

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC SUPREME COURT

DeAndrea Benjamin, Circuit Court Judge
and
L. Casey Manning, Circuit Court Judge

Opinion No. 5373 (S.C. Ct. App. Filed December 30, 2015)

Robert S. Jones.....Petitioner

v.

Builders Investment Group, LLC,
Brian D. Boone and Arden Homebuilders, LLC.....Defendants

Of Whom

Builders Investment Group, LLC
and Brian D. Boone

are.....Respondents

**APPENDIX
VOLUME II**

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**ATTORNEYS FOR RESPONDENTS
BUILDERS INVESTMENT GROUP,
LLC AND BRIAN D. BOONE**

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RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

George E. Brown, Circuit Court Judge

Civil Action No. 2011-CP-40-01980
Appellate Case No. 2013-002673

Robert S. Jones.....Plaintiff/Appellant,
v.
Builders Investment Group, LLC,
Brian D. Boone and Arden Homebuilders, LLC.....Defendants,

Of Whom
Builders Investment Group, LLC
and Brian D. Boone are.....Respondents.

RECORD ON APPEAL – VOLUME II

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RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

George E. Brown, Circuit Court Judge

Civil Action No. 2011-CP-40-01980
Appellate Case No. 2013-002673

Robert S. Jones.....Plaintiff/Appellant,
v.
Builders Investment Group, LLC,
Brian D. Boone and Arden Homebuilders, LLC.....Defendants,

Of Whom
Builders Investment Group, LLC
and Brian D. Boone are.....Respondents.

RECORD ON APPEAL – VOLUME II

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GUARANTY

Columbia, South Carolina
(City) (State)

September 25, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Southern First Bank, N.A.

(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 ARDEN HOMEBUILDERS, LLC POST OFFICE BOX 90679 Columbia, SC 29209

(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: LOAN NUMBER 400938500 DATED SEPTEMBER 25, 2007 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): LOAN NUMBER 400938500 DATED SEPTEMBER 25, 2007

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 \$ 498,000.00

(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.

FORREST A JONES

256-92-5779

Undersigned shall refer to all persons who sign this guaranty, severally and jointly.

SFB 0068

APPENDIX 506

501

GUARANTY

Columbia, South Carolina
(City) (State)

September 25, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce, Southern First Bank, N.A.

(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 ARDEN HOMEBUILDERS, LLC POST OFFICE BOX 90679 Columbia, SC 29209

(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: LOAN NUMBER 400938500 DATED SEPTEMBER 25, 2007 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.

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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.

ROBERT A. KREIBER

256-92-5779

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.

SFB 0052

CANCELLED

OCT 20 2008

GUARANTY

ENTERED
PB

BY

SL

Columbia
(City)

South Carolina
(State)

September 25, 2007

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Southern First Bank, N.A.

(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 ARDEN HOMEBUILDERS, LLC POST
OFFICE BOX 90679 Columbia, SC 29209

(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:

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400938500 DATED SEPTEMBER 25, 2007 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):

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4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ 498,000.00

(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.

Carl Edward Buck III
CARL EDWARD BUCK III

248-06-1286

Undersigned shall refer to all persons who sign this guaranty, severally and jointly.

SFB 0064

APPENDIX 508

503

ARDEN HOMESBUILERS, LLC
P.O. BOX 90679
COLUMBIA, SC 29209

Southern First Bank, N.A.
P.O. Box 7908
717 Lady Street, Suite D,
Columbia, SC 29202

29-3116244

Loan Number 400938500
Date 09/24/2009
Maturity Date 09/24/2009
Loan Amount \$498,000.00
Renewal Of _____

BORROWER'S NAME AND ADDRESS
*I include both borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
You means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Four Hundred Ninety-Eight Thousand Dollars Dollars \$ 498,000.00

☒ Single Advance: I will receive all of this principal sum on 09/24/2009. 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 09/24/2009 of the rate of 5.000% per year until the rate changes

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be equal to the following index rate: Southern First Bank Prime

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as every day beginning 09/25/2009

A change in the interest rate will take effect the day the rate changes

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than 5.000% %.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a Actual/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 30 days after it is due, I agree to pay a late charge of 5.000% of the payment amount with a minimum of \$15.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

☒ Interest: I agree to pay accrued interest with the principal.

☒ Principal: I agree to pay the principal on 09/24/2009.

☐ 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: This is a variable rate loan and the payment amounts may change.

☒ SECURITY: This note is separately secured by (describe separately document by type and date):
UNSECURED

(This section is for your internal use. Failure to file a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

F. Clinton Strickland
President

PURPOSE: The purpose of this loan is CONSOLIDATION OF OUTSTANDING BUSINESS LOANS

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on ARDEN's date, _____

ROBERT A. KRYSLER

MEMBER

ROBERT B. CONER

MEMBER

SFB 0054

THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Signed, Sealed and Delivered as of the _____ day of _____, 2007.

WITNESS:

INDIVIDUAL, GUARANTOR(S):

(SEAL)

Printed Name: BRIAN BOONE

Address: _____

Fax No. _____

ADDRESS OF LENDER:

BANK OF AMERICA, N.A.
13510 Ballantyne Corporate Place
NC27-109-02-02
Charlotte, NC 28202-0120
Attention: Loan Administration-Homebuilder Division
Fax No. _____

NC Construction Guaranty

(c) **Reservations of Rights.** Nothing in this Guaranty shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation and any waivers contained in this Guaranty, or (ii) apply to or limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief, writ of possession, prejudgment attachment, or the appointment of a receiver, or (D) to pursue rights against a party to this Guaranty in a third-party proceeding in any action brought against Lender in a state, federal or international court, tribunal or hearing body (including actions in specialty courts, such as bankruptcy and patent courts). Lender may exercise the rights set forth in clauses (A) through (D), inclusive, before, during or after the pendency of any arbitration proceeding brought pursuant to this Guaranty. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the Dispute occasioning resort to such remedies. No provision in the Loan Documents regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any Dispute.

(d) **Conflicting Provisions for Dispute Resolution.** If there is any conflict between the terms, conditions and provisions of this Section and those of any other provision or agreement for arbitration or dispute resolution, the terms, conditions and provisions of this Section shall prevail as to any Dispute arising out of or relating to (i) this Guaranty, (ii) any other Loan Document, (iii) any related agreements or instruments, or (iv) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In any other situation, if the resolution of a given Dispute is specifically governed by another provision or agreement for arbitration or dispute resolution, the other provision or agreement shall prevail with respect to said Dispute.

15. **Attorney's Fees and Costs of Collection.** The Guarantor shall pay on demand all attorneys' fees and all other costs and expenses incurred by the Lender in the enforcement of or preservation of the Lender's rights under this Guaranty. The Guarantor's obligations and liabilities under this Section shall survive any payment or discharge in full of the Obligations.

16. **Cumulative Rights.** The exercise by the Lender of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. The Lender shall have all rights, remedies and recourses afforded to the Lender by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same (a) shall be cumulative, and concurrent, (b) may be pursued separately, successively or concurrently against Guarantor or others obligated for the Obligations, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole discretion of Lender, (c) may be exercised as often as occasion thereafter shall arise, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of the Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. No provision of this Guaranty or any right, remedy or recourse of the Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or the Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to the Guarantor, by the Lender.

17. **Controlling Agreement.** With respect to any interest demanded from Guarantor based upon the Loan Documents, such interest shall be limited to the highest applicable rate deemed proper by law.

18. **Further Assurances.** Guarantor at Guarantor's expense will promptly execute and deliver to Lender upon Lender's request all such other and further documents, agreements, and instruments in compliance with or accomplishment of the agreements of Guarantor under this Guaranty.

19. **Time Is of the Essence.** Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

20. **Reinstatement.** Notwithstanding anything in this Guaranty to the contrary, this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any portion of the Obligations is revoked, terminated, rescinded or reduced or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of Borrower or any other person or entity or otherwise, as if such payment had not been made and whether or not Lender is in possession of or has released this Guaranty and regardless of any prior revocation, rescission, termination or reduction.

22. **Credit Verification.** Each legal entity and individual obligated on this Guaranty, whether as a Guarantor, a general partner of a Guarantor or in any other capacity, hereby authorizes Lender to check any credit references, verify his/her employment and obtain credit reports from credit reporting agencies of Lender's choice in connection with any monitoring, collection or future transaction concerning the Loan, including any modification, extension or renewal of the Loan. Also in connection with any such monitoring, collection or future transaction, Lender is hereby authorized to check credit references, verify employment and obtain a third party credit report for the spouse of any married person obligated on this Guaranty, if such person lives in a community property state.

[Signatures to appear on following page]

7. **Sale of Loan by Lender.** Lender may, without notice of any kind, sell, assign or transfer all or any of the Obligations, and in such event each and every immediate and successive assignee, transferee, or holder of all or any of the Obligations, shall have the right to enforce this Guaranty, by suit or otherwise, for the benefit of such assignee, transferee or holder, as fully as if such assignee, transferee or holder were herein by name specifically given such rights, powers and benefits. Lender shall have an unimpeded right, prior and superior to that of any such assignee, transferee or holder, to enforce this Guaranty for the benefit of Lender, as to so much of the Obligations as it has not sold, assigned or transferred.
8. **Subrogation.** Notwithstanding anything to the contrary contained herein, the Guarantor shall not have any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Obligations, until the later of the date on which the Obligations has been fully and finally paid or the Loan has expired or been terminated.
9. **Term of Guaranty.** This Guaranty is a continuing guaranty and shall continue in effect until such time as the Obligations have been fully and finally paid and performed, or until written notice from the Guarantor terminating this Guaranty has been actually received and acknowledged by the Lender, but said notice shall not in any way affect the obligations of the Guarantor with respect to the Obligations existing at the time that such notice is received by the Lender. Notwithstanding the foregoing and also notwithstanding any return of this Guaranty to the Guarantor, this Guaranty shall continue in effect and shall not release the Guarantor from liability (a) with respect to any of the Obligations that survive after expiration or termination of the Loan, or such earlier termination by the Guarantor as provided in this Section 9, (b) with respect to all obligations and liabilities of the Guarantor for indemnification and for the payment of all costs and expenses as provided herein, including but not limited to all attorney's fees and costs, (c) as provided herein with respect to preferential, fraudulent or other voidable payments or other transfers and (d) with respect to any environmental liability or indemnity. No act, failure to act, or omission of any kind or part of the Guarantor, Borrower, or Lender shall be a legal or equitable discharge of the Guarantor from their Obligations hereunder unless agreed to hereafter in writing by the Lender.
10. **Notices.** Unless specifically provided otherwise, any notice for purposes of this Guaranty shall be given in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by courier or by certified United States mail, postage pre-paid, and shall be addressed or delivered to the respective addresses set forth at the end of this Guaranty, or to such other address as may have been previously designated by the intended recipient by notice given in accordance with this Section. If sent by prepaid, registered or certified mail (return receipt requested), the notice shall be deemed effective when the receipt is signed or when the attempted initial delivery is refused or cannot be made because of a change in address of which the sending party has not been notified; and if transmitted by personal delivery or courier, the notice shall be effective when received. No notice of change of address shall be effective except upon actual receipt.
11. **Successors and Assigns/Joint and Several Liability.** This Guaranty shall inure to the benefit of Lender, its successors and assigns, and shall bind the Guarantor and the heirs, legal representatives, successors and assigns of the Guarantor. If more than one party shall execute this Guaranty, the term "Guarantor" shall mean each party executing this Guaranty, and all such parties shall be jointly and severally obligated hereunder.
12. **Governing Laws; Forum.** This Guaranty shall be construed in accordance with the laws of the State of North Carolina, and such laws shall govern the interpretation, construction and enforcement hereof. Wherever possible each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provision of this Guaranty. The Guarantor agrees that the courts of the State of North Carolina shall have jurisdiction to hear and determine any claims or disputes pertaining directly or indirectly to this Guaranty or any matter arising therefrom. The Guarantor expressly submits and consents in advance to such jurisdiction in any action or proceeding in such court, hereby waiving personal service of the summons and complaint, or other process or papers issued therein, and agrees that service of such summons or complaint or process or papers may be made by registered or certified mail (return receipt requested) addressed to the party to be served at its address appearing below or as amended pursuant to Section 10 hereof.
13. **Financial Information.** The Guarantor shall furnish to Lender the following: (a) within one hundred fifty (150) days after the close of each fiscal year of Guarantor: (i) a balance sheet of Guarantor dated as of the close of such fiscal year and (ii) an income statement of Guarantor for such fiscal year; and (b) from time to time, additional financial statements and financial information Lender requests. All balance sheets and income statements shall be certified by the Guarantor and the balance sheet and income statement described in (a) above shall be audited, compiled or reviewed, as required by Lender, by independent certified public accountants of recognized standing, selected by Guarantor and consented to by Lender without qualification or exception other than those acceptable to Lender. If required by Lender, all balance sheets and income statements together shall include disclosure of all contingent liabilities, a profit and loss statement, a reconciliation of net worth, changes in financial condition, a schedule of sources and uses of funds, and a detailed cash flow statement for the applicable period, together with such supporting schedules and documentation Lender requires all in form and content satisfactory to Lender.
14. **Dispute Resolution.**
- (a) **Arbitration.** Except to the extent expressly provided below, any Dispute shall, upon the request of either party, be determined by binding arbitration in accordance with the Federal Arbitration Act, Title 9, United States Code (or if not applicable, the applicable state law), the then-current rules for arbitration of financial services disputes of the American Arbitration Association ("AAA") and the "Special Rules" set forth below. For purposes of this Guaranty, "Dispute" means any controversy, claim or dispute between or among the parties to this Guaranty, including any such controversy, claim or dispute arising out of or relating to (a) this Guaranty, (b) any other Loan Document, (c) any related agreements or instruments, or (d) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In the event of any inconsistency, the Special Rules shall control. The filing of a court action is not intended to constitute a waiver of the right of Guarantor or Lender, including the suing party, thereafter to require submittal of the Dispute to arbitration. Any party to this Guaranty may bring an action, including a summary or expedited proceeding, to compel arbitration of any Dispute in any court having jurisdiction over such action. For the purposes of this Dispute Resolution Section only, the terms "party" and "parties" shall include any parent corporation, subsidiary or affiliate of Lender involved in the servicing, management or administration of any obligation described in or evidenced by this Guaranty, together with the officers, employees, successors and assigns of each of the foregoing.
- (b) **Special Rules.**
- (i) The arbitration shall be conducted in any U.S. state where real or tangible personal property collateral is located, or if there is no such collateral, in the City and County where Lender is located pursuant to its address for notice purposes in this Guaranty.
- (ii) The arbitration shall be administered by AAA, who will appoint an arbitrator. If AAA is unwilling or unable to administer the arbitration, or if AAA is unwilling or unable to enforce or legally precluded from enforcing any and all provisions of this Dispute Resolution Section, then any party to this Guaranty may substitute another arbitration organization that has similar procedures to AAA and that will observe and enforce any and all provisions of this Dispute Resolution Section. All Disputes shall be determined by one arbitrator; however, if the amount in controversy in a Dispute exceeds Five Million Dollars (\$5,000,000), upon the request of any party, the Dispute shall be decided by three arbitrators (for purposes of this Guaranty, referred to collectively as the "arbitrator").
- (iii) All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration and completed within ninety (90) days from the date of commencement; provided, however, that upon a showing of good cause, the arbitrator shall be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.
- (iv) The judgment and the award, if any, of the arbitrator shall be issued within thirty (30) days of the close of the hearing. The arbitrator shall provide a concise written statement setting forth the reasons for the judgment and for the award, if any. The arbitration award, if any, may be submitted to any court having jurisdiction to be confirmed and enforced, and such confirmation and enforcement shall not be subject to arbitration.
- (v) The arbitrator will give effect to statutes of limitations and any waivers thereof in determining the disposition of any Dispute and may dismiss one or more claims in the arbitration on the basis that such claim or claims is or are barred. For purposes of the application of the statute of limitations, the service on AAA under applicable AAA rules of a notice of Dispute is the equivalent of the filing of a lawsuit.
- (vi) Any dispute concerning this arbitration provision, including any such dispute as to the validity or enforceability of this provision, or whether a Dispute is arbitrable, shall be determined by the arbitrator; provided, however, that the arbitrator shall not be permitted to vary the express provisions of these Special Rules or the Reservations of Rights in subsection (c) below.
- (vii) The arbitrator shall have the power to award legal fees and costs pursuant to the terms of this Guaranty.
- (viii) The arbitration will take place on an individual basis without reference to, resort to, or consideration of any form of class or class action.

Guarantor; (c) the Guarantor is not, and the execution, delivery and performance by the Guarantor of this Guaranty will not cause the Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which the Guarantor is bound or affected; (d) if the Guarantor is not an individual, then the Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization, is lawfully doing business in each jurisdiction where it operates, and has full power and authority to enter into and perform this Guaranty; (e) except as may have been disclosed to the Lender in writing, there is no litigation pending or, to the knowledge of the Guarantor, threatened before or by any tribunal against or affecting the Guarantor; (f) all financial statements and information heretofore furnished to the Lender by the Guarantor do, and all financial statements and information hereafter furnished to the Lender by the Guarantor will, fully and accurately present the condition (financial or otherwise) of the Guarantor as of their dates and the results of the Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of the Guarantor heretofore furnished to the Lender, no material adverse change has occurred in the financial condition of the Guarantor; (g) after giving effect to this Guaranty, the Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of the Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (h) the Lender has no duty at any time to investigate or inform the Guarantor of the financial or business condition or affairs of the Borrower or any change therein, and the Guarantor will keep fully apprised of the Borrower's financial and business condition; (i) the Guarantor acknowledges and agrees that the Guarantor may be required to pay and perform the Obligations in full without assistance or support from the Borrower or any other person; and (j) the Guarantor has read and fully understands the provisions contained in the Loan Commitment, the Loan Agreement, and the other Loan Documents, each of which may be modified, extended, or supplemented from time to time without notice to or consent from the Guarantor and without affecting the obligations of the Guarantor under this Guaranty. The Guarantor's representations, warranties and covenants are a material inducement to the Lender to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting the Borrower, the Guarantor, any other party, or any security for all or any part of the Obligations.

In addition to the foregoing, Guarantor further represents, warrants and covenants that (x) Guarantor has received and examined copies of any Interest Rate Protection Agreement (as defined in the Security Instrument), the observance and performance of which by Borrower is hereby guaranteed; (y) Guarantor will benefit from Lender entering into each Interest Rate Protection Agreement with Borrower, and Guarantor has determined that the execution and delivery by Guarantor of this Guaranty is necessary and convenient to the conduct, promotion and attainment of the business of Guarantor; and (z) Lender has no duty to determine whether any Interest Rate Protection Agreement, will be or has been entered into by Borrower for purposes of hedging interest rate, currency exchange rate, or other risks arising in its businesses or affairs and not for purposes of speculation or is otherwise inappropriate for Borrower.

5. Certain Agreements and Waivers by Guarantor. Guarantor hereby expressly waives: (a) notice of the acceptance of this Guaranty, (b) notice of the existence or creation of any of the Loan Documents or all or any of the Obligations, and (c) presentment, demand, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices whatever. Guarantor also hereby waives any and all rights under Section 26-7 through Section 26-9 of the North Carolina General Statutes and also waives any required notice, whether written or oral, of additional or future advances from Lender to Borrower or the incurring of additional indebtedness by Borrower from Lender. Additionally, Guarantor hereby agrees that neither Lender's rights or remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of: (i) any neglect, delay, omission, failure or refusal on the part of Lender in collection or protection of, or realization upon, any security for any of the Obligations or in enforcing any remedy available to it under any of the Loan Documents; (ii) any limitation of liability or recourse in any other Loan Document or arising under any law; (iii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration; (iv) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Obligations; (v) any homestead exemption or other exemption under applicable law; (vi) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Obligations; (vii) whether express or by any operation of law, any partial release of the liability of any Guarantor hereunder, or if one or more guaranties are now or hereafter obtained by Lender covering all or part of the Obligations, any complete or partial release any one or more such guaranties under any other such guaranty, or any full or partial release of Borrower or any other party liable for the payment or performance of the Obligations; (viii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of firm, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of the Borrower or any other party at any time liable for the payment or performance of any or all of the Obligations; (ix) either with or without notice to or consent of the Guarantor, any renewal, extension, modification or rearrangement of the terms of any or all of the Obligations and/or any of the Loan Documents or performance of any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by the Lender to the Borrower, any Guarantor, and/or any other person at any time liable for the payment or performance of any or all of the Obligations, it being understood that the Lender shall not be required to give the Guarantor any notice of any kind under any circumstances with respect to or in connection with the Obligations, any and all rights to notice that the Guarantor may have otherwise had being hereby waived by the Guarantor; (x) any refund of any payment by the Borrower or any other party liable for the payment or performance of any or all of the Obligations or pay the amount thereof to someone else; (xi) the existence of any claim, set-off, or other right that the Guarantor may at any time have against the Borrower, the Lender, or any other person, whether or not arising in connection with this Guaranty or any other Loan Document; (xii) the unenforceability of all or any part of the Obligations against the Borrower; (xiii) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to the Borrower; or (xiv) any other condition, event, omission, action or inaction that would in the absence of this paragraph result in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty or any other agreement.

In the event that any payment by the Borrower or any other person to the Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason the Lender is required to refund such payment or pay the amount thereof to any other party, such payment by the Borrower or any other party to the Lender shall not constitute a release of the Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by the Lender of this Guaranty or of the Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by the Lender or paid by the Lender to another person (which amounts shall constitute part of the Obligations), and any interest paid by the Lender and any reasonable attorneys' fees, costs and expenses paid or incurred by the Lender in connection with any such event. It is the intent of the Guarantor and the Lender that the obligations and liabilities of the Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of the Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a Guarantor. The Lender shall be entitled to continue to hold this Guaranty in its possession for a period of one year from the date the Obligations are paid and performed in full and for so long thereafter as may be necessary to enforce any obligation of the Guarantor hereunder and/or to exercise any right or remedy of the Lender hereunder.

If acceleration of the time for payment of any amount payable by the Borrower under the Note, any Loan Document or any documents evidencing the Indebtedness, is stayed or delayed by any law or tribunal, all such amounts shall nonetheless be payable by the Guarantor on demand by the Lender.

6. Subordination. If, for any reason whatsoever, the Borrower is now or hereafter becomes indebted to the Guarantor: (a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of the Borrower securing same shall, at all times, be subordinate in all respects to the Obligations and to all liens, security interests and rights now or hereafter existing to secure the Obligations; and (b) the Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of the Borrower to the Guarantor until the Obligations have been fully and finally paid and performed. Guarantor hereby assigns and conveys to Lender any and all balances, credits, deposits, accounts, items and monies of Guarantor now or hereafter in the possession or control of, or otherwise with, Lender and Lender is hereby given a first lien upon, and a security interest in all property of the Guarantor of every kind and description now or hereafter in the possession or control of Lender for any reason, including all dividends and distributions on or other rights in connection therewith. Lender may, without demand or notice of any kind, at any time when any amount shall be due and payable hereunder by Guarantor, offset, appropriate and apply toward the payment of such amount any property, balances, credits, deposits, accounts, items or monies of Guarantor in the possession or control of Lender for any purpose. Any amount received by Lender from whatever source and applied by it toward the payment of the Obligations shall be applied in such order of application as Lender may from time to time elect. Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section.

#1319191



This Continuing Guaranty Agreement (this "Guaranty") is made effective as of the 1st day of October, 2007, by BRIAN BOONE, (singly or collectively, "Guarantor"), in favor of BANK OF AMERICA, N.A., a national banking association (together with its successors and assigns "Lender").

RECITALS

Lender and Holt Family Homes, LLC, a South Carolina limited liability company ("Borrower"), have entered into that certain Construction Loan Agreement dated July 28, 2005 (herein called, as it may hereafter be modified, supplemented, restated, extended, or renewed and in effect from time to time, the "Loan Agreement"), which Loan Agreement sets forth the terms and conditions of a loan (the "Loan") to Borrower for the construction of the Improvements (as defined in the Loan Agreement) on, and with respect to, land located in Mecklenburg County, North Carolina, as more particularly described in the Security Instrument (as defined in the Loan Agreement) and identified therein as the Land.

A condition precedent to Lender's obligation to make the Loan to Borrower is Guarantor's execution and delivery to Lender of this continuing Guaranty.

The Loan is evidenced by that certain Promissory Note dated July 28, 2005, executed by Borrower and payable to the order of Lender in the principal face amount of One Million Seven Hundred Seventy-One Thousand Nine Hundred and No/100 Dollars (\$1,771,900.00) (such note, as it may hereafter be renewed, extended, supplemented, increased or modified and in effect from time to time, and all other notes given in substitution therefor, or in modification, renewal, or extension thereof, in whole or in part, is herein called the "Note").

The Lender and Borrower anticipate that the Borrower will be requesting additional financial accommodations from the Lender from time to time which they intend to be covered by this Guaranty. The Guarantor has a financial or other interest in Borrower and will materially benefited by the Loan, and any additional loans that the Lender may make to the Borrower (for other than personal, household or family purposes).

Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Loan Agreement. This Guaranty is one of the Loan Documents described in the Loan Agreement.

WITNESSETH:

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to the Lender to extend credit to the Borrower from time to time, the Guarantor hereby jointly and severally guarantees to the Lender the prompt and full payment and performance of the Indebtedness, as hereinafter defined, and the other obligations in connection with the Loan as defined and described below in this Guaranty (hereinafter sometimes collectively called the "Obligations"), upon the following terms and conditions:

1. **Guaranty of Payment.** The Guarantor, for itself and its successors and assigns, hereby unconditionally and irrevocably guarantees to the Lender the punctual payment when due, whether by scheduled payment date, upon maturity, lapse of time, by acceleration of maturity, or otherwise, and at all times thereafter, of all principal, interest, fees, late charges, costs, expenses, indemnification indebtedness and other sums of money now or hereafter due and owing pursuant to (a) the terms of the Loan Commitment, the Note, the Loan Agreement, the Security Instrument, any Interest Rate Protection Agreement (as defined in the Security Instrument), any letter of credit or Agreement and Application for Letter of Credit, and any and all other documents executed by the Borrower in connection with the Loan (the "Loan Documents"), now or hereafter existing, and specifically including any and all advances made by the Lender under the Loan Documents from sources other than the Loan, and interest on such advances, (b) any and all existing or future non-consumer obligations, liabilities and indebtedness of the Borrower to the Lender, however and whenever incurred or evidenced, whether direct or indirect, absolute or contingent, or due or to become due, whether or not presently contemplated by the parties hereto; (c) all renewals, extensions, increases, refinancings, modifications, supplements or amendments to such indebtedness, or any of the Loan Documents, or any part thereof; and (d) all costs incurred by Lender to obtain, preserve, and enforce any security interest granted by the Borrower to the Lender, or to collect the above and maintain and preserve collateral therefor, including but not limited to reasonable attorney's fees and costs which may be incurred by Lender in the collection of the foregoing (all of the foregoing being hereinafter collectively called the "Indebtedness"). This Guaranty covers the Indebtedness, whether presently outstanding or arising subsequent to the date hereof, whether or not presently contemplated by the Guarantor, the Borrower or the Lender, and whether or not the same shall be incurred after satisfaction, payment or reduction of any previous Indebtedness, including all amounts advanced by the Lender in stages or installments. The guaranty of the Guarantor as set forth in this Section is a continuing guaranty of payment and not a guaranty of collection. The Lender's books and records showing the amount of the Indebtedness shall be admissible in evidence in any action or proceeding, and shall be binding upon the Guarantor and conclusive for the purpose of establishing the amount of the Indebtedness. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the Obligations of the Guarantor under this Guaranty.

2. **Guaranty of Performance.** The Guarantor further unconditionally and irrevocably guarantees to Lender the timely performance by Borrower of all other obligations of the Borrower under all of the Loan Documents, including but not limited to the timely completion of the Improvements and compliance with all covenants regarding environmental matters.

3. **Primary Liability of Guarantor.** This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. The Guarantor shall be liable for the payment and performance of the Obligations, as set forth in this Guaranty, as a primary obligor. This Guaranty shall be effective as a waiver of, and the Guarantor hereby expressly waives, any and all rights to which the Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time to require the Lender to take prior recourse or proceedings against any collateral, security or person whatsoever. Upon the occurrence of: (i) a default by Borrower in payment or performance of the Obligations; (ii) any default under the Loan Documents; (iii) any reasonable determination by the Lender that a material adverse change has occurred in the financial condition of any Guarantor; (iv) the death, incompetency, dissolution or insolvency of Borrower or any Guarantor; (v) an assignment by Borrower or any Guarantor for the benefit of creditors; (vi) the institution of any proceeding by or against Borrower or any Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee or custodian for any of them or for any of their respective properties; (vii) the entry of a judgment against Borrower or any Guarantor; (viii) the falsity in any material respect to, or any material omission in, any representation made by Borrower or any Guarantor; or (ix) any transfer of assets of any Guarantor, without the Lender's prior consent (except for transfers of assets for estate planning purposes valued at less than \$50,000 per year per Guarantor, customary political and charitable contributions, and transfers for which the Guarantor receives consideration substantially equivalent to the fair market value of the transferred asset) (individually and collectively a "Default"), the Obligations, for purposes of this Guaranty, shall be deemed immediately due and payable at the election of the Lender, and the Guarantor shall, on demand and without presentment, protest, any notice whatsoever, all such notices being hereby waived, pay the amount due thereon to the Lender or perform or observe the agreement, covenant, term or condition, as the case may be, and it shall not be necessary for the Lender, in order to enforce such payment or performance by any Guarantor, first to institute suit or pursue or exhaust any rights or remedies against the Borrower or others liable on the Obligations or for such performance, or to institute suit or pursue or exhaust any rights or remedies against the Borrower or any other Guarantor or other sureties of the Obligations, or to enforce any rights against any security that shall ever have been given to secure the Obligations, or to join the Borrower or any others liable for the payment or performance of the Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Obligations.

4. **Representations, Warranties and Covenants of Guarantor.** The Guarantor hereby represents, warrants, and covenants that (a) the Guarantor will derive substantial benefit, directly or indirectly, from the making of the Loan (and any future non-consumer loan) to the Borrower and from the making of this Guaranty by the Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against the

GUARANTY

Columbia
(City)

South Carolina
(State)

September 24, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Southern First Bank, N.A.

(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 ARDEN HOMEBUILDERS, LLC P.O. BOX 90679 COLUMBIA, SC 29209

(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: LOAN NUMBER 400938500 DATED SEPTEMBER 24, 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): LOAN NUMBER 400938500 DATED SEPTEMBER 25, 2007

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 \$ 498,000.00

(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.

SUBSCRIBER'S SIGNATURE

256-92-5779

Undersigned shall refer to all persons who sign this guaranty, severally and jointly.

SFB 0069

GUARANTY

Columbia
(City)

South Carolina
(State)

September 24, 2008

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Southern First Bank, N.A.

(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 ARDEN HOMEBUILDERS, LLC POST OFFICE BOX 90679 Columbia, SC 29209

(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: LOAN NUMBER 400938500 DATED SEPTEMBER 24, 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, 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 \$ 498,000.00

(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.

ROBERT A. KETTLER

256-92-5773

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.

SFB 0053

BUSINESS LOAN AGREEMENT

Southern First Bank, N.A.
190 Knox Abbott Dr.
Cayce, South Carolina 29033
(803)223-6400

LOAN NUMBER	AGREEMENT DATE	ACCOUNT NUMBER
401096900	December 8, 2009	401096900

BORROWER INFORMATION

ROBERT S JONES
6009 MARTHAS GLEN RD
COLUMBIA, SC 29209

Type of Entity: Individual
State of Residence: South Carolina

AGREEMENT. This Business Loan Agreement will be referred to in this document as the "Agreement." This Agreement is made by Southern First Bank, N.A. (Lender) and Borrower. The consideration is the promises, representations, and warranties made in this Agreement and the Related Documents.

DEFINITIONS. These definitions are used in this Agreement.

"Collateral" means the Property that all Obligor's pledge, mortgage, or give Lender a security interest in, regardless of where the Property is located and regardless of when it was or will be acquired, together with all replacements, substitutions, proceeds, and products of the Property.

"Events of Default" means any of the events described in the "Events of Default" section of this Agreement.

"Financial Statements" means the balance sheets, earnings statements, and other financial information that Obligor's have, are, or will be giving to Lender.

"Indebtedness" means the Loan and all other loans and indebtedness of Borrower to Lender, including but not limited to Lender's payments of insurance or taxes, all amounts Lender pays to protect its interest in the Collateral, overdrafts in deposit accounts with Lender, and all other indebtedness, obligations, and liabilities of Borrower to Lender, whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, joint or several, due or to become due, now existing or hereafter arising.

"Loan" means the loan or loans Lender makes to Borrower under the note or notes dated the same date as this Agreement that Borrower gives to Lender and all amendments, extensions, renewals, and refinancing.

"Obligor" means any person having any obligation to Lender, whether for the payment of money or otherwise, under this Agreement or under the Related Documents, including but not limited to Guarantor and any other guarantors of the Indebtedness.

"Parties" means all Borrowers, Guarantors, and Non-Borrower Debtors signing this Agreement.

"Party" means any Borrower, Guarantor, and Non-Borrower Debtor signing this Agreement.

"Property" means the Parties' assets, regardless of what kind of assets they are.

"Related Documents" means all documents, promissory notes, security agreements, leases, mortgages, construction loan agreements, assignments of leases and rents, guaranties, pledges, and all other documents or agreements executed in connection with this Agreement. The term includes both documents existing at the time of execution of this Agreement and documents executed after the date of this Agreement.

IDENTIFICATION OF INDEBTEDNESS. The following loan and any amendments, extensions, renewals or refinancing (the "Loans") thereof is subject to this Agreement:

- Loan number 401096900 with a principal amount of \$449,326.33

BORROWER'S REPRESENTATIONS AND WARRANTIES. Obligor's represent and warrant to Lender the accuracy of the description of Borrower, the nature of Borrower's business shown above, and the statements made in this section. The representations and warranties will continue and remain in effect until all of the Indebtedness is fully paid to Lender and Obligor's obligations are fully performed.

Borrower's Existence and Authority. Borrower is duly formed and in good standing under all laws governing Borrower and Borrower's business, and the person or persons executing this Agreement have the power and authority to execute this Agreement and the Related Documents and to bind Borrower to the obligation created in this Agreement and the Related Documents.

Financial Information and Filing. All Financial Statements provided to Lender have been prepared and will continue to be prepared in accordance with generally accepted accounting principles, consistently applied, and fully and fairly present the financial condition of Obligor's, and there has been no material adverse change in Obligor's business, Property, or condition, either financial or otherwise, since the date of Obligor's latest Financial Statements. Obligor's have filed all federal, state, and local tax returns and other reports and filings required by law to be filed before the date of this Agreement and have paid all taxes, assessments, and other charges that are due and payable prior to the date of this Agreement. Obligor's have made reasonable provision for these types of payments that are accrued but not yet payable. Borrower does not know of any delinquency or additional assessment not disclosed in Borrower's books and records.



SFB 0023

Lender's rights and remedies under this Agreement, the Related Documents, and any other agreement between one or more Obligor and Lender, and in connection with the preparation of all amendments, modifications, and waivers of consent with respect to this Agreement, including reasonable attorneys' fees.

GOVERNING LAW/PARTIAL ILLEGALITY. This Agreement and the Related Documents are and will be governed by, and the rights of the Parties will be determined by the laws of the state of South Carolina except to the extent that federal law controls. If any part, term, or provision of this Agreement is determined to be illegal or in conflict with state or federal law, the validity of the remaining portion or provisions of this Agreement will not be affected, unless the stricken portion or provision adversely affects Lender's risk of realizing Lender's anticipated return, in which case Lender may, in its sole discretion, deem the Loan matured.

NOTICES. All notices required under this Agreement must be in writing and will be considered given: (i) on the day of personal delivery, or (ii) one business day after deposit with a nationally recognized overnight courier service, or (iii) three business days after deposit with the United States Postal Service sent certified mail, return receipt requested. Any of these methods may be used to give notice. All notices must be sent to the party or parties entitled to notice at the addresses first set forth in this Agreement. Any Party may change its address for notice purposes on five days prior written notice to the other Parties.

INTEGRATION AND AMENDMENT. This Agreement and other written agreements among the Parties, including but not limited to the Related Documents, are the entire agreement of the Parties and will be interpreted as a group, one with the others. None of the Parties will be bound by anything not expressed in writing, and this Agreement cannot be modified except by a writing executed by those Parties bound by the modification.

FURTHER ACTION. Obligor will, upon request of Lender, make, execute, acknowledge, and deliver to Lender the modified and additional instruments, documents, and agreements, and will take the further action that is reasonably required, to carry out the intent and purpose of this transaction.

CONTINUING EFFECT. Unless superseded by a later Business Loan Agreement, this Agreement will continue in full force and effect until all of the Obligor's obligations to Lender are fully satisfied and the Loan and Indebtedness are fully repaid.

HEADINGS. All headings in this Agreement are included for reference only and do not have any effect on the interpretation of this Agreement.

COUNTERPARTS. This Agreement may be executed by the Parties using any number of copies of the Agreement. All executed copies taken together will be treated as a single Agreement.

TIME IS OF THE ESSENCE. Time is of the essence in the performance of this Agreement.

TRANSFERS. Borrower may not assign or transfer its rights or obligations under this Agreement without Lender's prior written consent. Lender may transfer its interest in Lender's sole discretion. Borrower waives all rights of offset and counterclaim Borrower has against Lender. The purchaser of a participation in the loan may enforce its interest regardless of any claims or defenses Borrower has against Lender.

JURISDICTION. Obligor agree to waive any objection to jurisdiction or venue on the ground that Obligor are not residents of Lender's locality. Obligor authorize any action brought to enforce Obligor's obligations to be instituted and prosecuted in any state court having jurisdiction or in the United States District Court for the District that includes Lender's location as set forth at the beginning of this Agreement. Obligor authorize Lender to elect the court at Lender's sole discretion.

ORAL AGREEMENTS DISCLAIMER. This Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

By signing this Agreement, Borrower acknowledges reading, understanding and agreeing to all its provisions and receipt of a copy hereof.

ROBERT S JONES
Individually

Date

LENDER: Southern First Bank, N.A.

By: P. Justin Strickland
Its: President

Date



Transactions

CSR: twritten

ARDEN HOMEBUILDERS, LLC
P O BOX 90679
COLUMBIA, SC 29209

SOUTHERN FIRST BANK, N.A.

Posting date Effective date	Transaction	Amount	Balance	Principal amount Interest amount	Block/Batch/Seqn Description
12/23/09	88	\$100.00	\$41,150.00	\$100.00	9007/907/2 - BancTxs by
12/21/09	Principal Reduction			\$0.00	vdansereau
12/14/09	88	\$449,326.33	\$41,250.00	\$449,326.33	2/0/9857 - POD
	Principal Reduction			\$0.00	
12/04/09	88	\$7,423.67	\$490,576.33	\$7,423.67	2/0/5090 - POD
	Principal Reduction			\$0.00	
10/14/09	78	\$26,166.30	\$498,000.00	\$26,166.30	0/0/841 - System
	Late Charge Debit			\$0.00	
10/22/08	Rate changed to 5.00%		\$498,000.00		0/0/634 - System
9/24/08					
10/21/08	Rate changed to 4.50%		\$498,000.00		0/0/675 - System
10/09/08					
10/09/08	Disregarded		\$498,000.00		0/0/2016 - System
	Rate changed to 4.50%				
10/20/08	83	\$29,941.40	\$498,000.00	\$0.00	60/400/9998
9/24/08	Interest only Payment			\$29,941.40	Int Renewal Pmt/TY14
10/20/08	Renewed rate to 5.00%		\$498,000.00		0/0/747 - System
9/24/08					
5/01/08	Rate changed to 5.00%		\$498,000.00		0/0/4046 - System
3/19/08	Rate changed to 5.25%		\$498,000.00		0/0/3248 - System
1/31/08	Rate changed to 6.00%		\$498,000.00		0/0/3433 - System
1/23/08	Rate changed to 6.50%		\$498,000.00		0/0/2162 - System
12/12/07	Rate changed to 7.25%		\$498,000.00		0/0/2261 - System
11/01/07	Rate changed to 7.50%		\$498,000.00		0/0/3382 - System
10/10/07	\$1	\$498,000.00	\$498,000.00	\$498,000.00	60/300/9998
9/25/07	Principal Disbursement			\$0.00	N/L principal
					disbursement/TY14 ...
9/25/07	Rate changed to 7.75%		\$0.00		0/0/2243 - System

SFB 0056

Bank: 24 Application: 60 Account: 400938500
Date: 05-05-2011 @ 15:05:06 Page 1

APPENDIX 519

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Transactions

CSR: jfloyd

ROBERT S JONES
6009 MARTHAS GLEN RD
COLUMBIA, SC 29209

SOUTHERN FIRST BANK, N.A.

Posting date Effective date	Transaction	Amount	Balance	Principal amount Interest amount	Block/Batch/Seqn Description
9/28/10	698 Partial chgoff pri credit	\$50,000.00	\$91,150.00	\$50,000.00 \$0.00	9007/907/4 - BancTx by jfloyd
6/28/10	698 Partial chgoff pri credit	\$50,000.00	\$141,150.00	\$50,000.00 \$0.00	9007/907/8 - BancTx by jfloyd
3/29/10	698 Partial chgoff pri credit	\$50,000.00	\$191,150.00	\$50,000.00 \$0.00	9007/907/9 - BancTx by jfloyd
12/29/09	698 Partial chgoff pri credit	\$208,176.33	\$241,150.00	\$208,176.33 \$0.00	9007/907/2 Partial Charge Off - BancTx by jfloyd ...
12/24/09	31	\$449,326.33	\$449,326.33	\$449,326.33	60/300/9998
12/08/09	Principal Disbursement			\$0.00	N/L principal disbursement/TY14 by pharris ...
12/08/09	Rate changed to 5.50%			\$0.00	070/1760 - System

12/20/10 - \$91,150 Final Charge Off

Jean Floyd
Vice President

Bank: 24 Application: 60 Account: 401096900

Date: 12-29-2011 @ 17:27 APPENDIX 520



October 23, 2009

Mr. Robert S. Jones
6009 Martha's Glenn Road
Columbia, SC 29209

Dear Bob:

You have requested Southern First Bank, N.A. to liquidate the following stock being held as collateral on the loan to Arden Homebuilders, LLC (#400938500), according to the terms in the Stock Pledge Agreements, dated September 24, 2008 between Robert S. Jones and Southern First Bank, N.A.:

2,500 shares of Congaree Bancshares, Inc. (certificate number CB 1130)
2,216 shares of First National Bancshares, Inc. (certificate number FN 5136)
25,000 shares of SCCB Financial Corporation (certificate number 0067)

All net proceeds will immediately be applied to the loan balance. Please consult your tax advisor about any tax consequences that may arise. By signing below, you agree to and authorize Southern First Bank, N. A. to liquidate the above collateral.

Should you have any questions, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Justin Strickland".

E. Justin Strickland
President

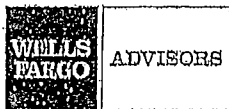
FJE/re

Agreed this 26 day of OCTOBER 2009

A handwritten signature in black ink, appearing to read "Robert S. Jones".
Robert S. Jones

P.O. Box 7908 • Columbia, SC 29202
(803) 223-6400 • Fax (803) 223-6499
www.southernfirst.com

SFB 0097



43,097

DATED 11/27/09

Account Number 2080-2288
YOUR FINANCIAL ADVISOR
DISCOUNT BROKERAGE

800-326-4434
800-369-9297

014843 01 60



WACHOVIA BANK NA
COMMON SALES ACCOUNT
ATTN CAROL FERNANDEZ
NC1167
401 S TRYON ST 9TH FL
CHARLOTTE NC 28288-1167

IF YOU WOULD LIKE TO ENROLL IN OUR ACCESS ONLINE SERVICE OR SIGN UP TO RECEIVE THIS
CONFIRMATION ELECTRONICALLY, VISIT US AT WWW.WACHOVIA.COM.

SOLD	QUANTITY	PRICE	PRINCIPAL
FIRST NATL BANCSHARES	1,838	0.83000	1,527.88
INC. S C	580	0.80000	822.00
	2,218	0.84832	1,879.88
		average price	
SYMBOL	FNSO	ACCOUNT TYPE	CASH
SECURITY NUMBER	1284-231	TRADE DATE	11/27/09
CUSIP	32111B-10-4	SETTLEMENT DATE	12/02/09
UNSOLICITED		NET AMOUNT	\$1,878.82
			*SEE ITEM 15 ON PAGE 2

MARKET OVER THE COUNTER
ORDER ENTRY NOTE: *CREDIT SELLOUT

SOLD	QUANTITY	PRICE	PRINCIPAL
CONGAREE BANCSHARES INC	1,500	2.00000	3,000.00
	1,000	2.55000	2,550.00
	2,500	2.22000	5,550.00
		average price	
SYMBOL	CNRB	ACCOUNT TYPE	CASH
SECURITY NUMBER	1592-588	TRADE DATE	11/27/09
CUSIP	20716N-10-2	SETTLEMENT DATE	12/02/09
UNSOLICITED		NET AMOUNT	\$5,548.85
			*SEE ITEM 15 ON PAGE 2

MARKET OVER THE COUNTER
ORDER ENTRY NOTE: *CREDIT SELLOUT

SFB 0098

Wells Fargo Advisors, LLC, member NYSE/SIPC is a registered broker-dealer and is separate non-bank affiliate of Wells Fargo & Company. Accounts carried by First Clearing, LLC, member NYSE/SIPC. Investments and Insurance products are:

Not Insured by FDIC or Any Federal Government Agency | May Lose Value | Not a Deposit of or Guaranteed by a Bank or Any Bank Affiliate

For Address Correction And Payment Due Instructions Please Refer To Contact Information On Page 2 Of This Confirmation
PC913331 014843 33112720213 NNNNNNNNNNNNNNNN 000001 Page 1 of 2 020 Q1 Q1YY

COLLATERAL RECORD

Borrower's Name Orden Homebuilders Initial Note Reference 400938500

Quantity	Detailed Description of Collateral (include owner's name if different from borrower)	Date Released	Signature for Release or Mail Method
1000	Robert S Jones 1 certificate #8 Pelmetto Builders Concrete LLC		
2,500	Robert S Jones 1 certificate #CB1130 + assignment Commerce Bancshares Inc	10-28-09	<i>[Signature]</i>
2,216	Robert S Jones 1 certificate #FN 5136 + assignment First National Bancshares Inc	10-28-09	<i>[Signature]</i>
25,000	Robert S Jones 1 certificate #00167 + assignment SCCB Financial Corp		

RECEIPT ACKNOWLEDGED THIS _____ DAY OF _____
GREENVILLE FIRST BANK • P. O. BOX 17465 • GREENVILLE, SC 29606

By: / _____
Title

- 1 - Client Copy
- 2 - Bank Copy

SFB 0100

Bob Jones

From: Bob Jones [rjones78@sc.rr.com]
Sent: Tuesday, March 18, 2008 8:44 AM
To: Martha Jones (mijhome@sc.rr.com)
Subject: RFP 7 FW: Update

Follow Up Flag: Follow up
Flag Status: Flagged

From: Robert Kelsler [mailto:robert.kelsler@gmail.com]
Sent: Tuesday, March 18, 2008 8:04 AM
To: Bob Jones; Ed Buck
Subject: Update

Gentlemen,

Just got off the phone with Brian on my last email. I was right. He and BIG do not feel they are responsible for the Southern First Loan. I told him tough and I expect them to live up to the loan. He was upset and so was I. Bob he at least acknowledged your loan.

After we got through that (no resolution) I turned my focus to the lack of sales at Parkway as I was ready already triggered. The point being has he been actively SELLING the product in Parkway. His answer was yes, for the last sixty days, (marketing since last November) and activity has been good but no offers. I asked him what was my expectations for him. He said sales. Have we had any contracts at Seven Oaks and Parkway? No (except for the Baxter.) I told him then something is wrong. Product, Price, Location, Marketing or (some or all of them). This sounds like Seven Oaks all over again. If this is the results so far, then we need to shut Arden down now while Arden has cash. Turns out Arden does not have the cash to pay the vendors this Friday as it has continued to build some houses without Wachovia funding. The funding is approved but Win is waiting on the paperwork to process it.

End the end, I told him my net worth is gone as I will be liquidating assets to pay the loans and I am starting over. Therefore, I have nothing to lose. Get the money from Wachovia, finish the current houses and shut Parkway down and salvage what cash we have. I told him there WILL be a capital call at the end for ALL class A partners to pay the final bills including Southern First and Bob. I will pay my part and I expect BIG and Boone to pay theirs.

Robert

Brian Boone

From: robert.keisler@gmail.com
Sent: Saturday, April 19, 2008 4:34 PM
To: Brian Boone; Robert Boozer; Ed Buck; Bob Jones
Subject: Re: Arden Homes' Management Committee - Decision and Response Requested

Brian,

I am voting for signing the note.

Robert K
Sent from my BlackBerry® wireless device

-----Original Message-----

From: "Brian Boone" <BBoone@ardenhomes.com>

Date: Sat, 19 Apr 2008 16:05:45

To: "Robert Boozer" <rabooze@mindspring.com>, "Ed Buck" <edwardbuck@bellsouth.net>, "Bob Jones" <rjones78@sc.rr.com>, "Robert Keisler" <robert.keisler@gmail.com>

Subject: Arden Homes' Management Committee - Decision and Response Requested

Gentlemen,

In keeping with the loan agreements and the conditions of the negative covenants set forth therein, Ed recently sought and received consent from Bank of America and Wachovia to allow for the repurchase of capital stock. With that consent in place, he is asking the management committee to formally consider the attached promissory note.

Since we have already had several discussions on this subject, I suggest that we vote on this request by e-mail. If you are in favor of the management committee signing this promissory note, please respond, "for." If you are not in favor of the management committee signing this promissory note, please respond, "against." If anyone feels that we should gather again before making a decision, please indicate so in your response. If you would like to make changes or revisions to the promissory note, please indicate the specifics in your response.

I will document the responses and decision for the official records. I know that Ed would like to resolve this issue as soon as possible.

Thank you,
Brian

Brian Boone

From: Bob Jones [rjones78@sc.rr.com]
Sent: Saturday, April 19, 2008 4:39 PM
To: Brian Boone; 'Robert Boozer'; 'Ed Buck'; 'Robert Kelsler'
Subject: RE: Arden Homes' Management Committee - Decision and Response Requested

Brian,

I vote **FOR** the management committee signing Ed's promissory note.

Thanks, Bob

From: Brian Boone [mailto:BBoone@ardenhomes.com]
Sent: Saturday, April 19, 2008 4:06 PM
To: Robert Boozer; Ed Buck; Bob Jones; Robert Kelsler
Subject: Arden Homes' Management Committee - Decision and Response Requested

Gentlemen,

In keeping with the loan agreements and the conditions of the negative covenants set forth therein, Ed recently sought and received consent from Bank of America and Wachovia to allow for the repurchase of capital stock. With that consent in place, he is asking the management committee to formally consider the attached promissory note.

Since we have already had several discussions on this subject, I suggest that we vote on this request by e-mail. If you are in favor of the management committee signing this promissory note, please respond, "for." If you are not in favor of the management committee signing this promissory note, please respond, "against." If anyone feels that we should gather again before making a decision, please indicate so in your response. If you would like to make changes or revisions to the promissory note, please indicate the specifics in your response.

I will document the responses and decision for the official records. I know that Ed would like to resolve this issue as soon as possible.

Thank you,
Brian

Brian Boone

From: Robert Boozer [rabooze@mindspring.com]
Sent: Sunday, April 20, 2008 8:32 PM
To: Brian Boone; 'Ed Buck'; 'Bob Jones'; 'Robert Kelsler'
Subject: RE: Arden Homes' Management Committee - Decision and Response Requested

I am against the signing of the promissory note, as stated previously.

Robert Boozer

From: Brian Boone [mailto:BBoone@ardenhomes.com]
Sent: Saturday, April 19, 2008 4:06 PM
To: Robert Boozer; Ed Buck; Bob Jones; Robert Kelsler
Subject: Arden Homes' Management Committee - Decision and Response Requested

Gentlemen,

In keeping with the loan agreements and the conditions of the negative covenants set forth therein, Ed recently sought and received consent from Bank of America and Wachovia to allow for the repurchase of capital stock. With that consent in place, he is asking the management committee to formally consider the attached promissory note.

Since we have already had several discussions on this subject, I suggest that we vote on this request by e-mail. If you are in favor of the management committee signing this promissory note, please respond, "for." If you are not in favor of the management committee signing this promissory note, please respond, "against." If anyone feels that we should gather again before making a decision, please indicate so in your response. If you would like to make changes or revisions to the promissory note, please indicate the specifics in your response.

I will document the responses and decision for the official records. I know that Ed would like to resolve this issue as soon as possible.

Thank you,
Brian

Brian Boone

From: Ed Buck [edwardbuck@bellsouth.net]
Sent: Sunday, April 20, 2008 8:16 AM
To: Brian Boone; 'Robert Boozer'; 'Bob Jones'; 'Robert Kelsler'
Subject: RE: Arden Homes' Management Committee - Decision and Response Requested

Gentlemen,

In accordance with our previous discussions and understandings, I vote FOR signing the promissory note.

Ed

From: Brian Boone [mailto:BBoone@ardenhomes.com]
Sent: Saturday, April 19, 2008 4:06 PM
To: Robert Boozer; Ed Buck; Bob Jones; Robert Kelsler
Subject: Arden Homes' Management Committee - Decision and Response Requested

Gentlemen,

In keeping with the loan agreements and the conditions of the negative covenants set forth therein, Ed recently sought and received consent from Bank of America and Wachovia to allow for the repurchase of capital stock. With that consent in place, he is asking the management committee to formally consider the attached promissory note.

Since we have already had several discussions on this subject, I suggest that we vote on this request by e-mail. If you are in favor of the management committee signing this promissory note, please respond, "for." If you are not in favor of the management committee signing this promissory note, please respond, "against." If anyone feels that we should gather again before making a decision, please indicate so in your response. If you would like to make changes or revisions to the promissory note, please indicate the specifics in your response.

I will document the responses and decision for the official records. I know that Ed would like to resolve this issue as soon as possible.

Thank you,
Brian

Brian Boone

From: Brian Boone
Sent: Sunday, April 20, 2008 10:18 PM
To: rabooze@mindspring.com; edwardbuck@bellsouth.net; rjones78@sc.rr.com; robert.kelsler@gmail.com
Cc: Brian Boone
Subject: FW: Arden Homes' Management Committee - Decision and Response Requested
Attachments: C. Edward Buck III Promissory Note.pdf

Good evening,

I appreciate the prompt responses. As expected, a majority is in favor of signing the promissory note. For the record, as is consistent with our previous discussions, I am against signing the note. The company is not in a financial position to pay the interest (or the principal) on this note.

With three of the five members of the management team in favor of signing the note, I realize that I cannot change the decision. However, I would like to suggest a compromise/revision of the terms of the note so that interest begins to accrue on January 1, 2009 and the first principal and interest payment will be made on April 1, 2009. This would alleviate the pressure on our small amount of remaining operating capital and, at the same time, make the commitment that Ed is seeking (albeit a different payment schedule).

With some success at Parkway Crossing, the company will be in a much better position to service this additional debt after the final payment is made to Ray Holt in December 2008.

I would appreciate your consideration for the modification of the note.

Thank you,
Brian

From: Brian Boone
Sent: Sat 4/19/2008 4:05 PM
To: Robert Boozer; Ed Buck; Bob Jones; 'Robert Kelsler'
Subject: Arden Homes' Management Committee - Decision and Response Requested

Gentlemen,

In keeping with the loan agreements and the conditions of the negative covenants set forth therein, Ed recently sought and received consent from Bank of America and Wachovia to allow for the repurchase of capital stock. With that consent in place, he is asking the management committee to formally consider the attached promissory note.

Since we have already had several discussions on this subject, I suggest that we vote on this request by e-mail. If you are in favor of the management committee signing this promissory note, please respond, "for." If you are not in favor of the management committee signing this promissory note, please respond, "against." If anyone feels that we should gather again before making a decision, please indicate so in your response. If you would like to make changes or revisions to the promissory note, please indicate the specifics in your response.

I will document the responses and decision for the official records. I know that Ed would like to resolve this issue as soon as possible.

Thank you,
Brian

PROMISSORY NOTE

Charlotte, North Carolina
March 18th, 2008

FOR VALUE RECEIVED, Arden Homebuilders, LLC (the "Borrower"), promises to pay to the order of Carl Edward Buck III (the "Lender"), the principal sum of Two Hundred Fifty Thousand and no/100 (\$250,000.00) Dollars, with interest thereon computed as provided below. The principal amount being the Unreturned Capital Investment determined as of January 1st 2008 in accordance with the Operating Agreement. Interest on the outstanding principal balance of this Promissory Note shall accrue at an annual rate equal to the commercial bank prime rate. The rate shall be a "floating" rate and will be adjusted to reflect the commercial bank prime rate as published in the "Wall Street Journal" in effect at the beginning of each quarter beginning January 1st 2008. Interest shall be computed on the actual number of days elapsed divided by a 360-day year. Interest shall be paid to the Lender quarterly on the outstanding balance beginning April 1st 2008. Principal payments shall be in eighteen (18) equal and consecutive quarterly installments beginning on July 1st 2008 provided however that no principal payments shall be made prior to 12/31/2008 or so long as there is an unpaid balance on the existing Promissory Note to W. Ray Holt in accordance with the W. Ray Holt Buy-Out and Settlement Proposal dated September 27, 2006. A condition of this Promissory Note requires that the borrower remain in compliance with the W. Ray Holt Promissory Note.

This Note is also conditional upon Arden Homebuilders, LLC maintaining certain business activities and may not be assigned, transferred or assumed by others without the lender's written permission. During the term of this Note, the borrower may not, without Lender's written approval, enter into an agreement to acquire additional member shares where the rate of payment is proportionally accelerated ahead of the payment schedule represented herein.

Should default be made in the performance of or compliance with any of the covenants or conditions of this Promissory Note, then in any of said events, said principal sum with all the accrued interest thereon, shall become at once due and payable at the option of the holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this Promissory Note be placed in the hands of an attorney at law for collection after the same shall for any reason become due or if collected by legal proceedings or through the probate or bankruptcy courts, then all costs of collection, including a reasonable attorneys fee shall be added to the outstanding balance.

The undersigned expressly agrees to remain and continue bound for the payment of the principal and interest provided for by the terms of this Promissory Note notwithstanding any extension or extensions of time for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this Promissory Note.

The maker may prepay the principal amount outstanding in whole or in part without any prepayment penalties of any kind.

The maker and any endorers of this Promissory Note hereby waive presentment, demand, protest and notice of dishonor.

Borrower's Initials: _____

Given under the hand and seal of each party.

ARDEN HOMEBUILDERS, LLC

BY:

ITS:

Bob Jones

From: Robert Keisler [robert.keisler@gmail.com]
Sent: Tuesday, July 01, 2008 6:39 PM
To: rjones78@sc.rr.com
Subject: Re: Emailing: Promissory Note - July 2008 - Revision 1
Attachments: Bob note.pdf

Bob,

I have printed your promissory note and signed it as of today. I will be in Lexington tomorrow morning meeting with a long term client who just found out he has cancer and is turning the day to day operations over to his son who will be graduating law school. He wants me to help his son. I will call you when I finish and see if you are at SRC and drop it by. If not, I will leave it in a package on my desk at Lady street.

Robert

On Tue, Jul 1, 2008 at 3:32 PM, Bob Jones <rjones78@sc.rr.com> wrote:
Brian,

Thanks for the quick response and clarifying your position, for the record, on my note and the Southern First note.

I will have Robert Keisler sign the renewal of my note as you have directed.

I trust you will have success executing the plan we all agreed to last Thursday. Please let us know how things go with Mauricio and Saussay Burbank.

Thanks, Bob

From: Brian Boone [mailto:BBoone@ardenhomes.com]
Sent: Tuesday, July 01, 2008 11:59 AM
To: rjones78@sc.rr.com
Cc: robert.keisler@gmail.com; rabooze@mindspring.com; mijhome@sc.rr.com

Subject: RE: Emailing: Promissory Note - July 2008 - Revision 1

Hello Bob,

Since Robert (Keisler) and Ed signed this note with you before I came on board, utilizing the funds to pay down the accounts payable (although not fully) before Big and I infused new capital, I think it would be more consistent to have Robert (Keisler) sign the note again. As was the case with Ed's note and all management committee decisions, we all have the same level of authority on the management committee.

During our discussions about the notes last week, I jumped in half way through as I had previous conversations with Robert (Keisler) on the subject (including one where he hung up the phone). My understanding of the operating agreement is that your note has first priority for payment before any distributions. Until you brought the issue to my attention in December, I was not aware that there was a promissory note or the desire for a second on the Parkway lots. At your request, I forwarded the documents to our attorney at Horack Talley. She indicated that we could not put a second on the Parkway lots without Wachovia's permission. You indicated that you had a conversation with Win on the subject. The second priority for payment before any distributions to members is the note with Southern First that I understand you, Robert, and Ed personally guaranteed (according to the operating agreement) before the conversion from Holt Family Homes to Arden. I do not know any details of that note as we do not have a copy in our files.

From my perspective and reading of the operating agreement, Arden will continue to pay the interest on both notes and they will be first priorities for distribution when we succeed or wind down after the secured bank loans are repaid. I have personal guarantees on the lots at Parkway and Seven Oaks (BoA, Carolina First, and Wachovia), which is what I read as my responsibility.

Brian

From: Bob Jones [mailto:rjones78@sc.rr.com]

Sent: Tue 7/1/2008 6:57 AM

To: Brian Boone

Cc: robert.keisler@gmail.com; rabooze@mindspring.com; mijhome@sc.rr.com

Subject: Emailing: Promissory Note - July 2008 - Revision 1

Brian,

Attached please find a revised Promissory Note extending the \$250,000.00 personal loan I made to Arden Homebuilders, LLC in July 2007 for another 12 months.

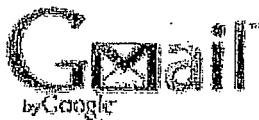
As Arden's Managing Member, please sign and return the original for my records. The terms and conditions remain unchanged.

Thank you for your kind and prompt attention to these matters.

Bob Jones

Member

Arden Homebuilders, LLC



Robert Keisler <robert.keisler@gmail.com>

Meeting this week

6 messages

Robert Keisler <robert.keisler@gmail.com>

Mon, Jun 23, 2008 at 2:50 PM

To: Brian Boone <BBoone@ardenhomes.com>, Bob Jones <rjones78@sc.rr.com>, Robert Boozer <rabooze@mindspring.com>

Brian,

I spoke to Bob and we are open for a meeting either on Thursday or Friday. My only conflict either day is Thursday at 6pm.

With the situation at Boozer, I would suggest we meet at another location. I would be glad to offer my office at 1492C Lake Murray Boulevard in Irmo.

Robert

Brian Boone <BBoone@ardenhomes.com>

Mon, Jun 23, 2008 at 11:14 PM

To: rabooze@mindspring.com

Cc: rjones78@sc.rr.com, robert.keisler@gmail.com

Robert, would 1:00 p.m. on Thursday work for you? If not, please select another time (preferably on Thursday). Please copy the group on your response - thanks, Brian

From: Robert Keisler [mailto:robert.keisler@gmail.com]

Sent: Mon 6/23/2008 2:50 PM

To: Brian Boone; Bob Jones; Robert Boozer

Subject: Meeting this week

[Quoted text hidden]

Bob Jones <rjones78@sc.rr.com>

Mon, Jun 23, 2008 at 11:19 PM

Reply-To: rjones78@sc.rr.com

To: Brian Boone <BBoone@ardenhomes.com>, rabooze@mindspring.com

Cc: robert.keisler@gmail.com

Works for me.

Thanks, Bob

From: Brian Boone [mailto:BBoone@ardenhomes.com]

Sent: Monday, June 23, 2008 11:14 PM

To: rabooze@mindspring.com

Cc: rjones78@sc.rr.com; robert.keisler@gmail.com

APPENDIX 534

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Subject: FW: Meeting this week

[Quoted text hidden]

Robert Keisler <robert.keisler@gmail.com>

Tue, Jun 24, 2008 at 6:14 AM

To: Bob Jones <rjones78@sc.rr.com>, Robert Boozer <rabooze@mindspring.com>, Brian Boone <BBoone@ardenhomes.com>

Unless no one has an objection, the management committee meeting will be 1:00 pm at my office in Irmo. The address is 1492 C Lake Murray Boulevard. If you need directions to my website contact page at www.rakcpa.com.

Robert

----- Forwarded message -----

From: **Brian Boone** <BBoone@ardenhomes.com>

Date: Mon, Jun 23, 2008 at 11:14 PM

Subject: FW: Meeting this week

[Quoted text hidden]

Robert Boozer <rabooze@mindspring.com>

Tue, Jun 24, 2008 at 3:51 PM

Reply-To: rabooze@mindspring.com

To: Robert Keisler <robert.keisler@gmail.com>, Bob Jones <rjones78@sc.rr.com>, Brian Boone <BBoone@ardenhomes.com>

I currently have a potential conflict with this time and date that I am trying to reschedule. I will inform you as soon as I know if I am available to attend.

Sent from my Verizon Wireless BlackBerry

-----Original Message-----

From: "Robert Keisler" <robert.keisler@gmail.com>

Date: Tue, 24 Jun 2008 06:14:25

To: "Bob Jones" <rjones78@sc.rr.com>, "Robert Boozer" <rabooze@mindspring.com>, "Brian Boone" <BBoone@ardenhomes.com>

Subject: Fwd: FW: Meeting this week

Unless no one has an objection, the management committee meeting will be 1:00 pm at my office in Irmo. The address is 1492 C Lake Murray Boulevard. If you need directions to my website contact page at www.rakcpa.com <<http://www.rakcpa.com/>>.

Robert

----- Forwarded message -----

From: Brian Boone <BBoone@ardenhomes.com <<mailto:BBoone@ardenhomes.com>> >

Date: Mon, Jun 23, 2008 at 11:14 PM

Subject: FW: Meeting this week

To: rabooze@mindspring.com <<mailto:rabooze@mindspring.com>>

Cc: rjones78@sc.rr.com <<mailto:rjones78@sc.rr.com>>, robert.keisler@gmail.com <<mailto:robert.keisler@gmail.com>>

APPENDIX 535

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Robert, would 1:00 p.m. on Thursday work for you? If not, please select another time (preferably on Thursday). Please copy the group on your response - thanks, Brian

From: Robert Keisler [mailto:robert.keisler@gmail.com <mailto:robert.keisler@gmail.com>]
[Quoted text hidden]

Robert Boozer <raboosze@mindspring.com>

Wed, Jun 25, 2008 at 3:09 PM

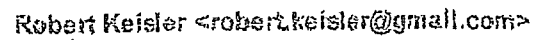
To: Robert Keisler <robert.keisler@gmail.com>, Bob Jones <rjones78@sc.rr.com>, Brian Boone <BBoone@ardenhomes.com>

I will be able to attend tomorrow at 1. I have rescheduled other conflicts.

From: Robert Keisler [mailto:robert.keisler@gmail.com]
Sent: Tuesday, June 24, 2008 6:14 AM
To: Bob Jones; Robert Boozer; Brian Boone
Subject: Fwd: FW: Meeting this week

Unless no one has an objection, the management committee meeting will be 1:00 pm at my office in Irmo. The address is 1492 C Lake Murray Boulevard. If you need directions to my website contact page at www.rakcpa.com.

[Quoted text hidden]



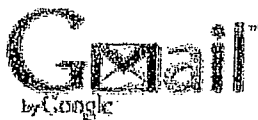
1 message

Tue, Mar 18, 2008 at 7:05 AM

Bcc: Bob Jones <rjones78@sc.rr.com>, Ed. Buck <edwardbuck@bellsouth.net>

Let me be clear about something you mentioned in your comments on the tax return that concerned me. Operating agreement Section 2.3, obligates all Class A partners to share in there responsibility on any loan that requires a guarantee whether or not they signed a guarantee. Southern First and Bob's loans will fall under this Section. If you have a problem with this, I need to know now as I expect BIG and Boone to be responsible along with the other Class A members for their respective share of all guaranteed debt.

Robert



Robert Keisler <rakcpa1@gmail.com>

Parkway Crossing

3 messages

Robert Kleinpaste <bobk@chesapeakecap.com>
To: Robert@rakcpa.com

Wed, Aug 6, 2008 at 10:03 PM

Robert:

1. I have not received any detailed information on the project yet. Maybe you could fill in some details for me.
2. The web site says there is an overall site plan to download, but it shows a retail development. Is there a residential site plan somewhere? How many total units are there?
3. How is the retail doing?
4. I think you said that Meeting Street was building on the site. Is Arden Homes a Boozer entity?
5. Who is Cambridge Partners?
6. Could you summarize the "deal" for me as it relates to your involvement:
 - a. How many unsold lots and houses do you own?
 - b. What is the breakdown of ownership in your entity?
 - c. Who is the Senior lender? What is the size of the loan. Are there personal financial guarantees on the loan?
 - d. Is Boozer owed money? Are other subs owed money?
 - e. What is the overall capital structure? How much cash is invested?

I think this is a good location, and hope that there is a way to get you and your money out of it.

Bob

Robert Keisler <rakcpa1@gmail.com>
Reply-To: robert@rakcpa.com
To: rjones78@sc.rr.com

Wed, Aug 6, 2008 at 10:57 PM

Bob,

I will need help in crafting a response on the site development. Do you have any site material? Ed?

The capital structure an etc will be easy although I need to run the ownership percentages on the current ownership.

Robert

APPENDIX 538

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[Quoted text hidden]

Robert A Keisler, CPA PA
 1492C Lake Murray Blvd, Columbia SC 29212
 P O Box 4071, Irmo, SC 29063
 Phone: 803-749-9293
 Fax: 803-753-9122
 www.rakcpa.com

Robert Keisler <rakcpa1@gmail.com>
 Reply-To: robert@rakcpa.com
 To: Robert Kleinpaste <bobk@chesapeakecap.com>

Thu, Aug 7, 2008 at 12:07 PM

Bob,

I have answered your questions below. Bob Jones is getting the development plans and etc and I should have those in a day or so.

Arden owns several lots in another subdivision that are under contract to a builder. Those are self liquidating plus should yield about \$200,000 in cash.

Robert

On Wed, Aug 6, 2008 at 10:03 PM, Robert Kleinpaste <bobk@chesapeakecap.com> wrote:

Robert:

1. I have not received any detailed information on the project yet. Maybe you could fill in some details for me.
2. The web site says there is an overall site plan to download, but it shows a retail development. Is there a residential site plan somewhere? Bob has one and there is an electronic copy I trying to obtain. How many total units are there? There are 72 total residential lots, 20 of which Arden owns. Five has houses on them. One is sold and closed, one (the Model) is set to close next week with an investor. The remaining three are completed and being marketed for sale.
3. How is the retail doing? Not sure of the exact status. They have cleared the sit and it appears ready to build. Bob will be talking to the developer (Cambridge Partners) and will find out the status.
4. I think you said that Meeting Street was building on the site. There is a town home section that Meeting Street is building. That part of the development was just finished by the developer. Is Arden Homes a Boozer entity? Boozer Lumber does not own Arden Homes. However, the Boozer Family owns approx 60% of Arden Homes.
5. Who is Cambridge Partners? Cambridge Partners is the developer and have recently changed their name to New Fourm. I would suspect they have recapitalized.
6. Could you summarize the "deal" for me as it relates to your involvement:
 - a. How many unsold lots and houses do you own? 15 unsold lots and 3 house.
 - b. What is the breakdown of ownership in your entity? Boozer Family (through an LLC and Brian Boone) own 61%, Bob Jones and myself 32% and 7% by former and current Boozer officers/employees.

APPENDIX 539

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- c. Who is the Senior lender? Wachovia on Parkway What is the size of the loan. \$1,850,000 relating to Parkway. There is another \$500,000 owed to Southern First that Bob and I are on the hook for. Are there personal financial guarantees on the loan? Of course.
- d. Is Boozer owed money? No Are other subs owed money? No
- e. What is the overall capital structure? Class A shares (guarantee the bank loans) Class B cash only. How much cash is invested? \$2,000,000 (\$500,000 by Bob and myself) I am not worried about this as much as I am about the unsecured debt Bob and I are on.

I think this is a good location, and hope that there is a way to get you and your money out of it.

Bob5%

Robert A Keisler, CPA PA
1492C Lake Murray Blvd, Columbia SC 29212
P O Box 4071, Irmo, SC 29063
Phone: 803-749-9293
Fax: 803-753-9122
www.rakcpa.com

Bob Jones

From: Bob Jones [rjones78@sc.rr.com]
Sent: Friday, October 17, 2008 9:23 AM
To: 'edwardbuck@bellsouth.net'
Cc: 'Robert Keisler'
Subject: FW: Mutual Release
Attachments: Mutual Release.doc

Ed,

Attached please find a copy of the release Robert Keisler drafted to memorialize your request to be released from your personal guarantee on the Southern First Loan.

I trust the attached release accurately reflects our agreement.

Thanks, Bob

From: Robert Keisler [mailto:robert.keisler@gmail.com]
Sent: Thursday, October 16, 2008 2:21 PM
To: Bob Jones
Subject: Mutual Release

Bob,

Attached is the mutual release we discussed. This release is in response to Ed requesting to be released from his personal guarantee of Arden Homebuilders, LLC loan with Southern First Loan, Ed agreeing to sell his note to you for \$1.00 and Ed acknowledging his continuing guarantee of Arden's remaining bank loans.

Arden needs to ensure that it has the ability to perform an orderly liquidation of its assets. As Arden's liquidator, I will agree to his requests providing he signs the release attached.

Please have Ed print two copies of the release and sign both copies and mail them to me at Robert Keisler, P O Box 4071, Irmo, SC 29063. I will sign on behalf of Arden and get with you to sign the document. After all signatures are obtained, I will mail one original back to Ed.

In addition and concurrent with executing the release, I am requesting that Ed formally notify Arden Homebuilders LLC of the purchase of his note by you. This can be done with a letter addressed to Arden Homebuilders LLC at my address in Irmo.

If you have any other questions, please let me know.

Robert

MUTUAL RELEASE

This MUTUAL RELEASE ("Release") executed this ____ day of October, 2008, by and between Carl Edward Buck ("Buck") and Robert S. Jones ("Jones"), Robert A. Keisler ("Keisler") and Arden Homebuilders, LLC ("Arden")

RECITALS

WHEREAS Arden is a Limited Liability Company organized in the State of South Carolina on July 1, 2007 and operates under a Revised and Restated Operating Agreement dated July 31, 2007.

WHEREAS Buck was a Class A Member of Arden until March 18th, 2008 at which time Buck's Class A Membership interest was repurchased by Arden as a result of an event of dissociation by Buck under Arden's Revised and Restated Operating Agreement dated July 31, 2007.

WHEREAS Buck has a Two Hundred Fifty Thousand (\$250,000) Promissory Note dated March 18, 2008 from Arden for the purchase of his Class A Membership interest as a result of an event of dissociation by Buck under Arden's Revised and Restated Operating Agreement dated July 31, 2007.

WHEREAS the Members of Arden voted unanimously on August 31st, 2008 to wind down operations and liquidate Arden.

WHEREAS Buck has continuing personal guarantees to on promissory notes made by Arden to Wachovia Bank, NA, by Arden to Bank of America, NA, by Arden to Carolina First Bank, and by Arden to Southern First Bank.

WHEREAS Buck seeks to be released from Buck's personal guarantee of the note between Arden and Southern First Bank.

WHEREAS Buck acknowledges Buck will continue to have a personal guarantee of the promissory notes between Arden and Wachovia Bank, NA, Arden and Bank of America, NA and Arden and Carolina First Bank until such promissory notes are paid in full or Buck's personal guarantee is no longer required.

WHEREAS Buck agrees to continue to cooperate with Arden in providing personal financial statements and executing bank documents required by Wachovia Bank, NA, Bank of America, NA and Carolina First Bank for the renewal of existing promissory notes until such notes or paid in full or Buck's personal guarantee is no longer required.

WHEREAS Buck seeks to have Buck's Two Hundred Fifty Thousand (\$250,000) Dollars promissory note dated March 18, 2008 from Arden purchased by Jones

WHEREAS Jones, Keisler and Arden agrees to have Buck released from Buck's personal guarantee of the promissory note between Arden and Southern First Bank

WHEREAS Jones agrees to purchase Buck's promissory note dated March 18, 2008 from Arden for One Dollar (\$1.00)

WITNESSTH

NOW THEREFORE, for and in consideration of the payment of One Dollar (\$1.00), and other good and valuable consideration, in hand paid, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Buck releases Jones, Keisler and Arden from all obligations required under the agreements referenced above, i.e., Arden's Operating Agreement and the Two Hundred Fifty Thousand (\$250,000) Dollar Promissory Note dated March 18, 2008 between Buck and Arden, and from any and all other claims, causes of action, or obligations Buck may have against Jones, Keisler and Arden, known or unknown, at the time of the execution of this Agreement.
2. Jones, Keisler and Arden releases Buck from all obligations required in the agreements referenced above, i.e., Arden's Operating Agreement and the Southern First Promissory Note, Buck's personal guarantee of Southern First Promissory Note, and from any and all other claims, causes of action, or obligations Jones, Keisler, and Arden may have against Buck, known or unknown, at the time of the execution of this Agreement.
3. Buck acknowledges that Buck's personal guarantee of the promissory notes between Arden and Wachovia Bank, NA, Arden and Bank of America, NA and Arden and Carolina First Bank shall remain in force and agrees to cooperate in the renewing of said promissory notes by providing the necessary personal financial information and executing any necessary documents relating to these promissory notes until such promissory notes are paid in full or Buck's personal guarantee is no longer required.
4. This Agreement shall be governed and interpreted in accordance with the laws of the state of South Carolina, without reference to conflicts of law principles.
5. Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction and venue of either the courts of Richland County, South Carolina (or, if there is exclusive federal jurisdiction, the United States District Court for the District of South Carolina) for purposes of any action or proceeding arising out of or relating to this Agreement.
6. This Agreement may only be amended, modified, or supplemented in writing, and must be signed by an authorized representative of each Party, and all such changes

shall reference this Agreement and identify the specific Sections of this Agreement that is amended, modified, or supplemented.

7. This Agreement sets forth the entire agreement of the parties and supersedes all other oral or written agreements between the parties related to the subject matter hereof.

The Parties understand and agree to the terms and conditions hereof. This Agreement is executed by the authorized representatives of the Parties as of the day and year first written above. Each party, by executing the Agreement, represents that it has authority to execute the Agreement.

Carl Edward Buck

Robert S Jones

Robert A Keisler

Arden Homebuilders, LLC

Its: Managing Member

Bob Jones

From: Bob Jones [rjones78@sc.rr.com]
Sent: Thursday, September 04, 2008 7:56 AM
To: 'Justin Strickland'; 'Robert Keisler'
Subject: RFP 7 - RE: Arden Renewal

Wednesday at 10:00 AM works for me.

Thanks, Bob

From: Justin Strickland [mailto:jstrickland@southernfirst.com]
Sent: Wednesday, September 03, 2008 9:33 AM
To: rjones78@sc.rr.com; Robert Keisler
Subject: RE: Arden Renewal

I could meet on Friday morning or anytime next Wednesday.

F. Justin Strickland
President
Southern First Bank
Greenville First Bank
PO Box 7908
Columbia, SC 29202
O.803.223.6410
F.803.223.6499
jstrickland@southernfirst.com

From: Bob Jones [mailto:rjones78@sc.rr.com]
Sent: Wednesday, September 03, 2008 7:53 AM
To: Justin Strickland; 'Robert Keisler'
Subject: RE: Arden Renewal

Robert,

Let me know what works for you and Justin.

Thanks, Bob

From: Justin Strickland [mailto:jstrickland@southernfirst.com]
Sent: Tuesday, September 02, 2008 10:23 AM
To: rjones78@sc.rr.com; Robert Keisler
Subject: Arden Renewal

Bob & Robert,

The loan for Arden matures this month so we need to take a minute and determine how long you guys need it renewed. Also, I need updated personal financials on the two of you as well as Ed Buck. Let me know when you would like to get together on this.

F. Justin Strickland
President
Southern First Bank
Greenville First Bank

PO Box 7908
Columbia, SC 29202
O.803.223.6410
F.803.223.6499
jstrickland@southernfirst.com

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From: Robert Keisler <robert.keisler@gmail.com>
Date: September 30, 2009 1:16:09 PM EDT
To: Brian Boone <bdavidboone@earthlink.net>, Kathy Boone <boozerk@earthlink.net>, Robert Boozer <raboozer@mindspring.com>, Fran Burnett <fran_burnett@hotmail.com>, James Odatt <james.odatt@yahoo.com>, Dale <lindseylum@mindspring.com>, Bob Jones <rjones78@sc.rr.com>, Ed Buck <edwardbuck@bellsouth.net>
Subject: Arden Homebuilders, LLC Update

Dealing with the various banks has been the my main focus involving Arden Homebuilders, LLC for the past few months. My update will center around what is happening with each bank.

Wachovia - Wachovia foreclosed in May 2009 on the property at Parkway Crossing and roughly half the lots at Seven Oaks. Wachovia sued Arden Homebuilders, LLC and the guarantors (Robert Keisler, Robert Jones and Ed Buck). Each of guarantors have settled their respective suits individually and only Arden Homebuilders, LLC remains in litigation.

After the guarantors settled, Wachovia asked for a dismissal of the suit with Arden Homebuilders, LLC. As I represent all the shareholders of Arden Homebuilders, LLC, I told Wachovia I could not without consent of all the shareholders for reasons explained in the next paragraph.

Arden Homebuilders, LLC is in this position as Wachovia failed to deal with Arden Homebuilders, LLC in the final settlement negotiations and failed to answer timely the counterclaims filed by Arden Homebuilders, LLC. (A copy of the counterclaims and Arden Homebuilders, LLC answer is attached for your information.) There could be some financial benefit to Arden Homebuilders, LLC as result of Wachovia's lack of properly dealing with Arden Homebuilders, LLC.

Wachovia has raised the issue of whether I as liquidator and managing member could answer the suit and make the counterclaims as a Company has to be represented by an attorney. There is an exception in NC law for an officer of a company to answer a suit if doing so would prevent a default by the company. This is the case for Arden Homebuilders, LLC answer. As the counterclaims is required to be made at the same time the answer is made, the counterclaims may valid also.

A hearing is scheduled for October 7th on a motion to dismiss the counterclaims by Wachovia based on the fact that I am not an attorney and could not represent Arden Homebuilders, LLC in this matter. They also filed a motion to dismiss the counterclaims as a specific damage amount was not made.

After speaking with Keith Nichols at Horack Talley law firm, their suggestion is to let the judge decide the matter on the dismissal. They believe I do have the ability to answer and make the counterclaims. However, they do not believe the counterclaims, if allowed, will result in any financial settlement for the benefit of Arden Homebuilders, LLC. The burden will be on Arden Homebuilders, LLC to prove the counterclaims. Horack Talley will be glad to represent Arden Homebuilders, LLC in this litigation but wants a \$10,000 retainer. They expect the total cost to



see this all the way through will be between (\$20,000 and \$30,000). Arden does not have the funds to deal with this matter.

I will be attending the hearing to explain my actions regarding the answer and counter claims. I also plan to hire Horack Talley to be on hand for the hearing to represent Arden Homebuilders, LLC if need arises on anything that Wachovia may present that Arden Homebuilders, LLC may need legal representation.

If any member wishes to discuss this further or is willing to pay the cost of the litigation, give me a call at 803-518-6092 or respond to this email. Otherwise, this litigation involving Arden Homebuilders, LLC and Wachovia will be over one way or the other after the October 7th hearing.

Carolina First - Arden Homebuilders, LLC is in default of the loan for non payment of interest and for not paying the loan off when due. The current balance is around \$108,000.

Carolina First understands their position as a second on the lots at Seven Oaks. Carolina First have indicated they will not be paying off Bank of America first position if Bank of America proceeds with foreclosing on the Seven Oaks lots.

At present, Carolina First's source of repayment is the continuation of the lot closings by True Homes. These closings are currently occurring at a rate of 1.5 lots per month. At this rate if it continues, it will take approximately a year to sell all the remaining lots Arden Homebuilders, LLC owns.

Trent Byrd at Carolina First is handling this matter in regards to Arden Homebuilders, LLC. The guarantors of this loan should expect to be contacted by Mr. Byrd in the near future.

For disclosure purposes, I have settled and been released from my guarantee with Carolina First on the Arden Homebuilders, LLC note. This settlement was included as part of an overall settlement with Carolina First on other amounts I owed Carolina First.

Bank of America - The loan balance has been steadily reduced as lots are purchased by True Homes, LLC and with the closing of the model in Seven Oaks last month. A shortage of around \$60,000 is due on the sale of the Seven Oaks model. A decision by Bank of America on this shortage will be made at the end of the lot closings. The current balance remaining with Bank of America is roughly \$610,000.

A forbearance agreement was presented by Bank of America. I asked Brian Boone to speak to Mr. Robert Unell on this matter. Corrections and revisions were to be made to the original agreement. I have not received the updated version.

In my opinion, the forbearance agreement is a good deal. However, the agreement expires in three months before being renewed. If the True Homes keeps purchasing lots as they are currently, Bank of America has indicated the renewal will be granted. But the decision is Bank of America's to make.

The forbearance agreement requires approximately \$12,000 from Arden Homebuilders, LLC to pay property taxes for 2008 and fees incurred by Bank of America. Arden does not have the funds to meet this requirement. (Cash on hand at the moment is around \$5,000.) Brian Boone and Robert Boozer have agreed to fund a total \$8,000. I spoke to Bob Jones yesterday on this matter and he does not have any funds to contribute towards the forbearance agreement. Also, I do not have any funds to contribute to the forbearance agreement.

Unless the members consent to using Arden Homebuilders, LLC remaining funds to fund the forbearance agreement, Arden Homebuilders, LLC will not be able to meet the financial requirements of the agreement.

The wild card in this matter involving Bank of America (and Carolina First) is the property taxes due for 2008 on the Seven Oaks lots of roughly \$7,000. The Mecklenburg County has not done anything at the moment. If the County proceeds with foreclosure, this would force Bank of America to pay the property taxes. What happens then is up to Bank of America.

Southern First - This loan is due in October 2009. Both Bob Jones and I have a meeting with them early next month to discuss this loan. Arden Homebuilders, LLC does not have the funds nor resources to repay this loan. The loan balance is \$500,000 plus interest of around \$20,000. The loan is unsecured and guaranteed by Bob Jones and myself.

Non Bank payables - All bills have been paid except the property taxes on the lots at Seven Oaks noted above and some small utility bills at Parkway Crossing, an advertising bill with AT&T, the copier contract balance, and a few old advertising bills. The collectors of these bills (except for the property taxes) have quit calling and I suspect they have written off the balance.

I have not heard anything further from Ray Holt regarding his \$75,000 balance due under his note that is in default since the last update.

Also, the amounts due Bob Jones, Ed Buck and Mary Berry under their respective notes are still due. No payments have been made on these notes and they are in default.

If you have any questions, please let me know.

Robert Keisler

RELEASE AGREEMENT

This Release Agreement ("Agreement") is entered into as of September 27, 2009 by and between Carolina First Bank ("Bank") and Robert A. Keisler, 116 Walnut Lane, Columbia, South Carolina 29212 ("Keisler") with reference to the following facts.

Recitals

- A. Keisler signed and delivered to Bank a Promissory Note dated August 21, 2007, in the stated principal amount of \$100,000 (the "Note").
- B. Keisler signed and delivered to Bank a Guaranty agreement dated August 20, 2007 guarantying payment any performance of all of the all "Debt" (defined therein) of Arden Homebuilders, LLC ("Arden") due Bank at such time and in the future (the "Guaranty").
- C. The Note has matured and is past due and Keisler is in default of his obligations under the Note.
- D. Arden is in default of its Debt obligations to Bank and consequently Keisler is in default of his obligations under the Guaranty.
- E. Keisler has provided Bank personal financial statements and other information representing his personal net worth and resources available to him from which Guarantor might pay his obligations under the Note and the Guaranty (the "Financial Statements").
- F. Keisler and Bank have reached an agreement to settle Keisler's obligations to the Bank under Note and the Guaranty.

Agreement

In consideration of the payment of \$15,000 by Keisler to Bank upon execution of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bank and Keisler covenant, agree and represent as follows;

1. Subject to the full and faithful performance by Keisler of the promises, agreements and covenants of this Agreement and the revocation provided herein, Bank hereby grants release, discharge, and satisfaction of the all of Keisler's obligations under the Note and Guaranty.
2. Keisler acknowledges that the recitals are true and correct.

3. Keisler represents and warrants that his Financial Statements are a true, accurate and complete statements of his assets, liabilities and resources as of the date made and agrees to correct any significant errors in the financial statement that are discovered within one year of the date hereof by written correction delivered to the Bank. Keisler agrees that, in the event that the Financial Statements, in fact, understates Keisler's combined assets by more than 15%, as determined by independent appraisers that have been mutually selected by the Bank and Keisler, or over states Keisler's combined liabilities by more than 15%, whether corrected as provided herein or not, Bank may, by written notice, revoke the release, discharge, and satisfaction granted in the foregoing paragraph 1. Revocation of paragraph 1 shall have no effect on other grants, covenants, agreements and representations contained in this Agreement.

4. All notices to Bank shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, or within five (5) days after depositing same with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) business day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, at the address stated below, or to such other address as Bank shall from time to time designate by notice in writing as herein provided.

If to Bank:

J. Trent Byrd
Senior Vice President
Carolina First Bank
1501 Main Street
Columbia, SC 29201

If to Keisler:

Robert A. Keisler
116 Walnut Lane,
Columbia, South Carolina 29212

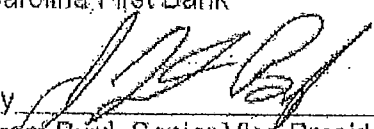
5. Keisler hereby releases and discharges the Bank and its agents and employees from all claims, demands, damages, liabilities and causes of action of any kind or character, known or unknown, that they may have or that may arise in the future arising from any cause whatsoever and, without limitation, arising from or connected with the Note the Guaranty or any other loan or transaction between the Bank and Keisler.

6. This Agreement is binding on and to the benefit of the assigns of, successors of and all persons claiming through the Bank and Keisler.

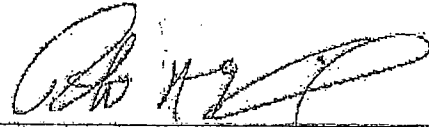
7. This Agreement states the entire agreement between Keisler, and Bank with respect to the subject matter hereof and may only be modified by a written instrument signed by Keisler and Bank.

In Witness Whereof, Keisler, and Bank have executed this agreement as of the date written above.

Carolina First Bank

By 

Trent Byrd, Senior Vice President



Robert A. Keisler

ROBERT A KEISLER

Balance Sheet

As of July 31, 2009

	Jul 31, 09
ASSETS	
Current Assets	
Checking/Savings	
Bank of America - Main	281.37
Bank of America - Money Market	303.37
Carolina First Bank	200.00
Carolina First Money Market	114.53
RBC Bank	100.00
Safe Federal Credit Union	1,120.84
USAA	100.00
Total Checking/Savings	2,220.11
Other Current Assets	
Wells Fargo Escrow Account	1,508.04
Total Other Current Assets	1,508.04
Total Current Assets	3,728.15
Fixed Assets	
2004 Expedition	7,000.00
Meridian Condominium	160,000.00
Total Fixed Assets	167,000.00
Other Assets	
Arden Homebuilders, LLC	1.00
Forest Lawn Memorial Park	1,500.00
Keland Incorporated, LLC	500.00
Robert A. Keisler, CPA PA	5,000.00
Snow Country Investors, LLC	1.00
Total Other Assets	7,002.00
TOTAL ASSETS	177,730.15
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	7,658.45
Total Accounts Payable	7,658.45
Credit Cards	
BOA - US Airways Visa	10,287.54
Capital One	11,000.00
Total Credit Cards	21,287.54
Total Current Liabilities	28,925.99
Long Term Liabilities	
Carolina First - Arden	100,000.00
NBSC	14,922.03
SC Student Loan Corporation	18,242.98
Wachovia Bank	10,000.00
Wells Fargo - Meridian	152,277.14
Total Long Term Liabilities	293,442.15
Total Liabilities	322,368.14
Equity	
Prior Net Worth	114,930.99
Current Year Net Change	-29,707.00
Total Equity	144,637.00
TOTAL LIABILITIES & EQUITY	177,730.16

DEBTOR NAME AND ADDRESS	SECURED PARTY NAME AND ADDRESS
BUILDERS INVESTMENT GROUP, LLC 627 GALWAY LANE COLUMBIA, SC 29209	Carolina National Bank and Trust Company 1350 Main Street Columbia, SC 29201-0000

CERTIFICATION OF NAME AND ADDRESS

The date of this Certification of Name and Address (Certification) is June 28, 2007.

BACKGROUND. This Certification is executed in conjunction with a security agreement between Debtor and Secured Party, dated June 28, 2007, 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.

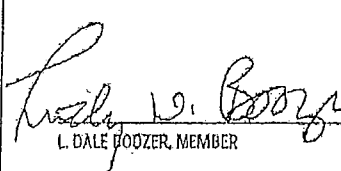
DEBTOR NAME. Debtor hereby warrants to Secured Party that the following is Debtor's complete and correct legal name:
BUILDERS INVESTMENT GROUP, LLC

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)
- 1600 MARION STREET
COLUMBIA, SC 29201

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
 L. DALE BOOZER, MEMBER 06/28/2007 ORIGINAL

LIMITED LIABILITY COMPANY AUTHORIZATION RESOLUTION

Carolina National Bank
and Trust Company
1350 Main Street
Columbia, SC 29201-0000

By: BUILDERS INVESTMENT GROUP, LLC

627 GALWAY LANE
COLUMBIA, SC 29209-0000

Referred to in this document as "Financial Institution"

Referred to in this document as "Limited Liability Company"

I, L. DALE BOOZER, certify that I am a Manager or Designated Member of the above named Limited Liability Company organized under the laws of RICHLAND/ SOUTH CAROLINA, Federal Employer I.D. Number 20-2511316, engaged in business under the trade name of BUILDERS INVESTMENT GROUP, LLC, and that the resolutions on this document are a correct copy of the resolutions adopted at a meeting of all members of the Limited Liability Company or the person or persons designated by the members of the Limited Liability Company to manage the Limited Liability Company as provided in the articles of organization or an operating agreement, duly and properly called and held on June 28, 2007 (date). These resolutions appear in the minutes of this meeting and have not been rescinded or modified.

AGENTS. Any Agent listed below, subject to any written limitations, is authorized to exercise the powers granted as indicated below:

Name and Title or Position	Signature	Facsimile Signature (if used)
A. <u>L. DALE BOOZER, MEMBER</u>	<u>[Signature]</u>	X
B. _____	X	X
C. _____	X	X
D. _____	X	X
E. _____	X	X
F. _____	X	X

POWERS GRANTED (Attach one or more Agents to each power by placing the letter corresponding to their name in the area before each power. Following each power indicate the number of Agent signatures required to exercise the power.)

Indicate A, B, C, D, E, and/or F	Description of Power	Indicate number of signatures required
<u>A</u>	(1) Exercise all of the powers listed in this resolution.	<u>1</u>
_____	(2) Open any deposit or share account(s) in the name of the Limited Liability Company.	_____
_____	(3) Endorse checks and orders for the payment of money or otherwise withdraw or transfer funds on deposit with this Financial Institution.	_____
_____	(4) Borrow money on behalf and in the name of the Limited Liability Company, sign, execute and deliver promissory notes or other evidences of indebtedness.	_____
_____	(5) Endorse, assign, transfer, mortgage or pledge bills receivable, warehouse receipts, bills of lading, stocks, bonds, real estate or other property now owned or hereafter owned or acquired by the Limited Liability Company as security for sums borrowed, and to discount the same, unconditionally guarantee payment of all bills received, negotiated or discounted and to waive demand, presentment, protest, notice of protest and notice of non-payment.	_____
_____	(6) Enter into a written lease for the purpose of renting, maintaining, accessing and terminating a Safe Deposit Box in this Financial Institution.	_____
_____	(7) Other _____	_____

LIMITATIONS ON POWERS The following are the Limited Liability Company's express limitations on the powers granted under this resolution.

EFFECT ON PREVIOUS RESOLUTIONS This resolution supersedes resolution dated _____. If not completed, all resolutions remain in effect.

CERTIFICATION OF AUTHORITY

I further certify that the Managers or Designated Members of the Limited Liability Company have, and at the time of adoption of this resolution had, full power and lawful authority to adopt the resolutions on page 2 and to confer the powers granted above to the persons named who have full power and lawful authority to exercise the same. (Apply seal below where appropriate.)

In Witness Whereof, I have subscribed my name to this document and affixed the seal, if any, of the Limited Liability Company on June 28, 2007 (date).

Attest by One Other Manager or Designated Member _____ Manager or Designated Member

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 §1171(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: June 28, 2007

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 BUILDERS INVESTMENT GROUP, 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 X 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 400451000 dated 06/28/2007 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 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 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, effect 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 X 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.

Randy D. Boozer
Randy D. Boozer 251-660759

"Undersigned" shall refer to all persons who sign this guaranty, severally and jointly.

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SETTLEMENT AGREEMENT AND MUTUAL RELEASE AGREEMENT

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE AGREEMENT ("Agreement"), made as of the 25 day of August, 2010, is by and between ARDEN HOMEBUILDERS, LLC, a South Carolina limited liability company formerly known as "Holt Family Homes, LLC" ("Borrower"), and ROBERT S. JONES, ROBERT A. KEISLER, CARL EDWARD BUCK, III, ROBERT A. BOOZER and BRIAN D. BOONE ("Guarantors"). (Borrower and Guarantors are, collectively, the "Obligors") and BANK OF AMERICA, N.A., a national banking association, having its principal office and place of business in Charlotte, Mecklenburg County, North Carolina (the "Lender").

WITNESSETH:

WHEREAS, Lender is the owner and holder of a Promissory Note dated October 18, 2005, executed and delivered by Borrower and payable to Lender in the original principal amount of Nine Million and no/100's Dollars (\$9,000,000.00) (as amended, the "Note"), which Note evidences the Borrower's obligations to the Lender in connection with a loan in the original principal amount of the Note, as modified (the "Loan"); and

WHEREAS, the Note was issued pursuant to a Land Acquisition and Construction Loan Agreement dated October 18, 2005, by and between Lender and Borrower (as amended, the "Loan Agreement"); and

WHEREAS, the Borrower's obligations under the Note are secured by, among other things, a Deed of Trust, Assignment and Security Agreement dated October 18, 2005, recorded on October 20, 2005 in Book 19609, at Page 34, in the Office of the Register of Deeds for Mecklenburg County, North Carolina (as modified, amended, supplemented, modified, restated, renewed or extended from time to time, the "Deed of Trust"), covering certain real property and improvements thereon, more particularly described therein (the "Property"); and

WHEREAS, all obligations of the Borrower to the Lender are personally guaranteed by Robert S. Jones, Robert A. Keisler and Carl Edward Buck, III, pursuant to a Guaranty Agreement dated October 18, 2005, and by Robert A. Boozer and Brian D. Boone, pursuant to a Guaranty Agreement dated March 18, 2008 (as amended, the Guaranty Agreements are referred to as the "Guaranties").

WHEREAS, Obligors have offered to make payment to Lender of an amount that is less than the full amount due on the Loan (the "Payment"), which the Lender has agreed to accept in full settlement of all its claim against the Obligors on account of the Loan; and

WHEREAS, Obligors and Lender have further agreed to release all claims between or against each other arising out of or related to the Loan, subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the premises, the Payment described herein, the mutual promises set forth below, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Acknowledgment of Indebtedness. Obligors further admit and acknowledge their remaining indebtedness to Lender pursuant to the Loan and the Guaranties is \$20,549.58, together with any accrued but unpaid interest thereon.

2. The Payment. Obligors shall pay to Lender, or cause to be paid (the "Payment"), a total of Seven Thousand, Five Hundred Dollars (\$7,500.00) on the date of this Agreement, in immediately available funds. The Payment shall be in full and final settlement of any claims the Lender may have against the Obligors arising out of or related to the Loan.

3. Release of Claims by Lender. In consideration of the Payment, the Lender does hereby agree to release the Obligors from any further liability on account of the Loan, subject to the limitations set forth herein, including, without limitation, any claim arising out of the Loan, the Note, the Loan Agreement, the Guaranties, or any other loan documents for the Loan.

4. Release of Claims by Obligors; Indemnification. In consideration of the Payment and of the release by Lender, Obligors, their heirs, executors, successors and assigns, do hereby agree to release, acquit and forever discharge Lender, as well as its assigns and successors in interest, of and from any and all liability, obligation, claim, cause of action, cost or expense whatsoever which Obligors may now have or which may hereafter accrue against said Lender on account of or in any way arising out of the Payment, the Loan, the Note, the Loan Agreement, the Guaranties, or any other documents relating to the Loan.

5. Effective Date of Agreement. This Agreement shall become effective only upon receipt of the Payment by Lender and the execution and delivery by the parties of this Agreement (the "Effective Date") and shall be the date as written above.

6. Entire Agreement. Each of the undersigned declares and represents that no promise, inducement or agreement not herein expressed has been made to any of them, that this Agreement contains the entire agreement among the parties with respect to the subject matter hereof and that the terms of this Agreement are contractual and not a mere recital.

7. Miscellaneous.

(a) The parties hereto agree that this Agreement shall be governed by and construed in accordance with North Carolina law.

(b) This Agreement constitutes the complete agreement of the parties hereto with respect to the subject matter hereof.

(c) No amendment or modification to this Agreement shall be valid or enforceable unless the same is set forth in a writing signed by both parties hereto.

(d) This Agreement shall be binding upon and enforceable against the parties hereto and their successors and assigns, provided that neither party may assign any of their rights or responsibilities hereunder without the prior written consent of the other parties.

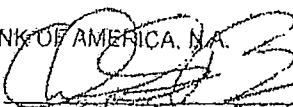
(e) This Agreement may be executed in counterparts, each of which shall be and constitute an original document, and all of which, taken together, shall be and constitute the same document.

[signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have, either individually or through their duly-authorized officers and agents, executed and delivered the foregoing Agreement as of the date first above written.

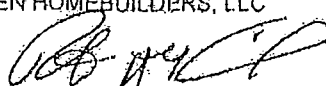
LENDER:

BANK OF AMERICA, N.A.

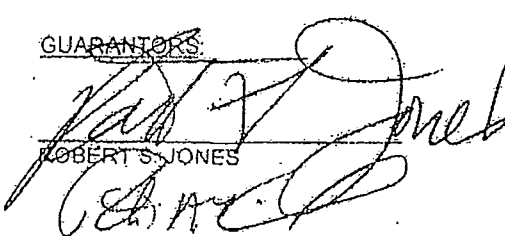
By: 
Name: Charles S. Boken
Title: Vice President

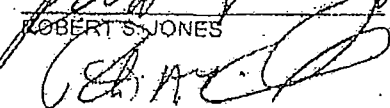
BORROWER:

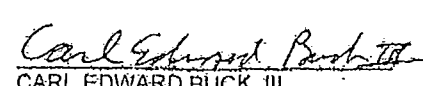
ARDEN HOMEBUILDERS, LLC

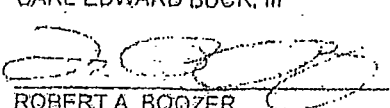
By: 
Name: ROBERT A. KEISLER
Title: MANAGING MEMBER

GUARANTORS:


ROBERT S. JONES


ROBERT A. KEISLER


CARL EDWARD BUCK, III


ROBERT A. BOOZER


BRIAN D. BOONE

RELEASE AGREEMENT

This Release Agreement ("Agreement") is entered into as of March 31, 2010 by and between Carolina First Bank ("**Bank**") and Brian David Boone, 3014 Ferncliff Road, Charlotte, North Carolina 28211 ("**Boone**") with reference to the following facts.

Recitals

- A. Arden Homebuilders, LLC signed and delivered to Bank a Promissory Note dated September 2, 2008, in the stated principal amount of \$191,000 (the "**Note**").
- B. Boone signed and delivered to Bank a Guaranty agreement dated September 2, 2008, guarantying payment any performance of all of the all "**Debt**" (defined therein) of Arden Homebuilders, LLC ("**Arden**") due Bank at such time and in the future (the "**Guaranty**").
- C. The Note has matured and is past due and Boone is in default of his obligations under the Note and Guaranty.
- D. Arden is in default of its Debt obligations to Bank and consequently Boone is in default of his obligations under the Guaranty.
- E. Boone has provided Bank personal financial statements and other information representing his personal net worth and resources available to him from which Guarantor might pay his obligations under the Note and the Guaranty (the "**Financial Statements**").
- F. Boone and Bank have reached an agreement to settle Boone's obligations to the Bank under Note and the Guaranty.

Agreement

In consideration of the payment of \$10,000 by Boone to Bank upon execution of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bank and Boone covenant, agree and represent as follows;

- 1. Subject to the full and faithful performance by Boone of the promises, agreements and covenants of this Agreement and the revocation provided herein, Bank hereby grants release, discharge, and satisfaction of the all of Boone's obligations under the Note and Guaranty.
- 2. Boone acknowledges that the recitals are true and correct.

3. Boone represents and warrants that his Financial Statements are a true, accurate and complete statements of his assets, liabilities and resources as of the date made and agrees to correct any significant errors in the financial statement that are discovered within one year of the date hereof by written correction delivered to the Bank. Boone agrees that, in the event that the Financial Statements, in fact, understates Boone's combined assets by more than 15%, as determined by independent appraisers that have been mutually selected by the Bank and Boone, or over states Boone's combined liabilities by more than 15%, whether corrected as provided herein or not, Bank may, by written notice, revoke the release, discharge, and satisfaction granted in the foregoing paragraph 1. Revocation of paragraph 1 shall have no effect on other grants, covenants, agreements and representations contained in this Agreement.

4. All notices to Bank shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, or within five (5) days after depositing same with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) business day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, at the address stated below, or to such other address as Bank shall from time to time designate by notice in writing as herein provided.

If to Bank:

J. Trent Byrd
Senior Vice President
Carolina First Bank
1501 Main Street
Columbia, SC 29201

If to Boone :

Brian Boone
3014 Ferncliff Road
Charlotte, NC 28211

5. Boone hereby releases and discharges the Bank and its agents and employees from all claims, demands, damages, liabilities and causes of action of any kind or character, known or unknown, that they may have or that may arise in the future arising from any cause whatsoever and, without limitation, arising from or connected with the Note the Guaranty or any other loan or transaction between the Bank and Boone.

6. This Agreement is binding on and to the benefit of the the Bank and Boone.

7. This Agreement states the entire agreement between Boone, and Bank with respect to the subject matter hereof and may only be modified by a written instrument signed by Boone and Bank.

In Witness Whereof, Boone, and Bank have executed this agreement as of the date written above.

Carolina First Bank

By _____
Trent Byrd, Senior Vice President


Brian Boone



Customer Copy Not Negotiable
Official Check

64-79/611

3733573527

Purchaser

Brian Boone

Date

Apr. 1, 2010

146700 8900257

Initials (type)

Center

PAY

****\$10,000.00****

\$ **10,000.00**

To the
Order
of

Carolina First Bank

SunTrust Banks, Inc. by its Authorized Agent
SunTrust Bank

Payable at SunTrust Bank

Non-Negotiable

Authorized Signature

⑈3733573527⑈

CHARLOTTE PARK ROAD STATION
4117 PARK RD
CHARLOTTE, NC 28209-9998

04/01/2010 02:23:44 PM

Sales Receipt			
Product	Sale	Unit	Final
Description	Qty	Price	Price

COLUMBIA, SC 29201			\$.44
Zone-2 First-Class Mail®			
Letter			
0 lb. 0.70 oz.			
* Expected delivery tomorrow, April			
2.			
Certified Mail™			\$2.80
Return Receipt (email)			\$1.10
Label #:			
7709 7709 4410 4201 2515			

Issue Postage: \$4.34

Total: \$4.34

Paid by:
MasterCard \$4.34
Account #: XXXXXXXXXXXX1176
Approval #: 033249
Transaction #: 298
23-902230176-99

Transaction Number: 80
USPS® # 361404-9550

* IMPORTANT: For Return Receipt (by *
* email), wait at least one day, but *
* no more than 60 days, to make your *
* request; visit www.usps.com; *
* select "Track & Confirm"; enter *
* label number(s); select "Request *
* Return Receipt (Electronic)"; *
* enter your name and email address. *

To check on the delivery status of
your Certified Mail™ article, visit
our Track & Confirm website at
www.usps.com or use this Automated
Postal Center™ (or any Automated
Postal Center™ at other Postal
locations).

Thanks.

It's a pleasure to serve you

ALL SALES FINAL ON ST. OPS AND POSTAGE.
REFUNDS FOR GUARANTEED SERVICE ONLY.

COPY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Southern First Bank, N.A.,

PLAINTIFF,

v.

Robert S. Jones,

DEFENDANT.

IN THE COURT OF COMMON PLEAS

Civil Action No: 2012-CP-40-5120

CONFESSION OF
JUDGMENT

JEANETTE M. MCBRIDE
C.C.P. & G.S.

2012 NOV 14 PM 3:29

RICHLAND COUNTY
FILED

WHEREAS, Robert S. Jones ("*Defendant*"), on or about December 8, 2009, made, executed and delivered to Southern First Bank, N.A. ("*Plaintiff*") a certain Commercial Promissory Note ("*Note*") whereby Defendant promised to pay to Plaintiff the principal sum of Four Hundred Forty-Nine Thousand Three Hundred Twenty-Six and 33/100 (\$449,326.33) Dollars, together with interest thereon as stated in the Note, payable pursuant to the terms and conditions stated in the Note; and

WHEREAS, Defendant has not made payment pursuant to the terms of the Note and is in default, pursuant to the terms and conditions of the Note; and

WHEREAS, Plaintiff has exercised its rights under the Note and has filed suit against Defendant in the above captioned action for nonpayment pursuant to the terms of the Note and Plaintiff has declared the entire indebtedness due and immediately payable; and

WHEREAS, as of July 18, 2012, there is now due and owing to the Plaintiff on the Note the principal balance of Four Hundred Forty-Nine Thousand Three Hundred Twenty-Six and 33/100 (\$449,326.33) Dollars, with interest thereon as stated in the Note from December 8, 2010, including late fees and other charges that may become due pursuant to the Note; and

NOW, THEREFORE, pursuant to South Carolina Code Ann. §15-35-350 et. seq., the undersigned does hereby confess judgment in favor of Plaintiff for the sum of Four Hundred Forty-Nine Thousand Three Hundred Twenty-Six and 33/100 (\$449,326.33) Dollars, together with interest thereon as stated in the Note, all expenses of collection and reasonable attorneys' fees, and authorizes judgment to be entered therefore against Defendant and does make oath and swear as follows:

This Confession of Judgment is for money justly and lawfully due Plaintiff.

 PAGE 1

APPENDIX 567

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Defendant desires to enter into this Confession of Judgment as evidence of amounts duly owed pursuant to the Note.

The amount set forth above is justly due and does not exceed the liability of Defendant.

Defendant has had the opportunity to seek legal advice from an attorney of his own choosing regarding this Confession of Judgment and cannot later claim that he failed to understand or comprehend this Confession of Judgment if he did not seek such independent legal advice. As such, Defendant has had the full opportunity to read this Confession of Judgment and obtain whatever legal advice that he desires prior to signing this Confession of Judgment.

RG PAGE 2

IN WITNESS WHEREOF, the undersigned has set his hand and seal as of the 8 day of November, 2012.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

WITNESSES:

Deese Williams
Crystal Amick

DEFENDANT:

Robert S. Jones
Robert S. Jones

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

ACKNOWLEDGMENT

THE FOREGOING instrument was acknowledged before this 8th day of November, 2012, by Robert S. Jones.

Deese Williams

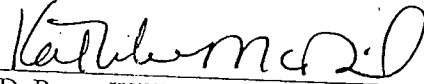
Notary Public for South Carolina

My Commission Expires: 2/15/13

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 20, 2014



D. Reece Williams, III
Kathleen M. McDaniel
CALLISON TIGHE & ROBINSON, LLC
P.O. Box 1390
Columbia, South Carolina 29202
Tel. (803) 404-6900
Fax. (803) 404-6902
reecewilliams@callisontighe.com
kathleenmcdaniel@callisontighe.com
Attorneys for Appellant

RECEIVED
SEP 9 2014
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea Benjamin, Circuit Court Judge
and
L. Casey Manning, Circuit Court Judge

Civil Action No. 2011-CP-40-01980

Robert S. Jones.....Plaintiff/Appellant
v.
Builders Investment Group, LLC,
Brian D. Boone and Arden Homebuilders, LLC.....Defendants

Of Whom
Builders Investment Group, LLC
and Brian D. Boone are.....Respondents

FINAL BRIEF OF APPELLANT

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September 9, 2014

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BUILDERS INVESTMENT GROUP, LLC
AND BRIAN D. BOONE**

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court erred, in granting the Respondents' motion for judgment notwithstanding the verdict, by ruling that Appellant Jones's discharge of the Renewed Loan by giving a personal promissory note to Southern First Bank was not payment of the loan entitling Appellant Jones to contribution from Respondents BIG and Boone.
- II. The trial court erred, in granting the Respondents' motion for judgment notwithstanding the verdict, by ruling that Section 2.3 of the Operating Agreement unambiguously means that a Class A member would not have to personally guaranty a loan if a lender did not specifically require that particular member to do so.

STATEMENT OF THE CASE

A jury trial in this case was held on December 11 and 12, 2012. At the end of the trial, the jury returned a verdict for Appellant Jones. (Verdict Form; R. pp. 6-7.) On December 27, 2012, Respondents Builders Investment Group, LLC and Brian D. Boone ("BIG and Boone") filed a Motion For a Judgment Notwithstanding the Verdict, or in the Alternative, a New Trial (Motion for a New Trial; R. pp. 32-124.) The trial court issued its Order Granting Defendants' Builders Investment Group, LLC and Brian D. Boone's Motion for Judgment Notwithstanding the Verdict ("Order Granting JNOV") on May 15, 2013. (Order Granting JNOV; R. pp. 8-18.) Appellant Jones timely filed a Motion to Alter or Amend Order Pursuant to Rule 59(e), SCRCF. (Rule 59(e) Motion; R. pp. 125-130.) The trial court issued its Order Denying Plaintiff's Motion to Alter or Amend Pursuant to Rule 59(e), SCRCF on November 18, 2013. (Order Denying Rule 59(e) Motion; R. pp. 19-27.) Appellant Jones believes that the trial court erred in granting judgment notwithstanding the verdict in favor of the Respondents. Appellant Jones timely filed a Notice of Appeal with this Court.

FACTS

On July 31, 2007, Appellant Jones and Respondents BIG and Boone executed the Operating Agreement of Arden Homes, LLC ("Operating Agreement"). (Arden Homes

Operating Agreement, pp. 33-34; R. pp. 482-483.) Pursuant to the terms of the Operating Agreement, all three parties were Class A Members of Arden Homebuilders, LLC ("Arden"). (Operating Agreement p. 36; R. p. 485.) The Operating Agreement contemplates that the parties would guaranty loans made to the Arden. In particular, Section 2.3 of the Operating Agreement states as follows:

2.3 Guaranty of Loans to Company. Each of the Class A Members (but none of the Class B Members) shall, in its individual capacity, jointly and severally guaranty any loan to the Company ("Guaranteed Loan") for so long as any guaranty of such loan is required by the lender. Notwithstanding any other provision of this Agreement or any provision of the Guaranteed Loan documents, as between the Members, each Class A Member shall be responsible for paying such Class A Member's proportionate share of any Guaranteed Loan ("Guaranty Percentage"). The "proportionate share" of a Class A Member shall equal such Class A Member's Percentage Interest divided by the aggregate Percentage Interests of all of the Class A Members. Any Class A Member who pays more than such Class A Member's Guaranty Percentage of the Guaranteed Loan to the Lender shall be entitled to contribution from the other Class A Members. Any Class A Member who is required to institute legal action to enforce such right of contribution shall be entitled to recover from the other Class A Members all costs and reasonable attorneys fee. Pursuant to the Company's Settlement Agreement with W. Ray Holt dated September 27, 2006 ("Settlement Agreement"), the provisions of this Section shall not apply to W. Ray Holt and the Company agrees to indemnify and hold W. Ray Holt harmless from any liability related thereto or to any guarantees which W. Ray Holt gave to any vendor for the sole benefit of the company.

(Operating Agreement, p. 9; R. p. 458) (emphasis added).

Arden did in fact need additional operating capital (Test. of Jones, Tr. of trial 50:19-51:1; R. p. 196, line 19-p. 197, line 1), and on or about September 25, 2007, Arden borrowed from South First Bank, N.A. ("South First"), in Columbia, South Carolina, the sum of approximately \$498,000.00 with interest at a variable rate (the "Original Loan"). (Note dated September 25, 2007; R. p. 500.) Appellant Jones and two other members of Arden personally guaranteed the Original Loan. (Guaranties; R. pp. 501-503; Test. of Jones, Tr. of trial 49:21-50:1; R. p. 195, line 21-p. 196, line 1.) Respondents BIG and Boone refused to guaranty the Original Loan.

(Test. of Jones, Tr. of trial 50:3-15; R. p. 196, lines 3-15; Test. of Kessler, Tr. of trial 92:3-93:6; R. p. 238, line 3-p. 239, line 6.)

On September 24, 2008, the day before the Original Loan was to mature, the Original Loan was renewed by Arden (the "Renewed Loan"). (Note dated September 24, 2008; R. p. 509.) The term of the Renewed Loan was for one year, with a maturity date of September 24, 2009. (*Id.*) Appellant Jones as well as one other member of Arden guaranteed the Renewed Loan as required by the lender. (Guaranties; R. pp. 510-511; Test. of Jones, Tr. of trial, 51:4-12; R. p. 197, lines 4-12.)

By December 2009, Arden was out of business and did not pay the Renewed Note when it matured on September 24, 2009, so Appellant Jones was left to "deal with" the Renewed Note. (Test. of Jones, Tr. of trial 52:21-53:7; R. p. 198, line 21-p. 199, line 7.) Appellant Jones gave a personal note to Southern First Bank and liquidated certain personal assets to pay off the Renewed Loan. (Test. of Jones, Tr. of trial 53:4-54:20; R. p. 199, line 4-p. 200, line 20; 65:6-15; R. p. 211, lines 6-15; 80:18-81:5; R. p. 226, line 18-p. 227, line 5; Test. of Strickland, Tr. of trial 186:18-21; R. p. 332, lines 18-21; 187:19-188:4; R. p. 333, line 19-p. 334, line 4; 191:21-192:3; R. p. 337, line 21-p. 338, line 3; 193:9-12; R. p. 339, lines 9-12.) Appellant Jones felt personally responsible for payment of the Renewed Note because of his long time banking relationship with Southern First and in particular, banker Justin Strickland. (Test. of Jones, Tr. of trial 52:8-53:7; R. p. 198, line 8-p. 199, line 7.)

Appellant Jones's personal note evidences a loan ("the Personal Loan") in the amount of \$449,326.33 made by Southern First to Appellant Jones personally, which note had a maturity date of December 8, 2010. (Note dated December 8, 2009; R. pp. 512-513.) As a result of Appellant Jones's undertaking of the Personal Loan, the Renewed Loan was discharged and

Arden had no further liability for payment of the Renewed Note. (Test. of Jones, Tr. of trial 52:7-9; R. p. 198, lines 7-9; 53:23-55:7; R. p. 199, line 23-p. 202, line 7; Test. of Strickland, Tr. of trial 186:18-21; R. p. 332, lines 18-21; 187:19-188:4; R. p. 333, line 19-p.334, line 4; 191:21-192:3; R. p. 337, line 21-p. 338, line 3.)

Unfortunately, Appellant Jones was unable to pay the Personal Loan. (Test. of Jones, Tr. of trial 55:10-24; R. p. 201, lines 10-24.) Accordingly, Southern First obtained a judgment against Appellant Jones in the amount of \$449,326.33. (Confession of Judgment; R. pp. 562-564; Test. of Strickland, Tr. of trial 192:1-11; R. p. 338, lines 1-11.)

Respondents BIG and Boone have refused to pay their proportionate share of the Renewed Loan as Jones asserts they were required to do by the terms of the Operating Agreement. (Test. of Jones, Tr. of trial 56:7-17; R. p. 202, lines 7-17.) This litigation ensued.

STANDARD OF REVIEW

Our Court of Appeals has set forth the standard of review on a motion for judgment notwithstanding the verdict in *Burns v. Universal Health Services, Inc.*, 361 S.C. 221, 603 S.E.2d 605 (Ct. App. 2004) (internal citations omitted):

In ruling on a motion for JNOV, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them. In making this determination, the judge must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. The trial court must deny the motion when the evidence yields more than one inference or its inferences are in doubt.

In deciding a motion for JNOV, the trial judge is concerned with the existence of evidence, not its weight. When considering a JNOV motion, neither an appellate court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.

A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. If more than one inference can be drawn from the evidence, the grant of a JNOV is improper and the case must be left to the jury's determination. The verdict will be upheld if there is any evidence to sustain the

factual findings implicit in the jury's verdict. The appellate court will reverse the trial court's ruling on a JNOV motion only when there is no evidence to support the ruling or where the ruling is controlled by an error of law.

ARGUMENT

In this case, the trial court erred as a matter of law in granting the Respondents' motion for judgment notwithstanding the verdict because there was more than sufficient evidence for a jury to find that Appellant Jones had paid more than his pro-rata portion of the Renewed Note and was entitled to contribution from Respondents BIG and Boone.

1. The trial court erred, in granting the Respondents' motion for judgment notwithstanding the verdict, by ruling that Appellant Jones's discharge of the Renewed Loan by giving a personal promissory note to Southern First Bank was not payment of the loan entitling Appellant Jones to contribution from Respondents BIG and Boone.

The central question here is whether Appellant Jones "paid" more than his proportionate share of the Renewed Loan. Appellant Jones asserts that he paid the entire Renewed Loan at the time of making the Personal Loan and payment to Southern First of certain personal assets. The Respondents argue and the trial court agreed that such undertaking of the Personal Loan was not payment of the Renewed Loan and that Appellant Jones would not be considered to have paid the Renewed Loan until he also made payment to Southern First on the Personal Loan in the form of money.

There is no case law in South Carolina on this point; however, a similar situation has been considered by at least one other court. *Barton v. Farmers' State Bank*, 276 S.W. 177 (Comm. of App. TX 1925). In *Barton*, the Texas court stated:

Payment, where required, does not have to be made with money. This is recognized in every authority that we have seen. In the statement of the general rule made in 9 Cyc. 798, and 13 C. J. 823, it is said that the right of contribution is not "enforceable until there has been an actual payment * * * of the common obligation or till something is done which is equivalent to a discharge thereof." Mr. Brandt says that one cannot enforce

contribution against another until he has “made a payment of the obligation, or assumed more than his share of the debt.” *Suretyship & Guaranty* (2d. Ed.) § 254. See, also, *Backus v. Coyne*, 45 Mich. 584, 8 N. W. 699. It may properly be said, therefore, that anything of detriment to one obligor (whether principal or surety) which has the effect of discharging his coprincipal or cosurety from the joint obligation is a sufficient payment upon which to base contribution.

And amongst the familiar media of such payments are promissory notes, where the notes are taken with intent of extinguishing the prior debt. In several jurisdictions, if the note taken on a pre-existing debt is negotiable in form, its mere taking imports discharge of the debt, and is a payment adequate to support a suit for contribution. *Robertson v. Maxcey*, 6 Dana (36 Ky.) 101; *Greene v. Anderson*, 102 Ky. 216, 43 S. W. 195, 197, and cases there cited; *Witherby v. Mann*, 11 Johns. (N. Y.) 519; *Pearson v. Parker*, 3 N. H. 366; *Cornwall v. Gould*, 4 Pick. (Mass.) 444; *Amos v. Bennett*, 125 Mass. 120, 123; *Gooding v. Morgan*, 37 Me. 419.

More recently, a court in Illinois has held, “Contribution involves the partial reimbursement of one who has discharged a common liability. Discharge is defined as any method by which a legal duty is extinguished; esp., the payment of a debt or satisfaction of some other obligation.” *Small v. Rogers*, 938 N.E.2d 18, 22 (Ill. App. Ct. 2010) (internal citations and quotations omitted).

At least one other court outside of South Carolina has considered a situation similar to that faced here. *Kee v. Lofton*, 737 P.2d 55 (Ct. App. Kan. 1987). In *Kee*, one guarantor signed a personal promissory note discharging the other guarantors from liability on a common debt. The Plaintiff then proceeded to make payments on the personal promissory note. After a time, he sought contribution from the former co-guarantors. The Kansas court held that the statute of limitations on his claim for contribution had begun to run at the time that he signed the personal promissory note discharging the debt, and that, because he had waited until he had paid in cash on the promissory note more than his ratable share, the statute of limitations had run. *Id.* Although the issue presented in *Kee* is different—i.e. the statute of limitations—the underlying

concept remains the same. Giving a promissory note is payment of a common debt entitling a co-guarantor to contribution.

A common treatise also considers the sufficiency of discharge entitling one to contribution:

It is not necessary that the claimant's payment be made in cash. Its equivalent, such as the claimant's negotiable promissory note or anything else the creditor accepts as satisfaction, is generally sufficient. . . . For a note or other negotiable instrument to be equivalent to payment for contribution purposes, the creditor must have accepted it in satisfaction of the whole or more than the claimant's fair share of the obligation.

18 Am. Jur. 2d Contribution § 14 Sufficiency and medium of discharge-payment not in cash. Thus, the weight of authority indicates that discharge of a corporate obligation by the undertaking of a personal obligation is payment of the corporate obligation for the purpose of contribution.

There is no dispute that the Renewed Loan no longer exists and that it was discharged by Appellant Jones's Personal Loan. Accordingly, discharge of the Renewed Note by the Jones promissory note, and subsequent Confession of Judgment, were payment of the Renewed Note by Appellant Jones entitling him to contribution.

Additionally, Respondents BIG and Boone are bound by the Operating Agreement to share responsibility for the Renewed Note, regardless of whether they signed a guaranty or not.

Section 2.3 of the Operating Agreement states:

Notwithstanding any other provision of this Agreement or any provision of the Guaranteed Loan documents, as between the Members, each Class A Member shall be responsible for paying such Class A Member's proportionate share of any Guaranteed Loan ("Guaranty Percentage").

A member's proportionate share of any "Guaranteed Loan" is calculated based upon the member's Percentage Interest and is not dependent upon whether the member provided a

guaranty or not. (Operating Agreement p. 9; R. p. 458.) Thus, despite the fact that Respondents BIG and Boone did not personally guaranty the Renewed Note, they were required to contribute their Percentage Interest to the payment of that Renewed Note. Because Appellant Jones paid the entire Renewed Note for Arden, Respondents BIG and Boone are bound to contribute their pro-rata share.

As a secondary matter, the trial court's Order Granting JNOV appears to conflate the issues of contribution and indemnification such that the Court finds that the Operating Agreement is a contract of indemnification. Although these terms are sometimes used interchangeably in South Carolina case law, the concepts differ in a significant way.

Indemnity has been defined as “[a] contractual or equitable right under which the entire loss is shifted from a tortfeasor who is only technically or passively at fault to another who is primarily or actively responsible.” Black's Law Dictionary 769 (6th 670 ed.1990) (emphasis added). In contrast, “contribution” is defined as the:[r]ight of one who has discharged a common liability to recover of another also liable, the aliquot portion which he ought to pay or bear. Under principle of ‘contribution,’ a tort-feasor against whom a judgment is rendered is entitled to recover proportional shares of judgment from other joint tort-feasors whose negligence contributed to the injury and who were also liable to the plaintiff. *Id.* at 328.

Andrade v. Johnson, 345 S.C. 216, 225, 546 S.E.2d 665, 669-70 (Ct. App. 2001) (*rev'd on other grounds*, *Andrade v. Johnson*, 356 S.C. 238, 588 S.E.2d 588 (2003)). Because of the fundamental difference between the two concepts, the trial court erred in holding that the Operating Agreement is a contract for indemnification.

Accordingly, this Court should find that Appellant Jones did in fact pay more than his pro-rata share of the Renewed Note by undertaking the Personal Loan and giving a Confession of Judgment, and he is entitled to contribution from Respondents BIG and Boone.

II. The trial court erred, in granting the Respondents' motion for judgment notwithstanding the verdict, by ruling that Section 2.3 of the Operating Agreement unambiguously means that a Class A member would not have to personally guaranty a loan if a lender did not specifically require that particular member to do so.

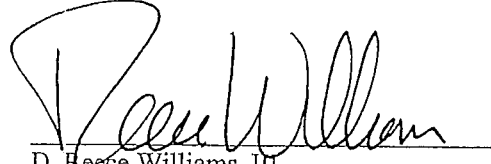
The express terms of the Operating Agreement state that, "[e]ach of the Class A Members (but none of the Class B Members) shall, in its individual capacity, jointly and severally guaranty any loan to the Company ("Guaranteed Loan") for so long as any guaranty of such loan is required by the lender." Respondents BIG and Boone were Class A Members of Arden, and Southern First Bank required the Renewed Loan to be personally guaranteed. Therefore, pursuant to the express terms of the Operating Agreement, Respondents BIG and Boone were required to personally guaranty the Renewed Loan. The fact that they did not want to guaranty the Renewed Loan and did not do so does not mean that they were not contractually required by the Operating Agreement to give the guaranty.

CONCLUSION

Based upon the foregoing, Appellant Jones requests that this Court rule that Appellant Jones paid more than his pro-rata share of the Renewed Loan when he undertook the Personal Loan, that Respondents BIG and Boone are required by the Operating Agreement to pay their proportionate share of the Renewed Loan, and that Appellant Jones is entitled to contribution from Respondents BIG and Boone.

Signature on following page

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Reece Williams, III". The signature is written over a horizontal line.

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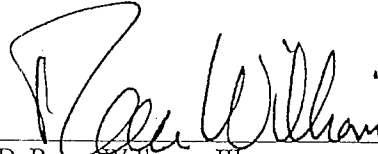
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Appellate Case No. 2013-002673

Robert S. Jones, Appellant,

v.

Builders Investment Group, LLC,
Brian D. Boone and Aiden Homebuilders, LLC, Defendants,

Of Whom
Builders Investment Group, LLC
and Brian D. Boone are Respondents.

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly granted Respondents' motion for judgment notwithstanding the verdict, ruling that Appellant Jones had not made actual payment on a loan to Southern First Bank entitling him to contribution from Respondents BIG and Boone.
- II. The trial court properly granted Respondents' motion for judgment notwithstanding the verdict, ruling that Respondents BIG and Boone were not required to guaranty a loan from Southern First Bank and thus not liable for any contribution to Appellant.

STATEMENT OF THE CASE

Respondents Builders Investment Group, LLC ("BIG") and Brian D. Boone ("Boone") concur in the Statement of the Case presented in Appellant Robert S. Jones' ("Jones") brief.

FACTS

Holt Family Homes, LLC was formed in 2005 to develop, build, and sell residential homes. (R. p. 231, l. 20 – p. 232, l. 6). At its inception, Holt Family Homes had four initial Class A members: Appellant Jones, Robert A. Keisler ("Keisler"), Carl Edward Buck ("Buck"), and Wetzel Ray Holt ("Holt"). (R. p. 242, ll. 17-25; R. p. 448). These Class A members also served as the managers of Holt Family Homes. (R. p. 419). Holt Family Homes also had five Class B members including BIG. (R. p. 449). Boone had no ownership interest in Holt Family Homes. (R. pp. 448-449).

On January 26, 2007, the managers of Holt Family Homes decided to obtain a loan from Southern First Bank (formerly known as Greenville First Bank, N.A.). (R. p. 490). The loan was for \$300,500 and was signed for by Jones, Keisler, and Buck. (R. p. 490). Jones, Keisler, and Buck were also the only personal guarantors on the loan from Southern First Bank. (R. p. 207, ll. 14-19; R. pp. 491-493).

On April 25, 2007, the managers of Holt Family Homes decided to obtain a second loan from Southern First Bank. (R. p. 494). The loan was for \$199,250 and was signed once again by Jones, Keisler, and Buck. (R. p. 494). Jones, Keisler, and Buck were also the only personal guarantors on this loan. (R. pp. 495-497). Neither BIG nor Boone was a Class A member or manager of Holt Family Homes at the time the loans from Southern First Bank were made. (R. p. 448).

In mid-2007, BIG and Boone agreed to make additional capital contributions and investments in Holt Family Homes. (R. p. 243, ll. 19-23). On July 31, 2007, the Holt Family Homes operating agreement was amended to reflect these investments ("Arden Operating Agreement"). (R. pp. 450-487). As part of the changes to the operating agreement, the name of the LLC was changed from Holt Family Homes to Arden Homebuilders, LLC ("Arden"). (R. p. 450). BIG contributed additional capital of \$625,000 and Boone contributed \$125,000. (R. p. 485). No other members contributed additional capital. (R. p. 458; R. p. 485). In return, BIG and Boone were made Class A members and managers of Arden. (R. p. 458; R. p. 485).

After their addition as Class A members, Boone and BIG signed guaranties on loans to Arden from Bank of America, Wachovia, and Carolina Bank. (R. p. 269, l. 17 – p. 270, l. 5). However, BIG and Boone were never asked to guaranty nor did they guaranty the loan from Southern First. (R. p. 269, ll. 10-16; R. p. 340, ll. 8-17). Section 4.2 of the Arden Operating Agreement specifically provided that the Southern First Loan was guaranteed by "Jones, Keisler, and Buck." (R. p. 463).

The Class A members also voted to make Boone the managing-member of Arden. (R. p. 303, ll. 14-20). As managing-member Boone was given the responsibilities of the debts of Arden. (R. p. 305, l. 18 – p. 306, l. 2). Boone was the main point of contact for loans with Bank of America, Wachovia, and Carolina First. (R. p. 248, l. 12 – p. 249, l. 16; R. p. 305, l. 18 – p. 306, l. 2). However, Boone never had any involvement with Southern First Bank. (R. p. 305, l. 18 – p. 306, l. 8). He never met any representative at Southern First Bank, did not receive the loan statements or any correspondence from Southern First Bank, and he was never given the responsibility of the Southern First loan.

(R. p. 305, l. 18 – p. 306, l. 8; R. p. 309, l. 23 – p. 311, l. 7). Mr. Keisler remained the main contact with Southern First Bank, and he and Jones handled all dealings with Southern First Bank without input from Boone or BIG. (R. p. 248, l. 12 – p. 249, l. 16; R. p. 305, l. 18 – p. 306, l. 8; R. p. 309, l. 23 – p. 311, l. 7).

On September 25, 2007, Jones, Keisler, and Buck consolidated the two loans at Southern First Bank into one new loan in Arden's name ("Southern First Loan"). (R. p. 500). Again, only Jones, Keisler, and Buck signed the note from Southern First Bank and only Jones, Keisler, and Buck signed personal guaranties on the loan. (R. pp. 501 - 503; R. p. 195, l. 21 – p. 196, l. 2).

On September 24, 2008, the Southern First Loan was modified to remove Buck as a personal guarantor. (R. pp. 509 - 511; R. p. 249, l. 17 – p. 250, l. 18). Only Jones and Keisler signed the new note and only Jones and Keisler signed personal guaranties. (R. pp. 509-511; R. p. 197, ll. 4-12). Further, only Jones and Keisler were involved in the decision to remove Buck as a guarantor. (R. p. 249, l. 17 – p. 250, l. 18). Neither BIG nor Boone was ever asked to vote on the release of Buck as a personal guarantor on the Southern First Loan, and neither BIG nor Boone ever personally guarantied the Southern First Loan. (R. p. 250, ll. 15-18; R. p. 197, ll. 4-12; R. p. 314, ll. 11-16).

On December 8, 2009, Jones took out a personal loan with Southern First Bank to satisfy the Southern First Loan. (R. pp. 50-51). Southern First Bank marked the Southern First Loan as satisfied on the books and transferred the balance to the personal loan of Jones. (R. p. 338, l. 17 – p. 339, l. 14). Southern First Bank then wrote-off the personal loan of Jones. (R. p. 322, ll. 5-24; R. p. 515). On November 8, 2012, Jones gave Southern First Bank a confession of judgment regarding his personal loan. (R. pp. 562-

564). Jones has not made any actual payments on his personal loan or the confession of judgment. (R. p. 215, l. 11 – p. 216, l. 9; R. p. 324, ll. 4-16).

Jones sought contribution from BIG and Boone for their alleged proportionate share of funds he claims to have paid, but were actually written-off. (R. p. 213, ll. 18-24; R. p. 322, ll. 5-24). This litigation ensued.

STANDARD OF REVIEW

"In ruling on motions for directed verdict or judgment notwithstanding the verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt. This Court will reverse the trial court only when there is no evidence to support the ruling below." *Steinke v. South Carolina Dept. of Labor, Licensing and Regulation*, 336 S.C. 373, 386, 520 S.E.2d 142 (1999) (emphasis added).

ARGUMENT

The trial court properly granted the Respondents' motion for judgment notwithstanding the verdict because Appellant Jones failed to pay more than his proportionate share of the Southern First Loan as required by the Arden Operating Agreement, and Respondents BIG and Boone were not required to guaranty the Southern First Loan.

- I. The trial court properly granted Respondents' motion for judgment notwithstanding the verdict, ruling that Appellant Jones had not made actual payment on a loan to Southern First Bank entitling him to contribution from Respondents BIG and Boone.

The main issue here is whether Jones "paid" more than his proportionate share of the Southern First Loan. This issue is governed by principles of contract. The Arden Operating Agreement specifically controls the right to contribution between the parties. Appellant improperly attempts to use equitable principles of contribution from other jurisdictions to support his case. These concepts are misplaced as the Arden Operating

Agreement controls and there is sufficient law within South Carolina to interpret the Agreement.

A. A plain and unambiguous reading of the Arden Operating Agreement provides that a member must actually "pay" more than his share to recover from the other members.

A plain and unambiguous reading of Section 2.3 of the Arden Operating Agreement makes it clear that a member must actually pay more than his share to recover from the other members. Because Jones has not paid more than his proportionate share of the Southern First Loan he is not entitled to contribution.

Section 2.3 of the Arden Operating agreement provides in pertinent part:

Any Class A Member who pays more than such Class A Member's Guaranty Percentage of the Guaranteed Loan to the Lender shall be entitled to contribution from the other Class A Members.

(emphasis added)(R. p. 458). "When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense." *C.A.N. Enterprises, Inc. v. S. Carolina Health & Human Services Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). A plain and unambiguous reading of Section 2.3 requires a Class A Member to actually pay more than his share to recover from the other members. Section 2.3 does not provide any other situation for recovery, it explicitly requires payment.

It is undisputed from the evidence presented at trial that Jones signed a personal promissory note, also with Southern First Bank, which was used to satisfy the Southern First Loan. (R. p. 338, l. 17 – p. 339, l. 14). This personal promissory note was then

written-off by Southern First Bank almost immediately.¹ It is also undisputed that Jones has not made any payments on this personal promissory note or the confession of judgment. (R. p. 215, l. 11 – p. 216, l. 9; R. p. 324, ll. 4-16; R. p. 47-48, ¶ 5; R. p. 53, ¶ 2; R. pp. 562-564).

Appellant claims that his signing of a personal promissory note which was used to satisfy the Southern First Loan on the books of Southern First Bank constitutes actual payment. However, as the Southern First Bank president, Justin Strickland, testified at trial, a promissory note is only a promise to pay, not payment. (R. p. 338, l. 17 – p. 339, l. 16).

Strickland's testimony is supported by the South Carolina Uniform Commercial Code, which provides that a promissory note is simply a promise to pay and does not mean a bank has received any sum of money or funds. S.C. Code Ann. § 36-9-102 ("Promissory note' means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds."). By signing a personal promissory note, Jones has simply incurred a liability on behalf of Arden. Jones has not made payment as required by the plain language of the operating agreement, and has thus suffered no actual damages.

Because Plaintiff has not paid more than his Guaranty Percentage, based on his own testimony, the testimony of Strickland, and the UCC, the Plaintiff is not entitled to contribution from BIG and Boone according to the plain terms of the Arden Operating

¹ Half of Jones personal promissory note was written-off five days after the note was issued, and the remaining amount was written-off shortly thereafter. (R. p. 322, ll. 5-24; R. p. 515).

Agreement. Accordingly, this trial court properly granted BIG and Boone's motion for a judgment notwithstanding the verdict.

B. South Carolina case law supports the plain reading of the Arden Operating Agreement.

South Carolina case law supports the plain reading of the Arden Operating Agreement which requires a member to pay more than his proportionate share before he can recover from another member. Because Jones simply incurred a liability related to the Southern First Loan and did not make actual payment, he is not entitled to contribution from BIG or Boone.

Section 2.3 of the Arden Operating Agreement is a contract of indemnity under South Carolina law. *Laurens Emergency Med. Specialists, PA v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 109, 584 S.E.2d 375, 377 (2003) ("South Carolina courts have consistently defined indemnity as 'that form of compensation in which a first party is liable to pay a second party for loss or damage the second party incurs to a third party.'").

South Carolina courts recognize two types of indemnity contracts: (1) a contract for indemnity against liability and (2) a contract for indemnity against loss. *Piper v. Am. Fid. & Cas. Co. et al.*, 154 S.C. 106, 108 (1930). In a contract for indemnity against liability, the obligation to indemnify arises when the liability is incurred. *Id.* By contrast, in a contract for indemnity against loss, "liability does not attach until loss has been suffered, that is when the [indemnitee] has paid the damages." *Id.* (emphasis added).

Whether a contract for indemnity is one for liability or for loss "depends on the intention of the parties as shown by the phraseology of the agreement contained in the policy." *Shealey v. Am. Health Ins. Corp.*, 220 S.C. 79, 82-83, 66 S.E.2d 461, 462 (1951). "In construing contracts of this character, the courts generally have held that if the

indemnity is clearly one against loss or damage, no action will lie in favor of the insured until some loss or damage has been sustained by him, either by payment of the whole or some part of the claim.” *Id.* (emphasis added).

Here, Section 2.3 of the Arden Operating Agreement is a contract for indemnity against loss because the Agreement specifically requires a member to “pay” more than his proportionate share. Jones has not paid more than his proportionate share of the Southern First Loan. In fact, it is clear that Jones has incurred only a liability with regard to the Southern First Loan by taking out a personal promissory note.

Jones’ personal promissory note was used to satisfy the Southern First Loan on the books of Southern First Bank. As discussed above, a promissory note is merely a promise to pay. It is not payment. While Jones incurred a liability on behalf of Arden when he signed the personal promissory note, he did not incur actual damage by way of payment.

This is the exact distinction that the South Carolina case law seeks to make. If the Arden Operating Agreement requires payment for contribution, then the mere incurrence of a liability is insufficient to satisfy the contract requirements for contribution. The Arden Operating agreement does not say, “Any Class A Member who incurs a *liability* more than his share is entitled to contribution.” The Arden Operating Agreement specifically requires payment. Accordingly, the mere incurrence of a liability by Jones is insufficient to entitle him to contribution from the BIG and Boone.

By way of contrast, this Court has held that actual payment is not necessary for indemnification when a “partnership agreement allowed indemnity for a ‘threat of loss.’” *Kuznik v. Bees Ferry Associates*, 342 S.C. 579, 607, 538 S.E.2d 15, 29 (Ct. App. 2000).

The Court in *Kuznik* reasoned that because the partnership agreement in question contained the phrase "threat of loss," it allowed the plaintiff to recover even though he had not yet made payment. In this case, the Arden Operating Agreement has no such provision. The Arden Operating Agreement does not mention "liability" or "threat of loss." The Arden Operating agreement allows only for contribution in one situation: payment.

Accordingly, the trial court properly granted BIG and Boone's motion for a judgment notwithstanding the verdict because the Plaintiff has not suffered a loss or damage and thus cannot recover from BIG or Boone.

C. Appellant misconstrues the equitable concept of contribution.

Appellant attempts to use the equitable concept of contribution to promote his definition of payment. However, as discussed above, the rights of the parties are controlled by the Arden Operating Agreement, not common law principles of equity. *RIM Associates v. Blackwell*, 597 S.E.2d 152, 359 S.C. 170 (Ct. App. 2004) ("... an action for contribution lies in equity.")

Appellant cites to a 1925 Texas appellate case, an Illinois appellate case, a Kansas appellate case, and the American Jurisprudence, Second Edition, to support the proposition that contribution allows for satisfaction by promissory note. However, these authorities are misplaced for several reasons. The authorities cited by the Appellant deal generally with the equitable concept of contribution. They discuss the rights and remedies between co-guarantors when two or more individuals have guarantied a single loan and there is no written agreement.

However, in this case, the rights and remedies between the parties is specifically governed by contract. The Kansas case cited by the Appellant specifically states "a cause of action for contribution is based on an implied agreement not in writing." *Kee v. Lofton*, 12 Kan. App. 2d 155, 160, 737 P.2d 55, 59 (Ct. App. Kan. 1987) (emphasis added). The language in Section 2.3 of the Arden Operating Agreement regarding contribution is clear and unambiguous. A plain and unambiguous reading of Section 2.3 of the Arden Operating Agreement makes it clear that a member must actually pay more than his share to recover from the other members.

Additionally, the facts of this case are substantially different than the authorities cited by Appellant. All the authorities cited by Plaintiff rely on the premise that all parties guarantied the loan. However, in this case it is undisputed that BIG and Boone never guarantied the Southern First Loan. Further, there is substantial South Carolina law, cited previously, which deals with issues raised in this case. Accordingly, there is no need to look to secondary sources or other jurisdictions for case law.

Appellant also argued that the trial court confused the concepts of contribution and indemnity. Appellant argues that indemnification only involves shifting the entire loss whereas contribution involves shifting a proportionate loss, thus the concept of contribution should apply and not indemnity. However, as discussed above, the concept of contribution arises when there is no written contract and thus is not applicable in this case.

Regardless, the concept of indemnification highlights the definition of payment in South Carolina and in the Arden Operating Agreement and the distinction between a contract protecting against loss versus a contract protecting against liability. Section 2.3

of the Arden Operating Agreement is a contract protecting against loss because the Agreement specifically requires a member to "pay" more than his proportionate share. Jones has not paid more than his proportionate share of the Southern First Loan. At most, Jones has incurred a liability with regard to the Southern First Loan by taking out a personal promissory note. Accordingly, he has not met the requirements of the contract and is not entitled to any payment by the Respondents, and the trial court properly granted BIG and Boone's motion for a judgment notwithstanding the verdict.

II. The trial court properly granted Respondents' motion for judgment notwithstanding the verdict, ruling that Respondents BIG and Boone were not required to guaranty the loan from Southern First Bank and thus not liable for any contribution to the Appellant.

The only reasonable inference to be drawn from the evidence presented at trial is that Respondents BIG and Boone were not required to guaranty the Southern First Loan. Appellant failed to present any evidence showing that BIG and Boone were ever required to guaranty the Southern First Loan. All of the testimony and evidence at trial demonstrates that neither BIG nor Boone was ever required by Southern First Bank, or anyone else, to guaranty the Southern First Loan.

Section 6.6(a) of the Operating Agreement specifically states:

No Member shall be liable for the debts or any other obligations or liabilities of the Company, whether arising in contract, tort or otherwise **unless a Member guarantees any debt or obligation as required under Article 2.3.**

(emphasis added)(R. p. 470):

It is undisputed that BIG and Boone never guarantied the Southern First Loan from Southern First Bank. The only argument raised by Appellant at trial and on appeal is that Section 2.3 of the Arden Operating Agreement required BIG and Boone to guaranty the Loan, and thus contribute to it.

Section 2.3 of the Operating Agreement provides in pertinent part:

2.3 Guaranty of Loans to Company. Each of the Class A Members (but none of the Class B Members) shall, in its individual capacity, jointly and severally guaranty any loan to the Company ("Guaranteed Loan") for so long as any guaranty of such loan is required by the lender.

(emphasis added)(R. p. 458). Section 2.3 provides that a class A member is required only to guaranty a loan "for so long as any guaranty of such loan is required by the lender."

The Southern First Bank President and loan officer on all of the loans, Justin Strickland, repeatedly testified at trial that neither BIG nor Boone was required to guaranty the Southern First Loan. (R. p. 319, ll. 10-18; R. p. 340, ll. 8-17). It is also undisputed that BIG and Boone never guaranteed the Southern First Loan from Southern First Bank. (R. p. 269, ll. 10-16; R. p. 317, ll. 8-14). Jones provided no documents or evidence at trial which demonstrated a requirement by Southern First Bank for BIG and Boone to guaranty the Southern First Loan. In fact, Section 4.2 of the Arden Operating Agreement specifically provides that the Southern First Loan was guaranteed by "Jones, Keisler, and Buck." The Arden Operating Agreement specifically sets forth who is to guaranty the Southern First Loan.

Further, the course of dealing and course of performance of the members of Arden also make it clear that BIG and Boone were not responsible for the Southern First Loan. "If a dispute arises, the parties' course of dealing can be used as evidence of how they intended to carry out the transaction." BLACK'S LAW DICTIONARY 356 (7th ed. 1999). The Southern First Loan was entered into before BIG and Boone became Class A members of Arden. All of the documents presented at trial demonstrate that the Southern First Loan was treated differently than all other loans to Arden, and that the details of that Southern First Loan were kept from BIG and Boone.

Boone was elected managing-member of Arden. He was given the responsibility of the debts of Arden. Boone was the main point of contact for all of Arden's debts except for the Southern First Loan. Boone received all of the statements and correspondence from the other debts of Arden except for the Southern First Loan. Keisler received all of the statements and correspondence regarding the Southern First Loan, and it was only Keisler and Jones that had any dealings with Southern First Bank.

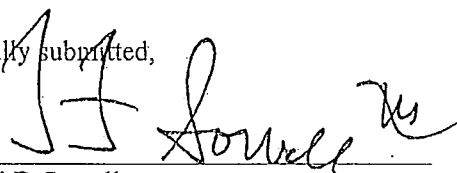
The segregation of the Southern First Loan from BIG and Boone is emphasized in the dealing of co-guarantor Buck. In 2008, Buck was released as a co-guarantor of the Southern First Loan. It is undisputed that neither BIG nor Boone was ever asked by anyone to vote on the release of Buck as a personal guarantor on the Southern First Loan. Jones and Keisler unilaterally made the decision to release Buck without input from BIG or Boone.

Section 6.6 of the Operating Agreement plainly states that a Member is not responsible for any debt of Arden "unless a Member guarantees any debt or obligation as required under Article 2.3." The only reasonable inference to be drawn from all the evidence presented at trial is that neither BIG nor Boone was ever required to guaranty the Southern First Loan and BIG and Boone were never intended to be responsible for any portion of the Southern First Loan. Accordingly, the trial court properly granted the Respondents' motion for a judgment notwithstanding the verdict.

CONCLUSION

Based on the foregoing, Respondents request that this Court affirm the decision of the trial court, and rule that Appellant has not paid more than his proportional share of the Southern First Loan and is not entitled to contribution from the Respondents. Further, this Court should rule that Respondents were never required to guaranty the Southern First Loan and are not responsible for any portion of the Southern First Loan.

Respectfully submitted,



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September 5, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
L. Casey Manning, Circuit Court Judge

Civil Action No. 2011-CP-40-01980
Appellate Case No. 2013-002673

Robert S. Jones,..... Appellant,

v.

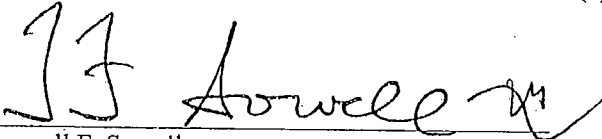
Builders Investment Group, LLC,
Brian D. Boone and Arden Homebuilders, LLC,.....Defendants,

Of Whom
Builders Investment Group, LLC
and Brian D. Boone are,.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this final Brief of Respondents complies with Rule 211 (b),
SCACR.

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SC Court of Appeals

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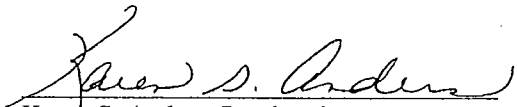
Builders Investment Group, LLC,
Brian D. Boone and Arden Homebuilders, LLC,.....Defendants,

Of Whom
Builders Investment Group, LLC
and Brian D. Boone are,.....Respondents.

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondents on the following by placing a copy in the U.S. Mail, postage pre-paid, to counsel for the Appellant on September 5, 2014, at the addresses shown below:

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APPENDIX 607

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
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DeAndrea Benjamin, Circuit Court Judge
and
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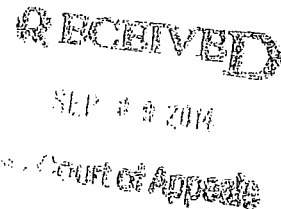
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TABLE OF AUTHORITIES

Black's Law Dictionary (9th ed. 2009)	1
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REPLY ARGUMENTS

Appellant Jones submits this Reply Brief in response to matters addressed in the Brief of Respondents. Appellant Jones will not restate each point from his Brief of Appellant but, instead, reincorporates and supplements those points herein.

The fundamental issue of this appeal is whether Appellant Jones' undertaking of his Personal Loan, which discharged the Arden Renewed Loan, was payment of the Arden Renewed Loan. In addition to those authorities cited in his Brief of Appellant, Appellant Jones would submit to this Court that the most basic definition of "payment" encompasses discharge of an obligation through means other than money. For example, Black's Law Dictionary defines payment as, "Performance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation." Black's Law Dictionary (9th ed. 2009) (emphasis added).

Another treatise is in harmony with this definition of payment:

"Payment" is defined as the discharge of a pecuniary obligation by money or what is accepted as the equivalent of a specific sum of money. It is a discharge of a debt by a compliance with the terms of the obligation. Stated more fully, payment is the discharge of an obligation by the actual or constructive delivery of money or its equivalent by an obligor or by someone for the obligor for the purpose of extinguishing an obligation, wholly or partially, and the acceptance of it by the obligee. Payment requires delivery by the debtor and acceptance by the creditor, both with common purpose.

60 Am. Jur. 2d *Payment* § 1 (internal citations omitted) (emphasis added).

As these two definitions of payment demonstrate, payment can be made in a form other than money. *Id.* Payment may be in a form equivalent to money so long as it is made with the purpose of discharging an obligation in part or in full. *Id.*

In this case, there is no dispute that Appellant Jones alone discharged Arden's responsibility for repayment of the Renewed Loan and that he did so by undertaking his Personal

Loan. Such undertaking was "some other valuable thing" and was "accepted as the equivalent of a specific sum of money" by Southern First Bank, N.A. ("Southern First"). Thus, Appellant Jones paid the Arden Renewed Loan by undertaking the Personal Loan and is entitled to contribution therefor.

Appellant Jones would also take this opportunity to clarify two statements of fact appearing in the Brief of Respondents. First, Respondents assert, "BIG and Boone were never asked to guaranty nor did they guaranty the loan from Southern First." Br. of Resp. p. 2 line 16. This statement is not entirely accurate. Although a representative of Southern First testified that he did not ask Respondents to guaranty the Renewed Loan, Robert Kessler testified that he did ask Respondents to guaranty the Original Loan and that they refused to do so. Mr. Kessler testified in pertinent part:

Q. Is it still up there on your table? If not, I'll give you another one. September 25th, '07?

A. Yes, sir.

Q. You're familiar with that one?

A. Yes, sir.

Q. And we've already heard about who guaranteed it. You were one of the guarantors; right?

A. That's correct.

Q. Did you ask anybody else to guarantee it?

A. Yes, I did.

Q. Who did you ask?

A. Brian Boone and Builders Investment Group or Robert Boozer for Builders Investment Group.

Q. All right. What kind of response did you get?

A. Not a satisfactory response.

Q. Well, tell us what that means. Was the answer yes or no?

A. No.

Q. And that was on behalf of -- who said no?

A. Who said that?

Q. Who said no?

A. Brian Boone.

Q. What about Kathy Boozer Boone on behalf of BIG?

A. I figured once he said no, there's in [sic] reason to ask them.

(Test. of Kessler, Tr. of trial 92:3-93:2; R. p. 198, line 3-p. 199, line 2.) Thus, Respondents were asked to guaranty the loan and refused to do so in contravention of the requirements of the Operating Agreement.

Appellant Jones would also call the Court's attention to the fact that Southern First continues to seek payment from Appellant Jones on his Personal Loan. In their Brief of Respondents, the Respondents appear to argue that Southern First no longer intends to hold Appellant Jones responsible for payment on his Personal Loan. Br. of Resp. p. 4 line 13. This is not accurate. Even though Southern First "charged off" some portion of the Personal Loan in 2007, Southern First thereafter obtained a judgment against Appellant Jones in the amount of \$449,326.33 on November 8, 2012. (Confession of Judgment; R. pp. 562-564; Test. of Strickland, Tr. of trial 192:1-11; R. 338, lines 1-11.) Justin Strickland, banker with Southern First, testified about bank's efforts to pursue Appellant Jones on the Personal Loan as follows:

A. We were having conversations with Mr. Jones. We did not pursue legal action immediately.

Q. But, eventually, you did?

A. Yes.

Q. And you sued him on that promissory note?

A. We did.

(Test. of Strickland, Tr. of trial 177:5-10; R. p. 323, lines 5-10.) Thus, although Southern First may have charged off some portion of the Personal Loan for the bank's accounting purposes, Southern First has continued to hold Appellant Jones responsible on the Personal Loan.

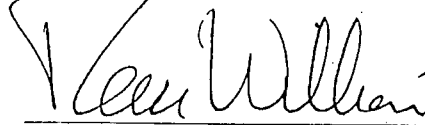
Based upon this testimony and that detailed in the Brief of Appellant, there was more than enough evidence in the record to reasonably support the jury's verdict in favor of Appellant Jones. Further, the weight of authority demonstrates that as a matter of law, Appellant Jones' undertaking of a Personal Loan so as to discharge Arden from responsibility for the Renewed Loan was payment entitling him to contribution. Accordingly, the trial court erred in granting Respondents' motion for judgment notwithstanding the verdict.

CONCLUSION

Based upon the foregoing, Appellant Jones again requests that this Court reverse the trial court's grant of the Respondents' motion for judgment notwithstanding the verdict, rule that Appellant Jones paid more than his pro-rata share of the Renewed Loan when he undertook the Personal Loan, that Respondents BIG and Boone are required by the Operating Agreement to pay their proportionate share of the Renewed Loan, and that Appellant Jones is entitled to contribution from Respondents BIG and Boone.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "D. Reece Williams, III". The signature is written in a cursive style with a large, stylized initial "D".

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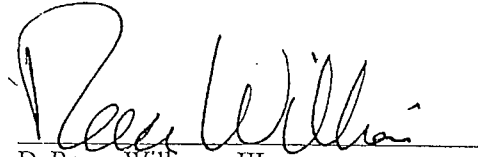
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I certify that I have served the FINAL REPLY BRIEF OF APPELLANT on the following by causing a copy to be mailed via U.S. Mail, postage pre-paid, to Counsel for the Respondents on September 9, 2014, at the addresses shown below:

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ATTORNEYS FOR APPELLANT

September 9, 2014
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Robert S. Jones, Appellant,

v.

Builders Investment Group, LLC, Brian D. Boone, and
Arden Homebuilders, LLC, Defendants,

Of whom Builders Investment Group, LLC and Brian D.
Boone are Respondents.

Appellate Case No. 2013-002673

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Opinion No. 5373
Heard September 10, 2015 – Filed December 30, 2015

AFFIRMED

D. Reece Williams, III and Kathleen McColl McDaniel,
both of Callison Tighe & Robinson, LLC, of Columbia,
for Appellant.

Thornwell F. Sowell, III, of Sowell Gray Stepp &
Laffitte, LLC, of Columbia, and David Cochran Dick, Jr.,
of the Law Office of David C. Dick, of Charleston, for
Respondents.

WILLIAMS, J.: In this civil appeal, Robert Jones contends the circuit court erred in granting Builders Investment Group, LLC (BIG) and Brian D. Boone's (collectively "Respondents") motion for judgment notwithstanding the verdict (JNOV). Jones claims the circuit court (1) erroneously held his personal payment of the parties' business loan discharged Respondents from their legal responsibility to contribute toward the payoff of the business loan and (2) misconstrued the terms of the parties' operating agreement regarding personal guaranties. We affirm.

FACTS/PROCEDURAL HISTORY

This appeal stems from a dispute between Jones and Respondents over whether Jones is entitled to contribution from Respondents for debts arising out of a joint business venture. In 2005, Holt Family Homes, LLC was formed to develop, build, and sell residential homes. At its inception, the company had four Class A members, one of whom was Jones.¹ BIG was a Class B member, and Boone had no ownership interest in Holt Family Homes.

In January 2007, Holt Family Homes obtained a loan from Southern First Bank² (SFB) for \$300,500. Three of the Class A members—Jones, Keisler, and Buck—signed and personally guaranteed the loan. In April 2007, Holt Family Homes obtained a second loan from SFB for \$199,250. The same Class A members signed and guaranteed this second loan.

In the summer of 2007, Boone and BIG agreed to make capital contributions and investments in Holt Family Homes.³ BIG contributed additional capital of

¹ The remaining Holt Family Homes Class A members were Robert Keisler, Carl Buck, and Wetzel Holt.

² SFB was operating as Greenville First Bank, N.A. at the time of the September and April 2007 loans to Holt Family Homes.

³ Boone's eventual involvement in Holt Family Homes—and subsequently in Arden Homebuilders, LLC—stemmed from Boone's spousal relationship with the managing member of BIG, Kathy Boozer Boone. Prior to BIG and Boone's involvement, Jones and Keisler worked for Boozer Lumber Company. Jones and Keisler discussed the idea of creating Holt Family Homes with Kathy Boone's father, Dale Boozer, who was the president and CEO of Boozer Lumber Company. Jones suggested at trial that Dale Boozer came up with the idea of creating this

\$625,000,⁴ and Boone contributed capital of \$125,000. In exchange for these investments, Boone and BIG became Class A members. To reflect these investments and changes in membership status, the company amended its operating agreement (Arden Operating Agreement) on July 31, 2007. As part of these amendments, the company's name was also changed from Holt Family Homes to Arden Homebuilders, LLC (Arden).

On September 25, 2007, Jones, Keisler, and Buck—the guarantors on the initial two loans with SFB—consolidated these two loans into one new loan for \$498,000 in Arden's name (Arden Loan). Similar to the initial two loans, only these three individuals signed and personally guaranteed the newly consolidated Arden Loan.

Almost one year later, on September 24, 2008, Buck was removed as a personal guarantor on the Arden loan. Only Jones and Keisler signed the renewed note. Jones confirmed that neither Boone nor BIG was asked about removing Buck as a personal guarantor, and neither Boone nor BIG personally guaranteed the amended Arden loan. On December 8, 2009, Jones obtained a personal loan with SFB in the amount of \$449,326.33 to satisfy the Arden loan.⁵ SFB marked the Arden loan as satisfied and transferred the balance to Jones's personal loan.

Jones was unable to repay the personal loan and subsequently executed a confession of judgment to SFB regarding his personal loan on November 8, 2012. Jones testified at trial that he had not made any payments on his personal loan or on the confession of judgment. The president of SFB, Justin Strickland, also affirmed Jones's testimony. Strickland acknowledged that Jones's personal loan was charged off in varying increments between December 29, 2009, and December 20, 2010. Despite writing off Jones's personal loan, Strickland testified SFB eventually sued Jones on the promissory note, which resulted in the confession of judgment against him.

business venture in an effort to vertically integrate into the Charlotte housing market and expand their market share.

⁴ BIG had already contributed \$300,000 in capital as a Class B member.

⁵ At trial, Jones testified he liquidated certain assets he had placed in SFB's security vault in an effort to decrease the \$498,000 loan prior to executing the personal loan with SFB.

On March 23, 2011, Jones filed suit against Respondents for breach of contract and breach of fiduciary duty. Jones alleged in his complaint that Respondents were required to personally guarantee the Arden loan based on their status as Class A members under the Arden Operating Agreement. In support of his position, Jones cited to section 2.3 of the Arden Operating Agreement, which states as follows:

2.3 Guaranty of Loans to Company. Each of the Class A Members (but none of the Class B Members) shall, in its individual capacity, jointly and severally guaranty any loan to the Company ("Guaranteed Loan") for so long as any guaranty of such loan is required by the lender. Notwithstanding any other provision of this Agreement or any provision of the Guaranteed Loan documents, as between the Members, each Class A Member shall be responsible for paying such Class A Member's proportionate share of any Guaranteed Loan ("Guaranty Percentage"). . . . Any Class A Member who pays more than such Class A Member's Guaranty Percentage of the Guaranteed Loan to the Lender shall be entitled to contribution from the other Class A Members.

Jones contended the Arden Operating Agreement—by the plain terms of section 2.3—required Respondents to pay their proportionate share of the loan, and Respondents' failure to do so entitled Jones to contribution for the full amount of the loan, plus interest, costs, and reasonable attorney's fees.

Prior to trial, Respondents moved for summary judgment on both causes of action. As to the breach of contract cause of action, Respondents acknowledged section 2.3 and its requirement for all Class A Members to pay their proportionate share of any guaranteed loans. However, Respondents claimed Jones had never paid his proportionate share of the loan and, thus, could not seek contribution pursuant to the Arden Operating Agreement until he had done so. In addition, Respondents claimed the plain language of section 6.6(a)⁶ of the Arden Operating Agreement requires a Class A member to personally guarantee a loan before liability can attach, noting the Arden loan was entered into before BIG and Boone became

⁶ Section 6.6(a) of the Arden Operating Agreement states, "No member shall be liable for the debts or any other obligations or liabilities of the Company, whether arising in contract, tort or otherwise unless a Member guarantees any debt or obligation as required under Article 2.3."

Class A members. Because SFB never required Respondents to guarantee the Arden loan, Respondents contended they could not be liable for any portion of the loan as a matter of law.

Prior to trial, the circuit court granted Respondents' summary judgment motion on Jones's breach of fiduciary duty claim. On December 10–11, 2012, the case proceeded to trial on Jones's breach of contract claim against Respondents. Respondents moved for a directed verdict at the close of evidence, which the circuit court denied. The jury returned a verdict in Jones's favor. Respondents then filed a motion for JNOV or, in the alternative, a new trial, reiterating the grounds they raised in support of their directed verdict motion at trial. After hearing arguments from counsel, the circuit court granted Respondents' motion for JNOV on May 15, 2013. Thereafter, Jones timely filed a Rule 59(e), SCRCP, motion. On November 18, 2013, the circuit court denied Jones's Rule 59(e) motion in an eight-page order. This appeal followed.

ISSUES ON APPEAL

- I. Did the circuit court err in holding Jones's personal payment of the Arden loan discharged Respondents from their legal responsibility to contribute toward the payoff of the Arden loan?
- II. Did the circuit court misconstrue the terms of the Arden Operating Agreement regarding personal guaranties?

STANDARD OF REVIEW

When reviewing the circuit court's ruling on a directed verdict or JNOV motion, this court must apply the same standard as the circuit court "by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 27–28, 602 S.E.2d 772, 782 (2004). The circuit court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429–30, 445 S.E.2d 439, 440 (1994). Moreover, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In deciding such motions, "neither the [circuit] court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence." *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000). This

court will reverse the circuit court's ruling only if no evidence supports the ruling below. *RFT Mgmt. Co., LLC v. Tinsley & Adams LLP*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012).

LAW/ANALYSIS

I. Jones's Entitlement to Contribution

Jones first claims that because he paid more than his proportionate share of the Arden Loan, he is entitled to contribution from Respondents pursuant to section 2.3 of the Arden Operating Agreement. We disagree.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). When the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. *Id.* A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause. *Id.* (quoting *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976)). "It is a question of law for the court whether the language of a contract is ambiguous." *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001).

In support of his position, Jones cites to section 2.3 of the Arden Operating Agreement, which states as follows:

2.3 Guaranty of Loans to Company. Each of the Class A Members (but none of the Class B Members) shall, in its individual capacity, jointly and severally guaranty any loan to the Company ("Guaranteed Loan") for so long as any guaranty of such loan is required by the lender. Notwithstanding any other provision of this Agreement or any provision of the Guaranteed Loan documents, as between the Members, each Class A Member shall be responsible for paying such Class A Member's proportionate share of any Guaranteed Loan ("Guaranty Percentage"). . . . *Any Class A Member who pays more than such Class A Member's Guaranty Percentage of the Guaranteed Loan to the Lender shall be entitled to contribution from the other Class A Members.*

(emphasis added).

The dispositive question in this case is whether Jones "paid" the Arden Loan such that he is entitled to contribution from Respondents pursuant to section 2.3. We agree with the circuit court and find Jones's signing of a personal promissory note with SFB in satisfaction of the Arden Loan was insufficient, as a matter of law, to fulfill the plain requirements of section 2.3. Our law is clear that a promissory note is only a promise to pay, not actual payment of a debt. *See* S.C. Code Ann. § 36-9-102(65) (Supp. 2014) ("Promissory note' means an instrument that evidences a *promise to pay* a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds." (emphasis added)). We also believe that neither SFB's decision to write off Jones's promissory note nor its execution of a confession of judgment against Jones satisfied the requirement for payment under the Arden Operating Agreement. By signing the promissory note and satisfying Arden's obligation to SFB, Jones simply incurred a liability on Arden's behalf. Because Jones submitted no proof at trial⁷ that he had paid more than his proportionate share of the Arden loan as required by the plain language of the Arden Operating Agreement, we conclude he has suffered no actual damages and is not entitled to contribution from Respondents pursuant to section 2.3 of the Arden Operating Agreement.⁸ *See Schulmeyer*, 353 S.C. at 495, 579 S.E.2d at 134 (noting when the

⁷ The circuit court's Rule 59(e) order indicates Jones attempted to introduce evidence at the Rule 59(e) hearing to document that he had paid SFB some portion of either the Arden loan or his personal loan. Because Jones did not submit this evidence prior to the court's order granting JNOV, the court refused to consider it. On September 2, 2015, this court received a motion from Jones, requesting to supplement the record pursuant to Rule 212(a), SCACR, with a May 8, 2014 letter documenting payments he has made on the loan. This court denied Jones's motion.

⁸ We also concur with the circuit court's ruling that section 2.3 was a contract for indemnity against loss, thereby requiring proof of loss before Jones could assert a claim for breach of contract. Our courts have recognized two types of indemnity contracts: (1) a contract for indemnity against liability and (2) a contract for indemnity against loss. *See Piper v. Am. Fid. & Cas. Co.*, 157 S.C. 106, 112, 154 S.E. 106, 108 (1930). In a contract for indemnity against liability, the obligation to indemnify arises when the liability is incurred, whereas in a contract for indemnity against loss, the indemnitee must have made some form of payment before he can assert a breach of the contract. *Id.* (quoting 1 JOSEPH A. JOYCE, JOYCE ON

contract's language is clear and unambiguous, the language alone determines the contract's force and effect).

II. Construction of the Arden Operating Agreement

Next, Jones contends the circuit court misconstrued the terms of the Arden Operating Agreement regarding personal guaranties. Specifically, Jones argues the court erred in finding section 2.3 unambiguously provided that a Class A member would not have to personally guarantee a loan if a lender did not specifically require that particular member to do so. We disagree.

We hold Jones abandoned this issue on appeal. "An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory." *Potter v. Spartanburg Sch. Dist.* 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011). In his brief, Jones presented the following one-paragraph argument regarding the circuit court's construction of the Arden Operating Agreement:

The express terms of the Operating Agreement state that, "[e]ach of the Class A Members (but none of the Class B Members) shall, in its individual capacity, jointly and severally guaranty any loan to the Company ("Guaranteed Loan") for so long as any guaranty of such loan is required by the lender." Respondents BIG and Boone were Class A Members of Arden, and Southern First Bank required the Renewed Loan to be personally guaranteed. Therefore, pursuant to the express terms of the Operating Agreement, Respondents BIG and Boone were required to personally guaranty the Renewed Loan. The fact that they did not want to guaranty the Renewed

INSURANCE § 27b (2d ed. 1917)). Because the Arden Operating Agreement specifically requires a member to "pay" more than this proportionate share before he is entitled to recover against other members, we believe this is a contract for indemnity against loss and, as such, "liability does not attach until loss has been suffered, that is when the [indemnatee] has *paid* the damages." *Id.* (emphasis added) (quoting 1 JOYCE, *supra*); see also *Shealey v. Am. Health Ins. Corp.*, 220 S.C. 79, 83, 66 S.E.2d 461, 462 (1951) (noting that when a contract is for indemnity against loss, "no action will lie in favor of the [indemnatee] until some loss or damage has been sustained by him, either by payment of the whole or some part of the claim").

Loan and did not do so does not mean that they were not contractually required by the Operating Agreement to give the guaranty.

Because Jones cited no authority in this section and his argument was largely conclusory, we find this issue is abandoned on appeal. *See id.*

CONCLUSION

Based on the foregoing, the circuit court's decision is

AFFIRMED.

HUFF and THOMAS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea Benjamin, Circuit Court Judge
and
L. Casey Manning, Circuit Court Judge

Civil Action No. 2011-CP-40-01980

Robert S. Jones.....Plaintiff/Appellant

v.

Builders Investment Group, LLC,
Brian D. Boone and Arden Homebuilders, LLC.....Defendants

Of Whom

Builders Investment Group, LLC
and Brian D. Boone
are.....Respondents

PETITION FOR REHEARING

This Court, in its Opinion No.5373 ("Opinion"), which was filed on December 30, 2015, affirmed the lower court's order granting Builders Investment Group, LLC ("BIG") and Brian D. Boone's ("Boone") (collectively "Respondents") motion for judgment notwithstanding the verdict ("JNOV"). Appellant Robert S. Jones ("Jones") respectfully submits that this Court misapprehended or overlooked certain points about which Jones submits this Petition for Rehearing, pursuant to Rule 221(a) and Rule 240 of the South Carolina Appellate Court Rules.

ARGUMENT

I. This Court misapprehends the mechanics of Jones's payment of the Arden loan.

The Court misapprehends the mechanics underlying Jones's payment of the Arden loan with the undertaking of his personal loan. In its Opinion, the Court states, "On December 8, 2009, Jones obtained a personal loan with SFB ["Southern First Bank, N.A."] in the amount of \$449,326.22 to satisfy the Arden loan. SFB marked the Arden loan as satisfied and transferred the balances to Jones's personal loan." (Op. *3) (footnote omitted). This statement fails to recognize the separate nature of the two transactions—i.e. the Arden loan and Jones's personal loan—and mischaracterizes the relationship of those two transaction.

This can be seen from a review of the transaction records for the Arden loan and Jones's personal loan. (R. pp. 514-515.) On the record of transactions for the Jones personal loan, it is stated that the principal of \$449,326.33 was disbursed on December 8, 2009. (R. p. 515.) It is only after that disbursement that the record of transactions for the Arden loan shows a principal reduction in the amount of \$449,326.33 on December 14, 2009. (R. p. 514.) This demonstrates that the proceeds of the Jones personal loan were used to pay off the Arden loan and that the balance of the Arden loan was not simply transferred to Jones's personal loan ledger.

The nature of the transactions was also testified to by Justin Strickland of SFB. He testified that on December 8, 2009, there was a principal disbursement of \$449,326.33 from Jones's personal loan and that these proceeds of Jones's personal loan were used to pay off the Arden loan. (Test. of Strickland, Tr. of trial 175:16-176:4, R. pp. 321-322.) Strickland

further testified that Jones borrowed the money to pay off the Arden loan. (Test. of Strickland, Tr. of trial 192:1-3, R. p. 338.)

The direction of flow of the funds is important because it demonstrates that Jones used the proceeds of his personal loan to pay off the Arden loan. The principal balance of the Arden loan was not transferred to Jones's personal loan. It was the reverse—the proceeds of the Jones personal loan were used to pay off the majority of the Arden loan.

The circuit court's analysis, adopted by this Court, is erroneous because it makes the determination of payment of the Arden loan contingent upon the source of funds for such payment. Although in this case Jones used the proceeds of his personal loan from SFB to pay off the Arden loan, the source of funds used to pay off the loan is immaterial to whether Jones is entitled to contribution from BIG and Boone. Jones could have won the lottery and paid the Arden loan. His mother could have lent him the money. Another bank could have lent him the money. In each of those cases, just as in this case, Jones would have used funds in his possession to discharge the Arden loan. That is payment of the loan regardless of the source of funds.

Such a situation is analogous to a home buyer obtaining a loan to pay the purchase price for a new home. Few people have the resources to pay cash for a home purchase and instead obtain a loan from a bank to purchase their home. The buyer's lender distributes the proceeds of the home loan to the seller, who most often uses the majority of the proceeds to pay off their pre-existing loan on the home. There is no doubt but that the seller's loan is "paid" in this situation. Such a transaction is not characterized as the purchaser assuming the seller's debt. The old debt is extinguished with the proceeds from a new obligation.

So it is in this case. Jones obtained a personal loan and used the proceeds of that loan, along with certain liquidated personal assets, to pay off the Arden loan. Accordingly, this Court should rehear this matter and find that Jones is entitled to contribution from Respondents because has paid not only more than his proportionate share of the Arden loan but, in fact, the entirety of the Arden loan.

II. The Court overlooks authority that Jones's undertaking of the personal loan was payment of the Arden loan.

As set forth in Jones's Brief of Appellant and Reply Brief, there is authority directly on point from other jurisdictions holding that "payment" sufficient to discharge an obligation can come in various forms, including the undertaking of a new obligation. *See Barton v. Farmers' State Bank*, 276 S.W. 177 (Comm. of App. TX 1925); *Small v. Rogers*, 938 N.E.2d 18, 22 (Ill. App. Ct. 2010); *Kee v. Lofton*, 737 P.2d 55 (Ct. App. Kan. 1987); 18 Am. Jur. 2d Contribution § 14 Sufficiency and medium of discharge-payment not in cash. The Court addresses none of these authorities and in failing to do so has overlooked authority supporting a determination that Jones paid the Arden loan with his personal loan. This Court should rehear this matter, giving due consideration to the authority supporting a finding that Jones's undertaking of the personal loan was payment of the Arden loan.

In contrast to the Court's ultimate determination that Jones did not "pay" the Arden loan, the Court's own statement of the first issue on appeal presupposes that the circuit court found Jones did pay the loan. The Opinion states the first issue on appeal as "Did the circuit court err in holding Jones's personal payment of the Arden loan discharged Respondents from their legal responsibility to contribute toward the payoff of the Arden loan?" (Op. *5.) This statement of the first issue on appeal misapprehends the circuit court's holding. The

circuit court did not hold that Jones's payment of the Arden loan discharged Respondents from their responsibility for contribution. Such a holding would require a preliminary determination that Jones "paid" the Arden loan. To the contrary, the circuit court disregarded the jury verdict to hold that Jones had not paid more than his proportionate share of the Arden loan. (Or. Denying Plaintiff's Motion to Alter or Amend Or. Pursuant to Rule 59(e) p. 6, R. p. 25.) That the Court articulates the critical first issue on appeal in this way evidences the Court's implicit understanding that the Arden loan was paid by Jones's undertaking of the personal loan.

III. The Court misapprehends to whom the promise of payment was made by virtue of Jones's undertaking a personal loan.

The Opinion hinges on the statement that the "law is clear that a promissory note is only a promise to pay, not actual payment of a debt." (Op. *7.) Here again, the Court misapprehends the nature of this transaction. The focus of payment must be on the correct transaction—payment of the Arden loan and not the Jones loan. Jones has never contended that the promissory note he gave to SFB was actual payment to SFB. Jones's promise to pay is a separate transaction from the actual payment of the Arden loan with Jones's personal loan proceeds. The promissory note from Arden to SFB evidencing Arden's "promise to pay" was extinguished when Jones directed the proceeds of his personal loan and his liquidated assets to the payment of the Arden loan. The Opinion erroneously conflates the two transactions into a single promise to pay.

IV. Jones did not abandon his argument that the circuit court erred in construction of the Arden Operating Agreement.

This Court held that Jones abandoned on appeal its argument that the circuit court erred in construction of the Arden Operating Agreement. The Court's reasoning for this was that Jones cited no authority for this issue and that the arguments were "largely conclusory." This is incorrect.

Jones's argument is based upon an analysis of the plain language of Section 2.3 of the Arden Operating Agreement. Jones first sets forth the operative provision that each Class A member shall guaranty any loan to Arden so long as a guaranty of such loan is required by the lender. Jones then explains how the facts of the case meet the terms of the provision for Respondents to guaranty the Arden loan at issue—i.e. Respondents are Class A members and SFB required a guaranty for the Arden loan. The citation to the record for these two propositions occurred earlier in Jones's Brief of Appellant. (Br. of Appellant at 2-3.) It was not necessary to restate what had been previously documented in the record in order to maintain the argument. This is a plain language argument and not dependent upon any authority for construction of the language of the Operating Agreement.

Furthermore, as explained on page 7 of Jones's Brief of Appellant, whether Respondents guaranteed the Arden loan or not has no bearing on their responsibility to pay their proportionate share of the Arden loan. This is because Section 2.3 of the Operating Agreement also states, "Notwithstanding any other provision of this Agreement or any provision of the Guaranteed Loan documents, as between the Members, each Class A Member shall be responsible for paying such Class A Member's proportionate share of any Guaranteed Loan ("Guaranty Percentage")." (Operating Agreement, p. 9.) This provision

does not limit "Guaranteed Loan" to those loans specifically guaranteed by Respondents but is defined earlier in the Section 2.3 as "any loan to the Company" for which a guaranty is required by a lender. (*Id.*) The Arden loan was a loan to the Company for which a lender required a guaranty; therefore, it meets the definition of "Guaranteed Loan." Despite any other provision of the Operating Agreement to the contrary, Respondents were required by this provision to pay their proportionate share of the Arden loan. To find otherwise is to read out of the Operating Agreement the following phrase: "Notwithstanding any other provision of this Agreement or any provision of the Guaranteed Loan documents."

Accordingly, this Court should rehear this matter and find that Jones did not abandon this issue on appeal and that Respondents are responsible for paying their proportionate share of the Arden loan regardless of whether they gave a guaranty.

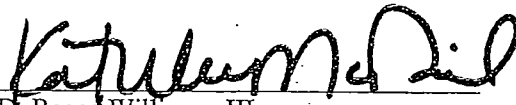
V. The Court's Opinion will cause confusion within the business community regarding the ability to use the proceeds from one obligation to pay off another.

This Opinion will cause confusion within the business community as a result of the Court's failure to recognize that the Arden loan was paid (regardless of the source of funds) and the distinctness of the two transactions. The vast majority of commerce is funded through loans from banks, other institutions, or individuals. Such loans are often paid off by new obligations in the general course of business and in response to changes in financing or company ownership. The Opinion will cast doubt on the ability and finality of individuals and companies to pay off old debts by the undertaking of new obligations, whether to the same or different creditors.

CONCLUSION

Based upon the foregoing, Appellant Jones respectfully requests that this Petition for Rehearing be granted and that this Court amend its Opinion to reverse the circuit court grant of judgment notwithstanding the verdict.

Respectfully submitted,



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January 14, 2016

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
L. Casey Manning, Circuit Court Judge

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JAN 25 2016

SC Court of Appeals

Civil Action No. 2011-CP-40-01980
Appellate Case No. 2013-002673

Robert S. Jones,.....Plaintiff/Appellant,

v.

Builders Investment Group, LLC,
Brian D. Boone and Arden Homebuilders, LLC,.....Defendants,

Of Whom
Builders Investment Group, LLC
and Brian D. Boone are,.....Respondents.

RESPONDENTS' RETURN TO APPELLANT'S PETITION FOR REHEARING

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Attorneys for Respondents

Respondents Builders Investment Group, LLC and Brian D. Boone hereby respond to Appellant's Petition for Rehearing ("Appellant's Petition"). This Court properly affirmed the lower court's order granting the Respondents' motion for judgment notwithstanding the verdict because Appellant Jones failed to pay more than his proportionate share of the Arden Loan as required by the Arden Operating Agreement. For the reasons outlined below, the Appellant's Petition should be denied.

I. This Court properly determined that Appellant had not paid more than his proportionate share as required under the Arden Operating Agreement.

This Court properly determined that Appellant had failed to meet the requirements of the Arden Operating Agreement regarding contribution. The rights between the parties is governed by contract, the Arden Operating Agreement, which specifically requires that Appellant actually pay more than his proportionate share of a debt before he is entitled to contribution from the other members of Arden.

No matter how the Appellant tries to spin the actual transactions with Southern First Bank, it is uncontested that Appellant never actually made payments to the Bank over his proportionate share. It is undisputed from the evidence presented at trial that Appellant signed a personal promissory note, also with Southern First Bank, which was used to satisfy the Arden Loan. (R. p. 338, l. 17 – p. 339, l. 14). This personal promissory note was then written-off by Southern First Bank almost immediately. It is also undisputed that Jones has not made any payments on this personal promissory note or the confession of judgment. (R. p. 215, l. 11 – p. 216, l. 9; R. p. 324, ll. 4-16; R. p. 47-48, ¶ 5; R. p. 53, ¶ 2; R. pp. 562-564).

The plain language of the Arden Operating Agreement, the UCC, and South Carolina case law are clear that incurring a liability (i.e. taking out a promissory note) is

insufficient to trigger contribution in this case. The sequence of the promissory note transactions has no bearing on the ultimate fact that Appellant merely incurred a liability and did not make payment. This Court properly concluded that “[w]e agree with the circuit court and find Jones's signing of a personal promissory note with SFB in satisfaction of the Arden Loan was insufficient, as a matter of law, to fulfill the plain requirements of section 2.3.”

Appellant contends that taking out one promissory note to satisfy another promissory note constitutes payments. However, this Court correctly relied on South Carolina law to determine that Appellant's personal promissory note was nothing more than an extension of the original liability and did not constitute payment. This Court cited S.C. Code Ann. § 36-9-102(65) which provides that a promissory note is only a promise to pay, not actual payment of a debt. By taking out another promissory note, Appellant was just exchanging one promise to pay for another. This Court appropriately found that this internal shuffling of promises did not constitute actual payment.

This Court also correctly gave little weight to Appellant's foreign authority. Not only was there sufficient case law in South Carolina addressing all of the issues (and cited by this Court), but Appellant's foreign case law all improperly relied on the equitable concept of contribution. This case was based on contract and not on any laws of equity. Because this Court did not overlook or misapprehend any issues, the Appellant's Petition should be denied.

II. This Court properly held that Appellant abandoned his argument that the circuit court erred in the construction of the Arden Operating Agreement.

This Court found that Appellant had abandoned his argument that the circuit court erred in the construction of the Arden Operating Agreement. In his briefs, Appellant simply argues that the plain reading of Section 2.3 of the Arden Operating Agreement is enough to overturn the circuit court's determination. However, Appellant relies solely on his own opinion of the meaning behind Section 2.3. Appellant does not cite any facts or authority to support his understanding of Section 2.3. Accordingly, Appellant abandoned his arguments regarding the construction of Section 2.3. *Potter v. Spartanburg Sch. Dist.* 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011).

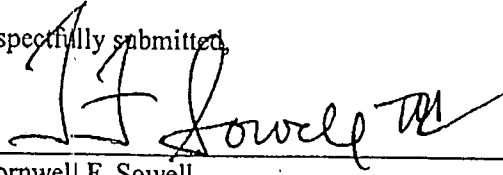
Further, this second argument raised by Appellant is moot because this Court already determined that he had not made payment entitling him to contribution under the Arden Operating Agreement. For this reason, and all of the reasons originally raised by Respondents in their brief, Appellant's Petition should be denied.

CONCLUSION

All of the arguments raised by Appellant in his Petition have been thoroughly briefed and argued before this Court. This Court has not overlooked or misapprehended any of the Appellant's arguments. For this reason, and those set forth above, Respondents respectfully request this Court deny Appellant's Petition for a Rehearing.

[Signature on following page]

Respectfully submitted,



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Attorneys for Respondents

January 25, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
L. Casey Manning, Circuit Court Judge

RECEIVED

JAN 25 2016

SC Court of Appeals

Civil Action No. 2011-CP-40-01980
Appellate Case No. 2013-002673

Robert S. Jones,.....Plaintiff/Appellant,

v.

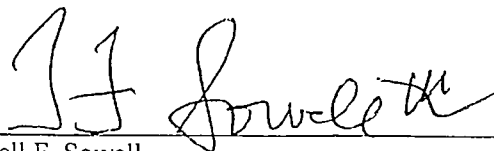
Builders Investment Group, LLC,
Brian D. Boone and Arden Homebuilders, LLC,.....Defendants,

Of Whom
Builders Investment Group, LLC
and Brian D. Boone are,.....Respondents.

PROOF OF SERVICE

I certify that I have served the Return to Petition for Rehearing on the following by placing a copy in the U.S. Mail, postage pre-paid, to counsel for the Appellant on January 25, 2016, at the address shown below:

D. Reece Williams, III, Esquire
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Thornwell F. Sowell
SOWELL GRAY STEPP & LAFFITTE, LLC
Counsel for Respondents

The South Carolina Court of Appeals

Robert S. Jones, Appellant,

v.

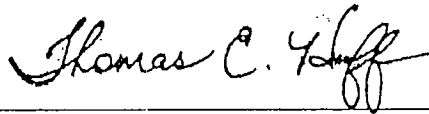
Builders Investment Group, LLC, Brian D. Boone and
Arden Homebuilders, LLC, Defendants,

Of Whom Builders Investment Group, LLC and Brian D.
Boone are Respondents.

Appellate Case No. 2013-002673

ORDER

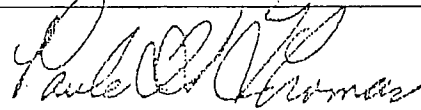
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

FILED

cc:

February 19, 2016

D. Reece Williams, III, Esquire
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David Cochran Dick, Jr., Esquire
Thornwell F. Sowell, III, Esquire
The Honorable L. Casey Manning