust Company so that we may properly close the files on Charter No. 24332.

Sincerely,



J. Greg Parviri  
Director for District Licensing

Attachment

CAIS  
SARASOTA

FIRST NB OF THE SOUTH  
SPARKS/REHAT

OPEN DATES BRANCH CERT  
ADDRESS

05/24/2001 118412 EOLING SPRINGS BRANCH  
1050 WILLIAMS SPRINGS ROAD

05/01/2004 121554 SUMMER BRANCH  
1050 WASHINGTON STREET

05/26/2001 124004 MESSENGER SERVICE  
1150 HALL STREET

07/16/2006 141541A COLUMBIA MAIN BRANCH  
1150 HALL STREET

07/22/2001 122105A TREMOLIN BRANCH  
1810 FOREST DRIVE

10/10/2006 134774A GARNER'S STORE  
6011 GARNER'S FERRY ROAD

12/01/2005 133175A NORTHEAST BRANCH  
1011 TWO NOTCH ROAD

05/19/2001 134454A NOT GIVEN  
1401 PELHAM ROAD

10/10/2006 137824A PELHAM ROAD BRANCH  
1450 PELHAM ROAD, SUITE 101

08/31/2007 143265A GREER BRANCH  
713 MADE HENRYTON LANE

10/11/2005 144174A MT. PLEASANT OFFICE  
421 JOHNNIE DODDS BOULEVARD

01/17/2009 145118A WESTSIDE BRANCH  
2800 REYNOLDS ROAD

COMPTROLLER OF THE CURRENCY  
BRANCH ONLY REPORT FOR CURRENCY, CITIES, CITY, ZIP, AND STATE

SC 1184120000 001

02/26/2009  
PAGE: 1

| STATE | ZIP CODE  | CITY            | COUNTY |
|-------|-----------|-----------------|--------|
| SC    | 293140000 | ROLLING SPRINGS | 081    |
| SC    | 292010000 | COLUMBIA        | 079    |
| SC    | 292010000 | COLUMBIA        | 079    |
| SC    | 292010000 | COLUMBIA        | 079    |
| SC    | 292060000 | COLUMBIA        | 079    |
| SC    | 292090000 | COLUMBIA        | 079    |
| SC    | 292190000 | COLUMBIA        | 075    |
| SC    | 296150000 | GREENVILLE      | 015    |
| SC    | 296150000 | GREENVILLE      | 015    |
| SC    | 296500000 | GREER           | 015    |
| SC    | 294400000 | MT. PLEASANT    | 015    |
| SC    | 291010000 | SPARTANBURG     | 023    |



Comptroller of the Currency  
Administrator of National Banks

Southern District Licensing  
500 North Akard, Suite 1600  
Dallas, Texas 75201-3328

June 30, 2011

Kenneth Posner  
Chief of Investment Analytics & Research  
North American Financial Holdings, Inc.  
667 Madison Avenue, 10<sup>th</sup> Floor  
New York, NY 10065

Re: Affiliated Merger of Capital Bank, Raleigh, North Carolina with and into NAFH National Bank, Miami, Florida, (2011-SO-02-0011) with the Resulting Bank Title of Capital Bank, National Association

Dear Mr. Posner:

This letter is the official certification of the Comptroller of the Currency (OCC) to merge Capital Bank, Raleigh, North Carolina with and into NAFH National Bank, Miami, Florida, effective June 30, 2011. The resulting bank title is Capital Bank, National Association, and will be located in Miami, Florida, charter number 24976.

This letter is also the official authorization given to Capital Bank, National Association to operate the main office and the branches of Capital Bank as branches. A listing of each newly authorized branch and its assigned OCC branch number is attached.

Sincerely,

*Brenda E. McNeese*  
Brenda E. McNeese  
NBE/Senior Licensing Analyst

Enclosure

cc: Chris Primrose, EIC, Midsize Bank Supervision  
Christopher Marshall, Capital Bank, National Association  
Richard Kim, WLRK



NAFH National Bank  
Capital Bank Merger  
(Resulting Bank: Capital Bank, National Association)  
Branch Listing

| <u>Branch No.</u> | <u>Branch Location</u>                          |
|-------------------|-------------------------------------------------|
| 150007A           | 333 Fayetteville Street, Suite 102, Raleigh, NC |
| 150008A           | 445 S. Main Street, Burlington, NC              |
| 150009A           | 227 S. Main Street, Graham, NC                  |
| 150010A           | 503 Huffman Mill Road, Burlington, NC           |
| 150011A           | 200 Williamsboro Street, Oxford, NC             |
| 150012A           | 300 E. Raleigh Street, Siler City, NC           |
| 150013A           | 8816 Six Forks Road, Raleigh, NC                |
| 150014A           | 130 N. Steele Street, Sanford, NC               |
| 150015A           | 1201 Kildaire Farm Road, Cary, NC               |
| 150016A           | 3466 South Church Street, Burlington, NC        |
| 150017A           | 2127 Clark Avenue, Raleigh, NC                  |
| 150018A           | 4901 Glenwood Avenue, Raleigh, NC               |
| 150019A           | 12217 Capital Blvd., Wake Forest, NC            |
| 150020A           | 9632 Chapel Hill Road, Morrisville, NC          |
| 150021A           | 918 Merrimon Avenue, Asheville, NC              |
| 150022A           | 929 S. McPherson Church Road, Fayetteville, NC  |
| 150023A           | 225 Green Street, Fayetteville, NC              |
| 150024A           | 102 E. Washington Street, Mebane, NC            |
| 150025A           | 225 4 <sup>th</sup> Street, NW, Hickory, NC     |
| 150026A           | 1310 Hendersonville Road, Asheville, NC         |
| 150027A           | 37 Hillsboro Street, Pittsboro, NC              |
| 150029A           | 1260 N. Arendell Avenue, Zebulon, NC            |
| 150030A           | 462 New Leicester Hwy, Asheville, NC            |
| 150031A           | 2222 Jefferson Davis Hwy, Sanford, NC           |
| 150032A           | 12701 US Hwy 70 W, Clayton, NC                  |
| 150033A           | 4841 Ramsey Street, Fayetteville, NC            |
| 150034A           | 11 N. Market Street, Asheville, NC              |
| 150035A           | 5070 Kentworth Drive, Holly Springs, NC         |
| 150036A           | 7705 Carpenter Fire Station Road, Cary, NC      |
| 150037A           | 2917 S. Homer Blvd., Sanford, NC                |
| 150038A           | 3310 S. Peak Drive, Hope Mills, NC              |
| 150039A           | 6501 Falls of Neuse Road, Raleigh, NC           |



Doc # 2011055935, OR BK 15539 Page 2164, Number Pages: 4, Recorded 03/11/2011 at 09:45 AM, JIM FULLER CLERK CIRCUIT COURT DUVAL COUNTY RECORDING \$35.50

A TRUE COPY ATTACHED  
Horry County Register of Deeds  
J. Skipper, Register -- J. Skipper, Register

Prepared by: Renee Marie Araujo, Esq.  
FDIC East Coast Temporary Satellite Office  
7777 Baymeadows Way West  
Jacksonville, FL 32256



(Leave Blank Above this Line for Recording Information)  
(Space above this line must be at least 3 inches)

### LIMITED POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that the **FEDERAL DEPOSIT INSURANCE CORPORATION**, a corporation organized and existing under an Act of Congress, hereafter called the "FDIC", hereby designates the following individual(s) of **NAFH NATIONAL BANK**, organized under the laws of the state of Florida, as "Attorney(s)-in-Fact" for the sole purpose of executing the documents outlined below:

**ROBERT HINTELMANN**  
**RICK MANLEY**  
**RICHARD RABB**  
**KITTY PAYNE**  
**JOEL BARRIER**  
**TERRY SPURLOCK**  
**CHRISTOPHER MARSHALL**  
**EUGENE TAYLOR**  
**R. BRUCE SINGLETARY**

WHEREAS, the undersigned has full authority to execute this instrument on behalf of the FDIC under applicable Resolutions of the FDIC's Board of Directors and redelegations thereof.

NOW THEREFORE, the FDIC grants to the above-named Attorney(s)-in-Fact the authority, subject to the limitations herein, as follows:

1. To execute, acknowledge, seal and deliver on behalf of the FDIC as Receiver of **FIRST NATIONAL BANK OF THE SOUTH**, all instruments of transfer and conveyance, including but not limited to deeds, assignments, satisfactions, and lieu releases, appropriately completed, with all ordinary or necessary endorsements, acknowledgments, affidavits and supporting documents as may be necessary or appropriate to evidence the sale and transfer of any asset of **FIRST NATIONAL BANK OF THE SOUTH**, including all loans held by **FIRST NATIONAL BANK OF THE SOUTH** to **NAFH NATIONAL BANK** pursuant to that certain



OR BK 15539 PAGE 2165

A TRUE COPY, AFFIDAVIT  
Horry County Registrar of Deeds  
Ballery V. Skipper, Director

Purchase and Assumption Agreement, dated as of July 16, 2010 between FDIC as Receiver of  
**FIRST NATIONAL BANK OF THE SOUTH** and **NAFH NATIONAL BANK**.

2. Regarding indebtedness previously owned by the former **FIRST NATIONAL BANK OF THE SOUTH** that had been paid off or otherwise satisfied prior to bank failure, authority is granted to the Attorney(s)-in-Fact to execute, acknowledge, seal and deliver on behalf of the Receiver any and all lien releases that may be necessary for the completion of the documentation obligations of the former **FIRST NATIONAL BANK OF THE SOUTH**, in connection with such paid-off loans or other debt obligations. All lien releases and related documents prepared in connection with this Limited Power of Attorney shall be appropriately completed with all ordinary or necessary endorsements, acknowledgments, affidavits and supporting documents as may be necessary or appropriate to evidence the release of the collateral and satisfaction of the debt.

Attorneys-in-Fact shall undertake to complete all appropriate due diligence necessary to verify the full and final payment and satisfaction of all indebtedness secured by the collateral being released.

The form which the Attorney(s)-in-Fact shall use for endorsing promissory notes or preparing allonges to promissory notes is as follows:

Pay to the order of

Without Recourse

**FEDERAL DEPOSIT INSURANCE CORPORATION as**  
Receiver for **FIRST NATIONAL BANK OF THE SOUTH**,  
Spartanburg, South Carolina

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Attorney-in-Fact

All other documents of assignment, conveyance or transfer shall contain this sentence: "This assignment is made without recourse, representation or warranty, express or implied, by the FDIC in its corporate capacity or as Receiver."

3. FDIC further grants to each Attorney-in-Fact full power and authority to do and perform all acts necessary to carry into effect the powers granted by this Limited Power of Attorney as fully as FDIC might or could do with the same validity as if all and every such act had been herein particularly stated, expressed and especially provided for.

This Limited Power of Attorney shall be effective from July 16, 2010 and shall continue in full force and effect through July 16, 2012, unless otherwise terminated by an official of the FDIC authorized to do so by the Board of Directors ("Revocation"). At such time this Limited Power of Attorney will be automatically revoked. Any third party may rely upon this document as the named individual(s)' authority to continue to exercise the powers herein granted unless a Revocation has been recorded in the public records of the jurisdiction where this Limited Power of Attorney has been recorded, or unless a third party has received actual notice of a Revocation.

Limited Power of Attorney - [ASSUMING INSTITUTION]

Page 2 of 4



OR BK 15539 PAGE 2166

A TRUE COPY ATTEST  
HARRY COUNTY REGISTRAR OF DEEDS  
BATTERY V. SKIPPER, Horry County, SC

IN WITNESS WHEREOF, the FDIC, by its duly authorized officer empowered by appropriate resolution of its Board of Directors, has caused these presents to be subscribed in its name this 11<sup>th</sup> day of MARCH, 2011.

FEDERAL DEPOSIT INSURANCE CORPORATION

By: *Opheelia Jones*  
Name: OPHELIA JONES  
Title: Manager of Customer Service -  
East Coast Temporary Satellite Office  
7777 Baymeadows Way West  
Jacksonville, FL 32256

Signed in the presence of:

Witness: *Melissa Romanowski*  
Printed Name: Melissa Romanowski

Witness: *Samuel R. Stangle*  
Printed Name: Samuel R. Stangle

STATE OF FLORIDA     )  
                                  )  
COUNTY OF DUVAL    )

On this 11<sup>th</sup> day of March, 2011, before me, a Notary Public in and for the State of Florida appeared OPHELIA JONES, to me personally known, who, being by me first duly sworn did depose that he/she is Manager of Customer Service, East Coast Temporary Satellite Office of the Federal Deposit Insurance Corporation (the "Corporation"), in whose name the foregoing Limited Power of Attorney was executed and subscribed, and the said Limited Power of Attorney was executed and subscribed on behalf of the said Corporation by due authority of the Corporation's Board of Directors, and the said OPHELIA JONES, acknowledged the said Limited Power of Attorney to be the free act and deed of said Corporation.

[PLACE SEAL BELOW HERE]

NOTARY PUBLIC-STATE OF FLORIDA  
Atawon Davis Thomas  
Commission #DD937708  
Expires: NOV. 02, 2013  
BORDERED FRANK ATLANTIC & BORDING CO., INC

*Atawon Davis Thomas*  
Notary Public  
Printed Name of Notary: Atawon Davis Thomas  
Commission No.: DD937708  
My Commission expires: Nov 2, 2013



A TRUE COPY, ATTEST  
Horry County Registrar of Deeds  
Ballery V. Skipper, Director ... Ballery V. Skipper

OR BK 15539 PAGE 2167

STATE OF FLORIDA )  
COUNTY OF DUVAL )

On this 11<sup>th</sup> day of March, 2011, before me, a Notary Public in and for the State of Florida appeared Melissa Brown (witness #1) and Samuel S. Shingle (witness #2), to me personally known to be the persons whose names are subscribed as witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that they saw OFHELIA JONES, Manager of Customer Service, East Coast Temporary Satellite Office of the Federal Deposit Insurance Corporation, the person who executed the foregoing instrument, subscribe the same, and that they had signed the same as a witness at the request of the person who executed the same.

[PLACE SEAL BELOW HERE]

NOTARY PUBLIC STATE OF FLORIDA  
Alawon Davis Thomas  
Commission # DD937708  
Expires: NOV. 02, 2013  
BONDED THROUGH ATLANTIC BONDING CO., INC.

Alawon Davis Thomas  
Notary Public  
Printed Name of Notary: Alawon Davis Thomas  
Commission No.: DD937708  
My Commission expires: Nov. 2, 2013

STATE OF FLORIDA  
DUVAL COUNTY

I, THE UNDERSIGNED Clerk of the Circuit Court in Duval County, Florida, DO HEREBY CERTIFY the within and foregoing is a true and correct copy of the original as it appears on file and the in the office of the Clerk of the Circuit Court of Duval County, Jacksonville, Florida, this the 12<sup>th</sup> day of March, 2011.

WITNESS my hand and seal of Clerk of Circuit Court, Duval County, Jacksonville, Florida, this the 12<sup>th</sup> day of March, 2011.  
JM FULLER  
Clerk of Circuit and County Court  
Duval County, Florida  
Deputy Clerk

Limited Power of Attorney - [ASSUMING INSTITUTION]

Page 4 of 4

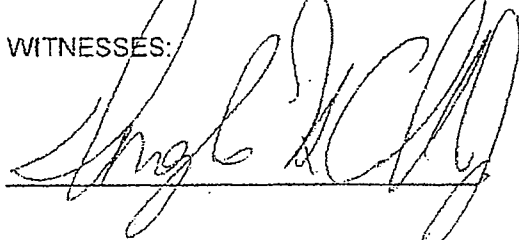
ASSIGNMENT PROMISSORY NOTE AND GUARANTY AGREEMENTS

NOW THEREFORE, FOR VALUABLE CONSIDERATION RECEIVED, Federal Deposit Insurance Corporation, as Receiver for First National Bank of the South does hereby grant, bargain, sell, assign, transfer and set over unto NAFH National Bank, 215 N. Pine Street, Spartanburg, South Carolina 29302-1665, Attn: Chief Financial Officer, without recourse, that promissory note given by Sand Dollar Cottage, LLC to Carolina National Bank and Trust Company dated November 8, 2006, as assigned to First National Bank of the South by merger, and as amended, modified and/or renewed by written instrument dated April 30, 2009, together with those certain guaranty agreements guarantying payment of such note dated November 8, 2006 and executed by James T. Callihan a/k/a James Callihan, Edward L. Williams, Frank J. Pennisi a/k/a Frank Pennisi, Dean J. Karavan a/k/a D.J. Karavan, Charles T. Walls, Jr. a/k/a Charles Walls, Robert S. Guyton, and Jeffrey H. Skelley, and together with all loan documents associated therewith and the money due and to become due thereon. This Assignment shall have an effective date of July 16, 2010.

This instrument is made without recourse, representation or warranty, express or implied, by the FDIC in its corporate capacity or as Receiver.

IN WITNESS WHEREOF, it has set my hand and seal this 28<sup>th</sup> day of June, 2011.

WITNESSES:

  
Carolin M. Bernotse

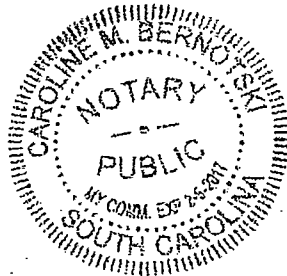
Federal Deposit Insurance Corporation,  
as Receiver for First National Bank  
of the South

BY:  (SEAL)  
Name: Robert Hintelmann  
Attorney in fact for the FDIC pursuant to  
Limited Power of Attorney

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of June, 2011 by Robert Hintelmann, Attorney-in-fact for Federal Deposit Insurance Corporation, as Receiver for First National Bank of the South, on behalf of said Corporation.



Caroline M. Bernotse  
Notary Public for South Carolina  
My Commission Expires: 2-5-17



|                                                                                                   |                                                                                            |                                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SAVO DOLLAR COTTAGE, LLC</b><br>4805-D OLEANDER DR<br>SUITE 203<br>MYRTLE BEACH, SC 29577-0000 | Carolina National Bank<br>and Trust Company<br>1350 Main Street<br>Columbia, SC 29201-0000 | TAX ID NO. 20-5841969<br>Loan Number <u>8400</u><br>Date <u>11/08/2006</u><br>Maturity Date <u>11/08/2007</u><br>Loan Amount \$ <u>400,000.00</u><br>Renewal Of _____ |
| <b>BORROWER'S NAME AND ADDRESS</b><br>"I" includes each borrower above, jointly and severally.    | <b>LENDER'S NAME AND ADDRESS</b><br>"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 Four Hundred Thousand and 00/100 Dollars \$ 400,000.00

☒ Single Advance: I will receive all of this principal sum on 11/08/2006. 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 amount of principal 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 up to the maximum only one time (and subject to all other conditions).  
 INTEREST: I agree to pay interest on the outstanding principal balance from 11/08/2006 at the rate of 8.500 % per year until the first rate change

☒ Variable Rate: This rate may then change as stated below.  
☒ Index Rate: The future rate will be 25% ABOVE the following index rate: Prime Rate as published in 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 daily  
 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 \_\_\_\_\_ % 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.

ACCURAL 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 \_\_\_\_\_

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5% of the payment amount, \$5.00 minimum, \$100.00 maximum

☒ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☒ are not, included in the principal amount above: \$2000.00 ORIGINATION FEE

PAYMENTS: I agree to pay this note as follows:  
☒ Interest: I agree to pay accrued interest: monthly beginning 12/08/2006

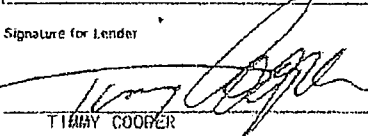
☒ Principal: I agree to pay the principal at maturity (11/08/2007)

☐ Installments: I agree to pay this note in \_\_\_\_\_ payments. The first payment will be in the amount of \$ \_\_\_\_\_ and will be due \_\_\_\_\_ A payment of \$ \_\_\_\_\_ will be due \_\_\_\_\_ thereafter. The final payment of the entire unpaid balance of principal and interest will be due \_\_\_\_\_

ADDITIONAL TERMS: \_\_\_\_\_

☒ SECURITY: This note is separately secured by (describe separate document by type and date):  
UNSECURED

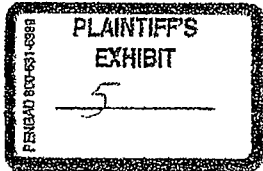
(This section is for your request use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender  
  
TIMMY COOPER  
COMMERCIAL LENDER

PURPOSE: The purpose of this loan is PURCHASE SINGLE RESIDENTIAL LOT

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

SAVO DOLLAR COTTAGE, LLC  
11/08/2006  
EDWARD L. WILLIAMS, MANAGING MEMBER



8400 *AD*

| DEBTOR NAME AND ADDRESS                                                    | SECURED PARTY NAME AND ADDRESS                                                             |
|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| SAND DOLLAR COTTAGE LLC<br>4605 B OLEANDER DRIVE<br>MYRTLE BEACH, SC 29577 | Carolina National Bank<br>and Trust Company<br>1350 Main Street<br>Columbia, SC 29201-0000 |

## CERTIFICATION OF NAME AND ADDRESS

The date of this Certification of Name and Address (Certification) is November 8, 2006

BACKGROUND. This Certification is executed in conjunction with a security agreement between Debtor and Secured Party, dated November 8, 2006, under which Debtor gives Secured Party a security interest in Debtor's property, as described in the security agreement. This Certification is executed for the purpose of providing, warranting, and verifying Debtor's name and address for the purpose of perfecting Secured Party's security interest under the Uniform Commercial Code.

DEBTOR NAME. Debtor hereby warrants to Secured Party that the following is Debtor's complete and correct legal name:  
SAND DOLLAR COTTAGE LLC

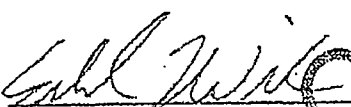
Debtor will provide Secured Party with verification of Debtor's exact legal name, if requested, at the same time this Certification is executed.

DEBTOR LOCATION. Debtor further warrants that the address or location appearing below is Debtor's (check one and provide address or location in space below)

- ☐ principal residence (individual)
  - ☒ state of registration/incorporation (if Debtor is a registered entity under state law)
  - ☐ chief executive offices (if Debtor is not registered and has more than one place of business)
  - ☐ sole place of business (if Debtor is not registered and has a single place of business)
- 4605 B OLEANDER DRIVE  
MYRTLE BEACH, SC 29577

TERM AND FUTURE PROVISIONS. This Certification will remain in effect until Secured Party terminates all security interests Secured Party has in Debtor's property. Debtor agrees to provide Secured Party with 30 days written notice in advance of making any changes to Debtor's name, location, or state of registration, as provided in this Certification.

DEBTOR SIGNATURE

  
EDWARD L. WILLIAMS, MANAGING MEMBER

11/08/2006



**REAL ESTATE OR RESIDENCE SECURITY:** If this note is secured by real estate or a residence that is personal property, the existence of a default.

**NOTICE:** Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

**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 loan.

[illegible]

|                                                                                                       |                                                                                    |                                                                                                                                                                                                                   |
|-------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SAND DOLLAR COTTAGE, LLC</b><br><br>4605-D OLEANDER DR<br>SUITE 203<br>MYRTLE BEACH, SC 29577-0000 | First National Bank<br>of the South<br>1350 Main Street<br>Columbia, SC 29201-0000 | TAX ID NO. <u>                    </u><br>Loan Number <u>4605-8400</u><br>Date <u>04/30/2008</u><br>Maturity Date <u>05/03/2011</u><br>Loan Amount \$ <u>300,000.00</u><br>Renewal Of <u>                    </u> |
| BORROWER'S NAME AND ADDRESS<br>"I" includes each borrower above jointly and severally.                |                                                                                    | LENDER'S NAME AND ADDRESS<br>"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 Three Hundred Thousand and 00/100 Dollars \$ 300,000.00

☒ **Single Advance:** I will receive all of this principal sum on 04/30/2008. 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 amount of principal 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 up to the maximum only one time (and subject to all other conditions).

**INTEREST:** I agree to pay interest on the outstanding principal balance from 04/30/2008 at the rate of 6.750 % per year until maturity

☐ **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.

☐                     

**ACCURAL 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                     

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5% of the payment amount, \$5.00 minimum, \$100.00 maximum

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: \$2000 renewal fee

**PAYMENTS:** I agree to pay this note as follows:

☐ **Interest:** I agree to pay accrued interest                     

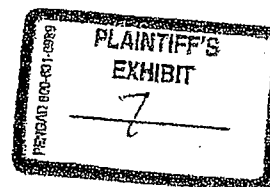
☐ **Principal:** I agree to pay the principal                     

☒ **Installments:** I agree to pay this note in 36 payments. The first payment will be in the amount of \$ 4,508.52 and will be due 06/03/2008. A payment of \$ 4,508.52 will be due the 3rd day of each month                      thereafter. The final payment of the entire

unpaid balance of principal and interest will be due May 3, 2011

**ADDITIONAL TERMS:**

ORIGINAL



☐ **SECURITY:** This note is separately secured by (describe separate document by type and date):                     

(This section is for your internal use. Failure to file a separate security document does not make the agreement with not secure this note.)

**PURPOSE:** The purpose of this loan is PURCHASE SINGLE RESIDENTIAL LOT

**SIGNATURES:** I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 21. I have received a copy on today's date.

SAND DOLLAR COTTAGE, LLC

Edward L Williams  
EDWARD L WILLIAMS, MANAGING MEMBER

04/30/2008

Signature for Lender

R M  
R SEABROOK MOORE

COMMERCIAL BANKING EXE

R.p. 216

# GUARANTY

Columbia

(City)

South Carolina

(State)

Date of Loan: November 8, 2005

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Carolina National Bank and Trust Company 1350 Main Street, Columbia, SC 29201-0000 (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 SAND DOLLAR COTTAGE 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 IX 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: Note Number 400073400 dated 11/08/2005 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this I 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.

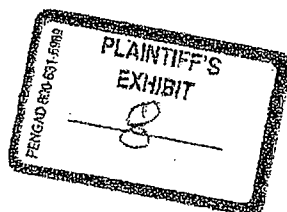
4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ UNLIMITED (if unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, 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 \_\_\_\_\_  
I secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.



JAMES CALLHAN

"Indebtedness" 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 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 thereof; (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 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. Until the obligations of the Borrower to Lender have been paid in full, 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.

# GUARANTY

Columbia

(City)

South Carolina

(State)

Date of Loan: November 8, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Carolina National Bank and Trust Company, 1350 Main Street, Columbia, SC 29201-0000 (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 SAND DOLLAR COTTAGE 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 IX 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: Note Number 100018400 dated 11/08/2006 and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this I 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.

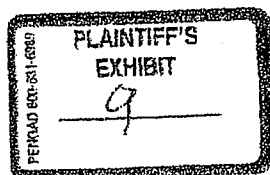
4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ UNLIMITED (If unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon, and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, and all attorneys' fees, collection costs and enforcement expenses payable 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.



J.J. KARAVAN

"Undersigned" shall refer to all persons who sign this guaranty, jointly 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 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 §1111(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. Until the obligations of the Borrower to Lender have been paid in full, 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.

# GUARANTY

Columbia

(City)

South Carolina

(State)

Date of Loan: November 8, 2005

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Columbia National Bank and Trust Company 1350 Main Street, Columbia, SC 29201-0000

(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

SANDY DOLLAR COTTAGE 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:

Note Number 100008400 dated 11/08/2005 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 other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, 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 \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.



JERRY H. SHELLEY

"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 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 thereof; (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 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. Until the obligations of the Borrower to Lender have been paid in full, 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.

# GUARANTY

Columbia

(City)

South Carolina

(State)

Date of Loan: November 8, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Carolina National Bank and Trust Company 1350 Main Street, Columbia, SC 29201-0000 (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 SAND DOLLAR COTTAGE 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 IX 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: Note Number 3400 dated 11/08/2006 and any extensions, renewals or replacements thereof (hereinafter referred to as the "indebtedness").

B. If this I 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 other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and securing the payment of the indebtedness, 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 IX unsecured; I secured by a mortgage or security agreement dated \_\_\_\_\_  
I secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.



ROBERT S GURTON

"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 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 51111(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. Until the obligations of the Borrower to Lender have been paid in full, 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.

# GUARANTY

Columbia (City) South Carolina (State)

Date of Loan: November 8, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Carolina National Bank and Trust Company 1350 Main Street, Columbia, SC 29201-0000 (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 SAND DOLLAR COTTAGE 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: Note Number 3400 dated 11/08/2006 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.

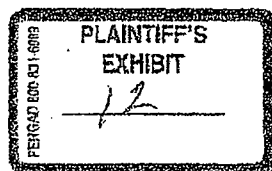
4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ UNLIMITED (if unlimited or if no amount is stated, the Undersigned shall be liable for all indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, 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.



Charles W. Wells  
CHARLES WELLS

"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 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(u)(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. Until the obligations of the Borrower to Lender have been paid in full, 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.

## GUARANTY

Columbia (City) South Carolina (State)

Date of Loan: November 8, 2005

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Central National Bank and Trust Company 1350 Main Street, Columbia, SC 29201-0000 (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 SAVO DELAR COTTAGE 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: Note Number 4400 dated 11/08/2005 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 Indebtedness, such revocation shall be effective only as to the one so revolving. 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.

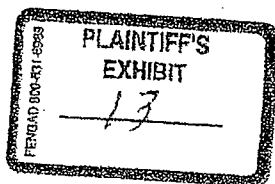
4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ UNLIMITED (if unlimited or if no amount is stated, the Undersigned shall be liable for all indebtedness, without any limitation as to amount), plus accrued interest thereon, and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and securing the payment of the indebtedness, and all attorneys' fees, collection costs and enforcement expenses reasonable 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.



Mark B. Burren  
Mark B. Burren

"Undersigned" shall refer to all persons who sign this guaranty, separately or jointly.

# ADDITIONAL PROVISIONS

6. Whether or not the 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 thereof; (vi) any failure to obtain collateral security (including rights of setoff) for indebtedness, or to sue 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 defenses 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 delinquency remaining after foreclosure of any mortgage or security interest securing indebtedness, whether or not the liability of Borrower or any other obligor for such delinquency 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. Until the obligations of the Borrower to Lender have been paid in full, 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 not in any way diminishing or impairing Lender's right to resort to payment or 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 thereof, 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 hereby certifies that the execution of this guaranty is a voluntary act.

Executed at Dallas, Texas, on this 11th day of November, 2008.

Page 2 of 2

# GUARANTY

Columbia

(City)

South Carolina

(State)

Date of Loan: November 8, 2006

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Carolina National Bank and Trust Company 1350 Main Street, Columbia, SC 29201-0000

(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

SAND DOLLAR COTTAGE 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: Note Number 3400 dated 11/08/2006 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 other costs, fees, and expenses agreed to be paid under all agreements evidencing the Indebtedness and securing the payment of the Indebtedness, 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

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.



COYARD WILLIAMS

"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 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 §1111(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. Until the obligations of the Borrower to Lender have been paid in full, 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.

CREDIT GENERAL LEDGER  
CAROLINA NATIONAL BANK  
COLUMBIA, SOUTH CAROLINA

PREPARED BY: [Signature]  
APPROVED BY: [Signature]

DATE: 5/8/08  
AMOUNT: 102419.44

DESCRIPTION  
Sand Dollar 400378400  
Principal + Interest @  
renewal  
OFFSET ENTRY

Account Number

Trans Code

✱

✱

90

\$

102419.44

⑆05390808⑆

90

CREDIT GENERAL LEDGER  
CAROLINA NATIONAL BANK  
COLUMBIA, SOUTH CAROLINA

PREPARED BY: [Signature]  
APPROVED BY: [Signature]

DATE: 5/8/08  
AMOUNT: 2000.00

DESCRIPTION  
Sand Dollar 400378400  
renewal fee  
OFFSET ENTRY

Account Number

Trans Code

✱

✱

90

\$

2000.00

⑆05390808⑆

90

SAND DOLLAR COTTAGE LLC  
1805 B OLEANDER DR SUITE 202  
MYRTLE BEACH, SC 29577  
1017  
07-807/532

Pay to the Order of: First National Bank of the South  
Date: May 7, 08  
\$ 104,419.44  
One hundred four thousand four hundred nineteen and 44/100 Dollars

CRESCENT BANK  
MYRTLE BEACH, SC 29577  
For: [Signature] # 84-00  
⑆067

PLAINTIFF'S  
EXHIBIT  
15

DEPOSITION  
EXHIBIT  
4- Guyton  
12-8-11

Capital Bank N.A.      About   Client Portal   Test Forum   Website   Help Desk   Home

PRINT FORM   PRINT SCREEN FORM   VIEW MESSAGES

### Loan Payoff Inquiry -

PREVIOUS <   SUBMIT >   EXIT

CUSTOMER INFORMATION

**SAND DOLLAR COTTAGE LLC**  
 4605-B GLENVIEW DR  
 STE 203  
 MYRTLE BEACH SC 29577

Loan number: [REDACTED] R488  
 Type: **Commercial and Industrial**  
 PerDiem: 45.71031  
 Ins PerDiem:

Effective date: **Wednesday, November 21 2012**

Headlines   Day Off

SPECIAL MESSAGES >

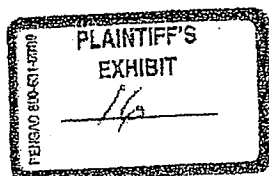
| Description         | Amounts    | Rebates | Payoffs           |
|---------------------|------------|---------|-------------------|
| Current Balance     | 243,830.99 |         | 243,830.99        |
| Secondary Interest  | 55,706.47  |         | 299,537.46        |
| Late Charges        | 400.00     |         | 299,937.46        |
| Other Charges/Fees  | 146.00     |         | 300,083.46        |
| <b>Total Payoff</b> |            |         | <b>300,083.46</b> |

**299,937.46**

PREVIOUS <   SUBMIT >   EXIT

Copyright 1992-2012 Jack Henry & Associates, Inc.

\* all fees & costs of collection  
 have been expensed. You  
 can add from your billings.  
 Please call if any questions



Capital Bank, N.A.  
121 Alhambra Plaza suite 1601  
Coral Gables FL 33134  
PH# (800) 639-5111

Page 1  
Date 11/21/12

SAND DOLLAR COTTAGE LLC  
4605-E OLEANDER DR  
STE 203  
MYRTLE BEACH SC 29577

#### GENERAL INFORMATION

|                |                                                      |                               |          |
|----------------|------------------------------------------------------|-------------------------------|----------|
| Account Number | 8400                                                 | CIF Number                    | SAB1264  |
| Home Phone     | -                                                    | Work Phone                    | -        |
| Loan Term      | 36 M                                                 | Loan Type Comm and Industrial |          |
| Interest Rate  | 6.750000%                                            | Origination Date              | 11/08/06 |
| Loan Officer   | Douglas Cobb                                         |                               |          |
| Collateral Cd  | 000 Unsecured                                        |                               |          |
| Call Report Cd | RC-C4A Commercial and Industrial Loans (U.S. Address |                               |          |
| Purpose Code   | 00 No Purpose Listed                                 |                               |          |

#### BALANCE & PAYMENT INFORMATION

|                  |            |                    |                   |
|------------------|------------|--------------------|-------------------|
| Original Amount  | 400,000.00 | Payment Due Date   | 10/03/09          |
| Current Balance  | 243,830.99 | Payment Amount     | 4,508.52          |
| Accrued Interest | 0.00       | Principal/Interest | 4,508.52          |
| Daily Per Diem   | 45.71      | Payment Type       | Interest Included |

#### LOAN HISTORY

11/08/06 to 11/21/12

| Posting Date | Description of Transactions  | Transaction Amount | Principal Balance |
|--------------|------------------------------|--------------------|-------------------|
| 11/13/06     | Generated Principal Advance  | 400,000.00         | 400,000.00        |
| 12/01/06     | Regular Payment with Compute | 2,738.89           | 400,000.00        |
| 12/01/06     | Interest Payment Split Out   | 2,738.89           | 400,000.00        |
| 1/08/07      | Regular Payment with Compute | 2,927.78           | 400,000.00        |
| 1/08/07      | Interest Payment Split Out   | 2,927.78           | 400,000.00        |
| 2/08/07      | Regular Payment with Compute | 2,927.78           | 400,000.00        |
| 2/08/07      | Interest Payment Split Out   | 2,927.78           | 400,000.00        |
| 3/06/07      | Regular Payment with Compute | 2,644.44           | 400,000.00        |
| 3/06/07      | Interest Payment Split Out   | 2,644.44           | 400,000.00        |
| 4/18/07      | Late Charge Assessed         | 100.00             | 400,000.00        |
| 4/25/07      | Regular Payment with Compute | 2,927.79           | 400,000.00        |
| 4/25/07      | Interest Payment Split Out   | 2,927.79           | 400,000.00        |
| 5/03/07      | Late Charge Split Out        | 100.00             | 400,000.00        |
| 5/03/07      | Regular Payment with Compute | 2,833.33           | 400,000.00        |

Capital Bank, N.A.  
 121 Alhambra Plaza suite 1601  
 Coral Gables FL 33134  
 PH# (800) 639-5111

Page  
 Date  
 Account No.

2  
 11/21/12  
 8400

SAND DOLLAR COTTAGE LLC  
 4605-B OLEANDER DR  
 STE 203  
 MYRTLE BEACH SC 29577

|          |                              |            |            |
|----------|------------------------------|------------|------------|
| 5/03/07  | Interest Payment Split Out   | 2,833.33   | 400,000.00 |
| 6/07/07  | Regular Payment with Compute | 2,927.78   | 400,000.00 |
| 6/07/07  | Interest Payment Split Out   | 2,927.78   | 400,000.00 |
| 7/06/07  | Regular Payment with Compute | 2,833.34   | 400,000.00 |
| 7/06/07  | Interest Payment Split Out   | 2,833.34   | 400,000.00 |
| 8/06/07  | Regular Payment with Compute | 2,927.78   | 400,000.00 |
| 8/06/07  | Interest Payment Split Out   | 2,927.78   | 400,000.00 |
| 8/31/07  | Regular Payment with Compute | 2,927.78   | 400,000.00 |
| 8/31/07  | Interest Payment Split Out   | 2,927.78   | 400,000.00 |
| 9/19/07  | Interest Rate Change         | 8.000000%  | 400,000.00 |
| 9/19/07  | Interest Payment Split Out   | 5.56       | 400,000.00 |
| 10/18/07 | Late Charge Assessed         | 100.00     | 400,000.00 |
| 10/23/07 | Regular Payment with Compute | 2,722.21   | 400,000.00 |
| 10/23/07 | Interest Payment Split Out   | 2,722.21   | 400,000.00 |
| 11/01/07 | Interest Rate Change         | 7.750000%  | 400,000.00 |
| 11/01/07 | Interest Payment Split Out   | 2.78       | 400,000.00 |
| 11/14/07 | Regular Payment with Compute | 2,855.56   | 400,000.00 |
| 11/14/07 | Principal Payment Split Out  | 100.00     | 399,900.00 |
| 11/14/07 | Interest Payment Split Out   | 2,755.56   | 399,900.00 |
| 12/12/07 | Interest Rate Change         | 7.500000%  | 399,900.00 |
| 12/28/07 | Interest Rate Change         | 7.500000%  | 399,900.00 |
| 12/28/07 | Late Charge Split Out        | 100.00     | 399,900.00 |
| 12/28/07 | Interest Payment Split Out   | 3,754.76   | 399,900.00 |
| 12/31/07 | Generated Principal Advance  | 100.00     | 400,000.00 |
| 1/25/08  | Interest Rate Change         | 6.750000%  | 400,000.00 |
| 1/25/08  | Interest Payment Split Out   | 25.00      | 400,000.00 |
| 1/31/08  | Late Charge Assessed         | 100.00     | 400,000.00 |
| 2/05/08  | Interest Rate Change         | 6.250000%  | 400,000.00 |
| 2/05/08  | Interest Payment Split Out   | 33.34      | 400,000.00 |
| 2/15/08  | Regular Payment with Compute | 2,483.34   | 400,000.00 |
| 2/15/08  | Interest Payment Split Out   | 2,483.34   | 400,000.00 |
| 2/29/08  | Late Charge Assessed         | 100.00     | 400,000.00 |
| 3/19/08  | Interest Rate Change         | 5.500000%  | 400,000.00 |
| 3/19/08  | Interest Payment Split Out   | 8.33       | 400,000.00 |
| 3/31/08  | Interest Payment Split Out   | 4,225.00   | 400,000.00 |
| 5/08/08  | Interest Rate Change         | 6.750000%  | 400,000.00 |
| 5/08/08  | Interest Payment Split Out   | 2,419.44   | 400,000.00 |
| 5/08/08  | Interest Payment Split Out   | 38.89      | 400,000.00 |
| 5/08/08  | Principal Curtailment        | 100,000.00 | 300,000.00 |
| 6/13/08  | Late Charge Assessed         | 100.00     | 300,000.00 |
| 6/30/08  | Late Charge Split Out        | 300.00     | 300,000.00 |
| 6/30/08  | Regular Payment with Compute | 4,508.52   | 300,000.00 |
| 6/30/08  | Principal Payment Split Out  | 2,596.02   | 297,403.98 |
| 6/30/08  | Interest Payment Split Out   | 1,912.50   | 297,403.98 |
| 7/14/08  | Late Charge Assessed         | 100.00     | 297,403.98 |
| 8/01/08  | Regular Payment with Compute | 4,508.52   | 297,403.98 |
| 8/01/08  | Principal Payment Split Out  | 2,821.02   | 294,582.96 |

Capital Bank, N.A.  
 121 Alhambra Plaza suite 1601  
 Coral Gables FL 33134  
 PH# (800) 639-5111

Page 3  
 Date 11/21/12  
 Account No. [REDACTED] 8400

SAND DOLLAR COTTAGE LLC  
 4605-B OLEANDER DR  
 STE 203  
 MYRTLE BEACH SC 29577

|          |                              |          |            |
|----------|------------------------------|----------|------------|
| 8/01/08  | Interest Payment Split Out   | 1,687.50 | 294,582.96 |
| 8/13/08  | Late Charge Assessed         | 100.00   | 294,582.96 |
| 9/11/08  | Late Charge Split Out        | 200.00   | 294,582.96 |
| 9/11/08  | Regular Payment with Compute | 4,508.52 | 294,582.96 |
| 9/11/08  | Principal Payment Split Out  | 2,781.32 | 291,801.64 |
| 9/11/08  | Interest Payment Split Out   | 1,727.20 | 291,801.64 |
| 9/15/08  | Late Charge Assessed         | 100.00   | 291,801.64 |
| 9/26/08  | Late Charge Split Out        | 100.00   | 291,801.64 |
| 9/26/08  | Regular Payment with Compute | 4,508.52 | 291,801.64 |
| 9/26/08  | Principal Payment Split Out  | 2,797.32 | 289,004.32 |
| 9/26/08  | Interest Payment Split Out   | 1,711.20 | 289,004.32 |
| 10/14/08 | Late Charge Assessed         | 100.00   | 289,004.32 |
| 11/13/08 | Late Charge Assessed         | 100.00   | 289,004.32 |
| 11/14/08 | Late Charge Split Out        | 100.00   | 289,004.32 |
| 11/14/08 | Regular Payment with Compute | 9,017.04 | 289,004.32 |
| 11/14/08 | Principal Payment Split Out  | 5,695.21 | 283,309.01 |
| 11/14/08 | Interest Payment Split Out   | 3,321.73 | 283,309.01 |
| 12/12/08 | Late Charge Split Out        | 100.00   | 283,309.01 |
| 12/12/08 | Regular Payment with Compute | 4,508.52 | 283,309.01 |
| 12/12/08 | Principal Payment Split Out  | 2,903.16 | 280,405.85 |
| 12/12/08 | Interest Payment Split Out   | 1,605.36 | 280,405.85 |
| 1/12/09  | Regular Payment with Compute | 4,508.52 | 280,405.85 |
| 1/12/09  | Principal Payment Split Out  | 2,873.77 | 277,532.08 |
| 1/12/09  | Interest Payment Split Out   | 1,634.75 | 277,532.08 |
| 2/04/09  | Regular Payment with Compute | 4,508.52 | 277,532.08 |
| 2/04/09  | Principal Payment Split Out  | 2,890.51 | 274,641.57 |
| 2/04/09  | Interest Payment Split Out   | 1,618.01 | 274,641.57 |
| 3/13/09  | Late Charge Assessed         | 100.00   | 274,641.57 |
| 3/23/09  | Regular Payment with Compute | 4,508.52 | 274,641.57 |
| 3/23/09  | Principal Payment Split Out  | 3,066.11 | 271,575.46 |
| 3/23/09  | Interest Payment Split Out   | 1,442.41 | 271,575.46 |
| 4/10/09  | Late Charge Split Out        | 100.00   | 271,575.46 |
| 4/10/09  | Regular Payment with Compute | 4,508.52 | 271,575.46 |
| 4/10/09  | Principal Payment Split Out  | 2,912.16 | 268,663.30 |
| 4/10/09  | Interest Payment Split Out   | 1,596.36 | 268,663.30 |
| 5/13/09  | Late Charge Assessed         | 100.00   | 268,663.30 |
| 5/21/09  | Regular Payment with Compute | 4,508.52 | 268,663.30 |
| 5/21/09  | Principal Payment Split Out  | 2,999.79 | 265,663.51 |
| 5/21/09  | Interest Payment Split Out   | 1,508.73 | 265,663.51 |
| 6/15/09  | Late Charge Assessed         | 100.00   | 265,663.51 |
| 7/07/09  | Late Charge Split Out        | 100.00   | 265,663.51 |
| 7/07/09  | Regular Payment with Compute | 4,508.52 | 265,663.51 |
| 7/07/09  | Principal Payment Split Out  | 2,946.91 | 262,716.60 |
| 7/07/09  | Interest Payment Split Out   | 1,561.61 | 262,716.60 |
| 7/13/09  | Late Charge Assessed         | 100.00   | 262,716.60 |
| 7/27/09  | Late Charge Split Out        | 97.00    | 262,716.60 |
| 7/27/09  | Regular Payment with Compute | 4,508.52 | 262,716.60 |

Capital Bank, N.A.  
 121 Alhambra Plaza suite 1601  
 Coral Gables FL 33134  
 PH# (800) 639-5111

Page 4  
 Date 11/21/12  
 Account No. 8400

SAND DOLLAR COTTAGE LLC  
 4605-B OLEANDER DR  
 STE 203  
 MYRTLE BEACH SC 29577

|          |                              |           |            |
|----------|------------------------------|-----------|------------|
| 7/27/09  | Principal Payment Split Out  | 3,021.48  | 259,695.12 |
| 7/27/09  | Interest Payment Split Out   | 1,487.04  | 259,695.12 |
| 8/10/09  | Regular Payment with Compute | 4,508.52  | 259,695.12 |
| 8/10/09  | Principal Payment Split Out  | 2,979.27  | 256,715.85 |
| 8/10/09  | Interest Payment Split Out   | 1,529.25  | 256,715.85 |
| 9/14/09  | Late Charge Assessed         | 100.00    | 256,715.85 |
| 10/13/09 | Late Charge Assessed         | 100.00    | 256,715.85 |
| 10/26/09 | Late Charge Split Out        | 103.00    | 256,715.85 |
| 10/26/09 | Regular Payment with Compute | 4,508.52  | 256,715.85 |
| 10/26/09 | Principal Payment Split Out  | 3,016.41  | 253,699.44 |
| 10/26/09 | Interest Payment Split Out   | 1,492.11  | 253,699.44 |
| 11/13/09 | Late Charge Assessed         | 100.00    | 253,699.44 |
| 12/14/09 | Late Charge Assessed         | 100.00    | 253,699.44 |
| 3/10/10  | Generated Principal Advance  | 465.90    | 254,165.34 |
| 3/31/10  | Generated Principal Advance  | 64.00     | 254,229.34 |
| 5/04/10  | Generated Principal Advance  | 64.00     | 254,293.34 |
| 6/11/12  | Principal Payment            | 10,462.35 | 243,830.99 |
|          | 6/08/12 Effective Date       |           |            |

YTD/PYTD/LTD AMOUNTS & COUNTERS

|                           | Year-to-Date | Previous YTD | Life-to-Date |
|---------------------------|--------------|--------------|--------------|
| Interest Paid             | 0.00         | 0.00         | 13,870.27    |
| Principal Paid            | 10,462.35    |              |              |
| Late Charges Paid         | 0.00         | 0.00         |              |
| Prepayment Penalties      | 0.00         | 0.00         | 0.00         |
| Origination Fees          | 0.00         | 0.00         | 0.00         |
| Extension Fees            | 0.00         |              | 0.00         |
| IRS Interest Reported     |              | 0.00         | 0.00         |
| Times Past Due 10-29      | 0            | 0            | 8            |
| Times Past Due 30-59      | 0            | 0            | 7            |
| Times Past Due 60-89      | 0            | 0            | 0            |
| Times Past Due 90-119     | 0            | 0            | 1            |
| Times Past Due 120-149    | 0            | 0            | 0            |
| Times Past Due 150-179    | 0            | 0            | 0            |
| Times Past Due 180+       | 0            | 0            | 0            |
| Number of Payments Extend | 0            | 0            | 0            |
| Number of Times Renewed   | 0            | 0            | 2            |
| Number of Months Extended |              |              | 0            |
| Number of Extensions      |              |              | 0            |
| Number of Right to Cures  | 0            |              | 0            |

Capital Bank, N.A.  
121 Alhambra Plaza suite 1601  
Coral Gables FL 33134  
PH# (800) 639-5111

Page 5  
Date 11/21/12  
Account No. [REDACTED] 3400

SAND DOLLAR COTTAGE LLC  
4605-B OLEANDER DR  
STE 203  
MYRTLE BEACH SC 29577

---

Number of Bad Checks Received

0

---

Thank you for banking with us.

Carolyn Pennisi

From: "Robert Guyton" <rsGuyton@rsGuytonlaw.com>  
To: "Frank Pennisi" <fpennisi@sc.rr.com>; "shep guyton" <rsGuyton@sccoast.net>  
Cc: <cwalls@sc.rr.com>; "Carolyn Pennisi" <cpennisi@sc.rr.com>; "Sharon Schildt" <SSchildt@rsGuytonlaw.com>  
Sent: Monday, April 20, 2009 9:48 AM  
Subject: RE: Sand Dollar Cottage LLC

Frank, when you provided the funds for principal reduction, there were two components. You paid one amount as your proportionate share, and then you loaned an additional amount to the company. In exchange, all of the other members agree pay you interest on the second amount, and to assume responsibility for the payments to the bank. However, the bank did not release any of the guarantors on the loan, since the loan is really unsecured. From that perspective, and in looking at the banker's comments, he would still have to maintain a current file on you as a guarantor, which would include tax returns etc., & though internally the other members are responsible for making the payments, which all agreed individually to indemnify you. I am not sure why they would be routing the requests for information on James and Jeff through you, but they would need to maintain a current file on all guarantors, since no one has been released. Let me know if that doesn't clear up your questions. I am also copying Sharon Schildt so she can follow up with James and Jeff on their information. Thanks, Shep

From: Frank Pennisi [mailto:fpennisi@sc.rr.com]  
Sent: Mon 4/20/2009 9:45 AM  
To: shep guyton  
Cc: cwalls@sc.rr.com; Carolyn Pennisi  
Subject: Fw: Sand Dollar Cottage LLC

Shep

Carolyn and I are a little bit confused regarding this bank contacting us. As you can see they are asking for tax returns for us as well as Callahan and Skelly. We thought our agreement was, by Carolyn and I paying our share up front, our part of the investment was satisfied. But this looks like we are being included in the outstanding debt. Please advise us, at this point I do not believe it is wise for us to continue discussing this with the bank until we hear from you. (please read Steve Waddell remarks below.

thank you

frank

----- Original Message -----

From: Steve Waddell  
To: fpennisi@sc.rr.com  
Cc: Bryan Tapp  
Sent: Friday, April 17, 2009 4:05 PM  
Subject: FW: Sand Dollar Cottage LLC

Mr. Pennisi:

My name is Steve Waddell and I am the Market President for the bank. In regards to the below:

We hold certain documents which include a borrowing resolution and written consent, as well as a guarantee agreement.

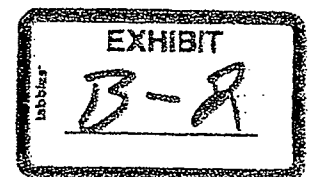
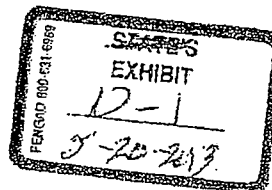
Do you dispute that these are accurate documents?

Please advise accordingly.

Thanks,

Steve Waddell  
(803) 744-2373

From: Bryan Tapp



‘५’

Carolyn Pennisi

---

From: "Steve Waddell" <swaddell@fnbwecandothat.com>  
To: <cpennisi@sc.rr.com>  
Cc: "Andrea T. Pelzer" <apelzer@fnbwecandothat.com>  
Sent: Tuesday, May 05, 2009 4:43 PM  
Attach: FirstNationalFinancialStatement.pdf  
Subject: Financials

Thanks so much for your call today. I am glad to hear that y'all are safe and sound.

As discussed, I will need 2007 Federal Tax Returns, and 2008 if available, along with a personal financial statement. I have attached a form for your use.

When returning, if you could email both Andrea and I, as I will be traveling a little this week.

---

If you could possibly return these by Friday, it would be greatly appreciated.

Thanks,

Steve  
Steven G. Waddell  
Senior Vice President  
Midlands Market Executive  
First National Bank of the South

"We Can Do That"

ph (803) 744-2373  
fx (803) 779-0722  
swaddell@ebankfirstnational.com

12/2/2

RECEIVED

FEB 05 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE SOUTH CAROLINA COURT OF APPEALS

---

APPEAL FROM HORRY COUNTY

First National Bank of the South, Successor in interest to Carolina National Bank and Trust  
Company,  
Respondent

vs.

James T. Callihan a/k/a James Callihan; Edward L. Williams; Frank J. Pennisi a/k/a Frank  
Pennisi; Dean J. Karavan a/k/a D.J. Karavan; Charles T. Walls, Jr. a/k/a Charles Walls; Robert S.  
Guyton; and Jeffrey H. Skelley,  
Defendants,

Of Whom Frank J. Pennisi and Charles T. Walls are the Appellants.

Appellate Case No.: 2013-001483

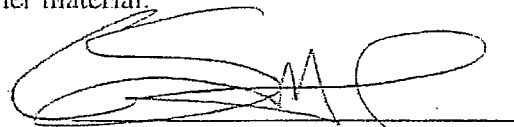
The Honorable W. Jeffrey Young  
Horry County  
Trial Court Case No.: 2010CP2603170

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CERTIFICATE OF COUNSEL

---

The undersigned hereby certifies that the Record on Appeal contains all material  
proposed to be included by any parties, and not any other material.



C. Scott Masel SC Bar # 12497  
Newby Sartip Masel & Casper, LLC  
P.O. Box 808  
Myrtle Beach, SC 29577  
*Attorney for Appellants*

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

APPELLANT CASE NO.: 2013-001483

RECEIVED

FEB 05 2016

SC Court of Appeals

First National Bank of the South, Successor in interest to Carolina National Bank and Trust  
Company,  
Respondent

vs.

James T. Callihan a/k/a James Callihan; Edward L. Williams; Frank J. Pennisi a/k/a Frank  
Pennisi; Dean J. Karavan a/k/a D.J. Karavan; Charles T. Walls, Jr. a/k/a Charles Walls; Robert S.  
Guyton,, and Jeffrey H. Skelley,  
Defendants,

Of Whom Frank J. Pennisi and Charles T. Walls are the Petitioners.

---

CERTIFICATE OF SERVICE

---

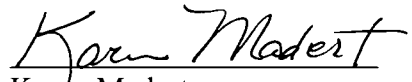
I certify that I am an employee of the law firm of Newby Sartip Masel & Casper,  
LLC, and that I have served a copy of the Redacted Record on Appeal, upon counsel for the  
Respondent named below by depositing a copy of the same in the United States Mail, postage  
prepaid, on February 4, 2016, addressed as follows:

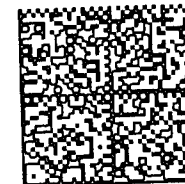
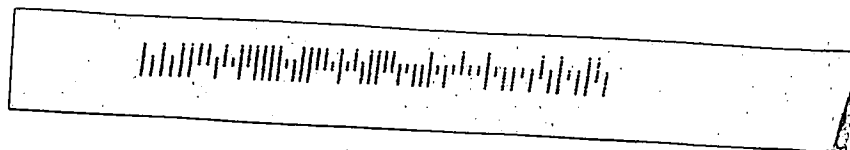
Robert A. Kerr  
Moore & VanAllen  
78 Wentworth Street  
Charleston, SC 29401

RECEIVED

FEB 16 2016

S.C. SUPREME COURT

  
Karen Madert



US POSTAGE  
\$05.00<sup>9</sup>

Mailed From 29577  
02/04/2016  
032A 0061816307

NEWBY, SARTIP, MASEL & CASPER, LLC  
ATTORNEYS AT LAW  
4593 OLEANDER DRIVE, SUITE 100  
POST OFFICE BOX 808  
MYRTLE BEACH, SOUTH CAROLINA 29578-0808

**RECEIVED**

FEB 16 2016

**S.C. SUPREME COURT**

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FEB 05 2016

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201