

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS
THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
HON. ALEXANDER S. MACAULAY

APPELLATE CASE NO.: 2014-000220

RECEIVED

JUN 24 2016

SC SUPREME COURT

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK ... RESPONDENT

VS

J. CHARLES GRAY and WATERFORD RIDGE OWNERS ASSOCIATION, INC.,
DEFENDANTS, of whom J. CHARLES GRAY is an PETITIONER

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK ... RESPONDENT

VS

PEGGY B. GRAY and WATERFORD RIDGE OWNERS ASSOCIATION, INC.,
DEFENDANTS, of whom PEGGY B. GRAY is an PETITIONER

APPENDIX

Charles R. Griffin, Jr. #6489
210 North McDuffie Street Ste 103
Anderson, SC 29621
864-231-8870
888-682-7317 (fax)
Attorney for Petitioner

Other Counsel of Record:

Brad Richardson, Esquire
133 Straight Dr
Anderson, SC 29625
864-222-0292
Attorney for Respondent

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The South Carolina Court of Appeals

Plantation Federal Bank, as Successor in Interest to First
Savers Bank, Respondent,

v.

J. Charles Gray and Waterford Ridge Owners
Association, Inc., Defendants,

Of whom J. Charles Gray is the Appellant.

Plantation Federal Bank, as Successor in Interest to First
Savers Bank, Respondent.

v.

Peggy B. Gray and Waterford Ridge Owners
Association, Inc., Defendants,

Of whom Peggy B. Gray is the Appellant.

Appellate Case No. 2014-000220

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.

Thomas E. Huff A.C.J.

H. B. Veen J.

Paul A. Thomas J.

Columbia, South Carolina

cc: Charles R. Griffin, Jr., Esquire
Bradley Keith Richardson, Esquire
Beverly H. Whitfield

FILED

May 20, 2016

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APR 14 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Oconee County
Alexander S. Macaulay, Circuit Court Judge

Appellate Case No. 2014-000220

Plantation Federal Bank, as Successor in Interest to First Savers Bank, Respondent, v. J. Charles Gray and Waterford Ridge Owners Association, Inc., Defendants,
Of whom J. Charles Gray is the Appellant.

Plantation Federal Bank, as Successor in Interest to First Savers Bank, Respondent, v. Peggy B. Gray and Waterford Ridge Owners Association, Inc., Defendants,
Of whom Peggy B. Gray is the Appellant.

PETITION FOR REHEARING

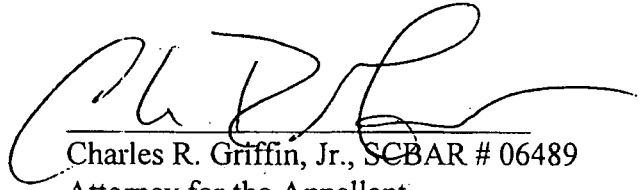
The undersigned, attorney for the Appellant, pursuant to Rule 221, SCACR, hereby
Petitions the Court for a Rehearing in this matter.

The grounds for this Petition are:

First, genuine issues of material fact exist regarding the breach of contract claim. Second, genuine issues of material fact exist as to the fraud claim. Third, genuine issues of material fact exist as to the breach of fiduciary duty claim. Fourth, genuine issues of material fact exist as to the SCUTPA claim.

SIGNATURE PAGE ATTACHED

App. 000003



Charles R. Griffin, Jr., SCBAR # 06489

Attorney for the Appellant

210 N. McDuffie Street Ste. 103

Anderson, SC 29621

Telephone 864-231-8870

Fax 888-682-7317

Email: griffinfirm1@gmail.com

April 12, 2016

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
HON. ALEXANDER S. MACAULAY

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SC Court of Appeals

APPELLATE CASE NO.. 2014-000220

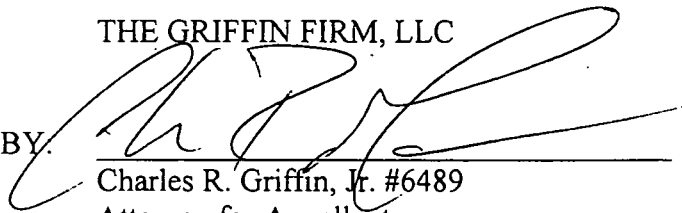
Plantation Federal Bank, as Successor in Interest to First Savers Bank, Respondent, v. J.
Charles Gray and Waterford Ridge Owners Association, Inc., Defendants,
Of whom J. Charles Gray is the Appellant.

Plantation Federal Bank, as Successor in Interest to First Savers Bank, Respondent, v.
Peggy B. Gray and Waterford Ridge Owners Association, Inc., Defendants,
Of whom Peggy B. Gray is the Appellant.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on April 12, 2016 he served the Appellants' Petition for Rehearing by depositing with the U.S. Mail with postage prepaid a copy of same to the office Bradley Richardson, 133 Straight Drive Anderson, SC 29625.

THE GRIFFIN FIRM, LLC

BY. 

Charles R. Griffin, Jr. #6489
Attorney for Appellants
210 N. McDuffie Street Ste 103
Anderson, SC 29621
864-231-8870
Fax 888-682-7317

Dated: April 12, 2016

App. 000005

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Plantation Federal Bank, as Successor in Interest to First
Savers Bank, Respondent,

v.

J. Charles Gray and Waterford Ridge Owners
Association, Inc., Defendants,

Of whom J. Charles Gray is the Appellant.

Plantation Federal Bank, as Successor in Interest to First
Savers Bank, Respondent,

v.

Peggy B. Gray and Waterford Ridge Owners
Association, Inc., Defendants,

Of whom Peggy B. Gray is the Appellant.

Appellate Case No. 2014-000220

Appeal From Oconee County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2016-UP-141
Submitted December 1, 2015 – Filed March 30, 2016

AFFIRMED

Charles R. Griffin, Jr., of Anderson, for Appellants.

Bradley Keith Richardson, of Bradley K. Richardson,
P.C., of Anderson, for Respondent.

PER CURIAM: J. Charles Gray and Peggy B. Gray appeal a circuit court order granting Plantation Federal Bank's motion for summary judgment as to the Grays' counterclaims in a foreclosure action. The Grays argue the circuit court erred in granting Plantation's motion because genuine issues of material fact exist regarding whether Plantation was liable for (1) breach of contract, (2) fraud, (3) breach of fiduciary duty, and (4) violations of the South Carolina Unfair Trade Practices Act (SCUTPA). We affirm pursuant to Rule 220(b), SCACR.

First, we find no genuine issues of material fact exist regarding the breach of contract claim. *See McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014) ("In reviewing a decision to grant summary judgment, [the appellate court] appl[ies] the same standard as the circuit court."); Rule 56(c), SCRCPP ("[Summary] judgment . . . shall be rendered forthwith if . . . there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law."); *McMaster*, 411 S.C. at 143, 767 S.E.2d at 453 ("In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." (quoting *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010))); *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002) (setting forth the elements of a claim for breach of contract accompanied by a fraudulent act as "(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach"); *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 276, 442 S.E.2d 620, 623 (Ct. App. 1994) (holding breach of contract accompanied by a fraudulent act "requires *proof* of fraudulent intent relating to the breaching of the contract and not merely to its making" (emphasis added)).

Second, we find no genuine issues of material fact exist as to the fraud claim. *See Schnellmann v. Roettger*, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007) (setting

forth the first element of a cause of action for fraud as a representation of fact); *id.* ("The failure to prove any element of fraud or misrepresentation is fatal to the claim.").

Third, we find no genuine issues of material fact exist as to the breach of fiduciary duty claim. *See Regions Bank v. Schmauch*, 354 S.C. 648, 671, 582 S.E.2d 432, 444 (Ct. App. 2003) ("South Carolina holds the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature."); *id.* at 670-71, 582 S.E.2d at 444 ("[A] fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or induced the confidence placed in him.").

Fourth, we find no genuine issues of material fact exist as to the SCUTPA claim. *See* S.C. Code Ann. § 39-5-20(a) (1985) (declaring as unlawful "unfair or deceptive acts or practices in the conduct of any trade or commerce"); *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006) (noting that in order to recover under the SCUTPA, a plaintiff must show "the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce"); *id.* at 26, 640 S.E.2d at 500 ("Whether an act or practice is unfair or deceptive within the meaning of the [SC]UTPA depends on the surrounding facts and the impact of the transaction on the marketplace.").

AFFIRMED.¹

HUFF, A.C.J., and WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
HON. ALEXANDER S. MACAULAY

APPELLATE CASE NO.. 2014-000220

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK . . . RESPONDENT

VS

J. CHARLES GRAY and WATERFORD RIDGE
OWNERS ASSOCIATION, INC., DEFENDANTS,
Of whom J. CHARLES GRAY is an APPELLANT

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK . . . RESPONDENT

VS

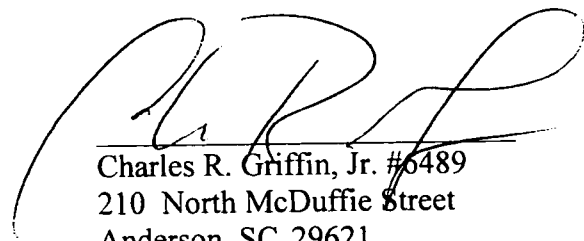
PEGGY B. GRAY and WATERFORD RIDGE
OWNERS ASSOCIATION, INC., DEFENDANTS,
Of whom PEGGY B. GRAY is an APPELLANT

FILED

JAN 20 2015

of Appeals

FINAL BRIEF OF APPELLANTS



Charles R. Griffin, Jr. #6489
210 North McDuffie Street
Anderson, SC 29621
864-231-8870
888-682-7317 (fax)
Attorney for Appellants

January 25, 2015

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TABLE OF AUTHORITIES

STATUTES

South Carolina Unfair Trade Practices Act
S.C. Code Ann. § 36-1-205(3)
Rule 56, SCRCP

CASES

Ball v. Canadian Am. Exp. Co., 314 S.C. 272, 442 S.E.2d 620, (Ct. App. 1994)
Burden v. Woodside Cotton Mills 104 S.C. 435, 89 S.E. 474 (1916)
Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E.2d 606, (2002)
Darby v. Waterboggan of Myrtle Beach, Inc., 288 S.C. 579, 344 S.E.2d 153 (Ct. App. 1986)
Floyd v. Country Squire Mobile Homes, Inc., 287 S.C. 51, 336 S.E.2d 502, (Ct. App. 1985)
Gaskins v. Firemen's Ins. Co. of Newark, N.J., 206 S.C. 213, 33 S.E.2d 498, (1945)
Harper v. Ethridge, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986)
Hendrix v. Eastern Distribution, Inc., 320 S.C. 218, 464 S.E. (2d) 112 (1995)
Horton, Inc. v. Wescott Land Co., LLC, 398 S.C. 528, (S.C. Ct. App. 2012)
Johnson v. Alexander, 408 S.C. 58, (S.C. Ct. App. 2014)
Johnson v. Alexander, 2014 S.C. App. LEXIS 103 (S.C. Ct. App., May 16, 2014)
Moore v. Moore, 360 S.C. 241, (S.C. Ct. App. 2004)
Moseley v. All Things Possible, Inc., 388 S.C. 31, (S.C. Ct. App. 2010)
Quail Hill, LLC v. Cnty. of Richland, 387 S.C. 223, 692 S.E.2d 499, (2010)
Regions Bank v. Schmauch, 354 S.C. 648, (S.C. Ct. App. 2003)
Roberts v. Gaskins, 327 S.C. 478, 486 S.E.2d 771 (Ct. App. 1997)
Sullivan v. Calhoun, 117 S.C. 137, 139, 108 S.E. 189, (1921)
Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161, (2013)
Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 746 S.E.2d 35, (2013)
Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus., 304 S.C. 101, (Ct. App. 1991)
Williams v. Riedman, 339 S.C. 251, (S.C. Ct. App. 2000)
Wright v. Craft, 372 S.C. 1, (S.C. Ct. App. 2006).

STATEMENT OF ISSUES ON APPEAL

- I. Did the Court err in granting Summary Judgment in favor of the Respondent?

STATEMENT OF THE CASE

These two consolidated actions from the Appellants' purchase and financing of Lots 27 and 29 Waterford Ridge (hereinafter "the Lots") which were being sold pursuant to a real estate auction. Record 230, ll. 8 – 24.

Appellants had purchased such properties before at such auctions. Charles Gray Record 230, l. Record 231, ll. 1 – 25, Record 232, ll. 1 – 25, Record 233, ll. 1 – 25, Record 234, ll. 1 – 12, Record 235, ll. 2 – 17.

At the time, Appellants were in the business of purchasing and improving real estate for resale. Record 233, ll. 18 – 25, Record 239, ll. 1 – 3.

At these auction, there were a number of employees of different lending institutions, along with their appraisers, present soliciting business to finance the sales from the auctions. Record 237, ll. 24 – 25, Record 238, ll. 1 – 25, Record 239, ll. 1 – 20, Record 263, ll. 13 – 25, Record 264, ll. 1 – 5.

Further, all of the purchases Appellants made at these auctions were financed pursuant to "Interest Only" short term financing loans which were generally renewed at the time the loan became due. Record 249, ll. 5 – 22.

Appellant Charles Gray handled the financing transactions, although the Lots were titled separately in his name and Appellant Peggy Gray's name. Charles Gray Record 259, ll. 6 – 25.

When Appellants initially purchased the lots in question Respondent's employee Shane Smith (hereinafter "Smith") was employed with another financial institution, Community First. Record 239, ll. 13 – 20.

Further, prior to Appellants contact with Respondent, Appellants had developed a business relationship with Smith who subsequently became employed with Respondent. Record 239, ll. 16 – 25, Record 240, ll. 1 – 6, Record 305, ll. 5 – 8. Record 261, ll. 8 – 25, Record 262, ll. 1 – 14, Record 272, ll. 4 – 9.

The initial purchase of the Lots was financed by Community First. Charles Record 249, ll. 23 – 25, Record 250, ll. 1 – 25, Record 251, ll. 1 – 14, Record 260, ll. 15 – 25. Record 353, ll. 1 – 4.

Pursuant to Smith's solicitations and while Smith was employed with Community First, Appellants financed the purchase of the Lots. Record 227, ll. 3 – 5, Record 240, ll. 10 – 13.

24 Q. All right. And Mr. Smith was employed by?
25 A. Community First, and he was on that site that day. He
Record 239

1 was under that tent that day. And he walked over that
2 lot with me that day. And he knew that it was an
3 interior lot, and he knew that I had to pay 10 percent
4 down. Record 239 & 240

5 like that. But that's about the extent of it. And
6 from there he went to First -- Community First as a
7 V.P. And I -- and he was at the auction representing
8 Community First. So he went -- he helped me walk over
9 the lot, like I indicated before, and we agreed to
10 -- with all the other banks, **I agreed to go to**
11 **Community First on those two lots, 27 and 29, with**
12 **him, since I sort of knew him and interest only. And**
13 **all the banks standing there was interest only, so**
14 **might as well go with him.**
Record 262 (Bold Added)

When the loans matured, Community First renewed the loans Record 253, ll. 14 – 22. Record 354 ll. 1 – 8. Record 354, Record 353, ll. 1 – 4.

A course of dealing regarding renewing these short term "Interest Only" loans had developed among Appellants and the banks with whom Appellants did business including Community First while Smith was employed with Community First and Respondent after Smith became Employed with Respondent. Record 304, ll. 6 – 25, Record 262, ll. 5 – 14.

10 Q. Do we agree that First Savers could have called that
11 loan and not refinanced it?

12 A. Yeah, you could have, I guess. Based on what I know
13 now, you could have called it any time other than the
14 one-year time. But the other bank, we've been doing
15 that for three or four, five years. **So there was a**
16 **pattern.**

17 Q. But this was the first time you had done business with
18 First Savers.

19 A. But you make decisions based on your experience level.
20 **My experience was I'd been getting interest only on**
21 **lots for four or five years from different banks,**
22 **including First Savers Bank.** Record 304
(Bold Added)

In 2008 while the loans were with Community First, Appellants were informed by Smith that Community First would no longer finance "Interest Only" loans on the Lots. Record 255, ll. 20 – 25, Record 256, ll. 1 – 24, Record 258, ll. 8 – 23.

When the loans came up for renewal for the last time with Community First, Smith introduced Appellants to Respondent. Record 255, ll. 7 – 8, Record 260, ll. 1 – 8. Record 359, ll. 9 – 19.

9 Q. Thank you, ma'am. When the loan came up for renewal
10 with Community First, did you contact any other banks
11 to see about financing options?

12 A. No.

13 Q. And why is that?

14 A. They said they'd go interest -- the second time they
15 said they'd go interest only, the second time around.

16 We did contact -- **well, we really didn't contact First**
17 **Savers. They really came to us. Shane Smith said,**

18 **"Come on. I'm going to go over to First Savers, and**
19 **you can come with me."**

20 Q. But did you talk to any other banks --

21 A. No. Record 359 (Bold Added)

Thus, based on Smith's solicitations and representations that the loans would be interest only, Appellants engaged Respondent and Smith and refinanced the Lots with Respondent. Record 239, ll. 16 – 25, Record 305, ll. 2 – 11. Record 359, ll. 9 – 19.

Further, at the time Appellants engaged Respondent to refinance the loans, Smith never informed Appellants that the loans would not be "Interest Only." Charles Gray Record 304, 1 – 5.

2 First Savers. **I was never told by First Savers, Shane**
3 **Smith, at one time, that that loan would ever go to a**
4 **permanent loan** until they -- till the banks got in
5 trouble. Record 304. (Bold Added)

To Appellants surprise, when Respondent subsequently refinanced the Lots, Appellants were required to bring approximately \$10,684.to the closing. Record 275, ll. 1 – 6, Record 272, ll. 13 – 17.

Community First had not required Appellants to pay any such sum of money to refinance the loans. Record 271, ll. 12 – 19.

Thereafter the loans matured in 2009 and Appellants renewed the loans. Record 277, ll. 9 – 12.

Again, to Appellants surprise, in order to renew the loans as "Interest Only" at the time Appellants renewed the loan on Lot 27, Appellants had to pay \$6,218.75 as a principal payment on the loan on that lot and another similar amount as a principal payment on the other loan on the other lot. Record 280, ll. 15 – 24, Record 285, ll. 20 – 25, Record 286, ll. 1 – 10.

21 suppose. I don't know what the deal was. And they
22 informed me at that time they would not do an interest
23 only unless I paid them that money and paid some
24 principal down. Record 280

Further, Appellants were informed that the next time the notes matured,
Respondent would not finance "Interest Only" again, and Appellants would have finance
the loans pursuant to a Fifteen Year fixed mortgage at approximately Eight and a half to
Nine Percent. Record 281, ll. 3 – 5, Record 283, ll. 1 – 25.

Appellants informed Smith that they could not afford a 15 year mortgage at a
fixed rate on the Lots rather than the short term "Interest Only" loans. Record 285, ll. 9 –
19.

Appellants had continued to do business with Respondent due to the business
relationship that Appellants had established with Smith, and Appellants had relied upon
the course of dealings of "Interest Only" short term loans that Appellants had developed
with Smith. Record 286, ll. 24 – 25, Record 287, ll. 1 – 6, Record 296, ll. 16 – 25.

22 question by saying I thought my better chances of
23 getting any type of an interest only, that I could
24 afford the payments on, was to deal with the people
25 I'd been dealing with. Record 296.

11 Q. Did you anticipate they would renew this loan,
12 interest only, forever?

13 A. I had no reason not to believe that.

14 Q. Did anyone ever tell you that?

15 A. Probably not and I never did ask. **I had five years of**
16 **experience with interest only.** So I didn't know --

17 Q. No one at First Savers ever told you, we'll renew this
18 thing forever, if you need us to?

19 A. I never asked them. I just -- up until that point, I
20 guess the banks were satisfied with the interest only.
Record 306 (Bold Added).

Thereafter, Appellants ceased making payments in December 2009 since Appellants were then out of money due to Respondent's actions, and the loans were not going to be renewed again as short term "Interest Only" loans. Record 297, ll. 2 – 8 Record 302, ll. 23 – 25, Record 304, ll. 1 – 25.

Appellants estimated that they could have continued with the loans had the loans remained "Interest Only." Record 301, ll. 13 – 25, Record 302, ll. 1 – 25, Record 303, ll. 1 – 22.

Further, Respondent's demands for additional upfront money to refinance the loans with Respondent resulted in undue financial hardship for Appellants. Charles Record 302, ll. 23 – 25, Record 303, ll. 1 – 25.

Thereafter Respondent initiated this Foreclosure action.

ARGUMENTS

I. The Court erred in Granting Summary Judgment in favor of the Respondent.

When reviewing an order granting summary judgment, an appellate court employs "the same standard applied by the trial court under Rule 56, SCRPC." *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 425, 746 S.E.2d 35, 37 (2013) (citation omitted). Rule 56 provides the trial court shall grant summary judgment if "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). "However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). *Johnson v. Alexander*, 408 S.C. 58, 61 (S.C. Ct. App. 2014) Rehearing denied by *Johnson v. Alexander*, 2014 S.C. App. LEXIS 103 (S.C. Ct. App., May 16, 2014).

II. Breach of Contract Accompanied by a Fraudulent Act and/or Fraudulent Intent and Fraud

A. The Order granting Summary Judgment states:

"The Grays have counterclaimed alleging breach of contract accompanied by a fraudulent act and/or with fraudulent intent. The Grays have also filed a separate counterclaim alleging fraud. **In order to maintain either cause of action the Grays must establish that all of the elements of fraud are present.**" Record 4. Bold added.

Breach of Contract Accompanied by a Fraudulent Act and/or Fraudulent Intent and Fraud are two (2) clearly distinct causes of action, each with different elements.

A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct." *Roberts v. Gaskins*, 327 S.C. 478, 486 S.E.2d 771 (Ct. App. 1997). With certain exceptions, a contract need not be in writing to be enforceable. *Gaskins v. Firemen's Ins. Co. of Newark, N.J.*, 206 S.C. 213, 216, 33 S.E.2d 498, 499 (1945). If an agreement is manifested by words, the contract is said to be express. An oral contract is enforceable according to its terms. *Hendrix v. Eastern Distribution, Inc.*, 320 S.C. 218, 464 S.E. (2d) 112 (1995).

Breach of Contract Accompanied by a Fraudulent Act and/or Fraudulent Intent does not require proof of all of the elements of Fraud.

To establish a claim for breach of contract accompanied by a fraudulent act, a party must show: (1) a breach of contract; (2) **fraudulent intent relating to the breaching of the contract and not merely to its making**; and (3) a fraudulent act accompanying the breach. *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002). "Fraudulent act" is broadly defined as "any act characterized by dishonesty in fact or unfair dealing." *Id.* at 466, 560 S.E.2d at 612. "'Fraud,' in this sense, 'assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.'" *Id.* (quoting *Sullivan v. Calhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921)). Breach of contract accompanied by a fraudulent act requires proof of fraudulent intent relating to the breaching of the contract and not merely to its making, and such proof may or may not involve false representations. *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 276, 442 S.E.2d 620, 623

(Ct. App. 1994). "Fraudulent intent is normally proved by circumstances surrounding the breach." *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 54, 336 S.E.2d 502, 503-04 (Ct. App. 1985). "The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too remote in either time or character." *Id.* at 54, 336 S.E.2d at 504. D.R. *Horton, Inc. v. Wescott Land Co., LLC*, 398 S.C. 528, 555-556 (S.C. Ct. App. 2012). (Bold Added).

To prevail on a cause of action for fraud, a Plaintiff must prove by clear, cogent and convincing evidence the following elements: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Moseley v. All Things Possible, Inc.*, 388 S.C. 31, 35-36 (S.C. Ct. App. 2010).

Breach of contract accompanied by a fraudulent act is not simply a combination of a claim for breach of contract and a claim for fraud. **The action for breach of contract accompanied by a fraudulent act is not based on the same elements as an action for fraud (deceit).** *Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986). A claim of fraud goes to the making of the contract. *See, e.g., Darby v. Waterboggan of Myrtle Beach, Inc.*, 288 S.C. 579, 344 S.E.2d 153 (Ct. App. 1986). It is based on the theory that the innocent party was induced to enter a contract he would not otherwise have made because he relied on a false representation by the fraudulent party. *Id.* In other words, a claim for fraud relates to the making of the contract. Breach of

contract accompanied by a fraudulent act is different. It requires proof of fraudulent intent relating to the breaching of the contract and not merely to its making. *Harper v. Ethridge, supra*. Such proof may or may not involve false representations. *See id.* (the fraudulent act is any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design). *Ball v. Canadian Am. Express Co.*, 314 S.C. 272, 276 (S.C. Ct. App. 1994). (Bold Added).

In granting the Respondent's motion for Summary Judgment the Order states:

"In order to maintain either cause of action the Grays must establish that all of the elements of fraud are present." Record 4.

With all due respect this is clearly this an error of law.

B. Appellants have set forth facts stating a claim for Fraud.

At the Summary Judgment stage, the Appellants have satisfied the elements of Fraud.

Smith induced the Appellants to refinance the loans with Respondent pursuant to the representation that the Loans would be refinanced "Interest Only." This was false, and was made knowing it to be false or it was made with reckless disregard for its truth or falsity. The representation was material. Appellants did not know at the time it was false. The representation was made with the intent that Appellants rely upon said Representation. The Appellants had a right to rely on the representation and in fact did rely upon the representation. Further, Appellants have been damaged as a result of the Representation.

C. Appellants have set forth facts stating a claim for Breach of Contract Accompanied by a Fraudulent Act and/or Fraudulent Intent

At the Summary Judgment stage, the Appellants have satisfied the elements of Breach of Contract Accompanied by a Fraudulent Act and/or Fraudulent Intent.

The loans at issue here are contracts. A course of dealing or usage of trade had developed between Smith and the Appellants while he was with Community First which course of dealing carried over to Respondent when Smith went to work with Respondent and solicited Appellants 'business.

S.C. Code Ann. § 36-1-205(3) states:

A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

See also *Burden v. Woodside Cotton Mills* 104 S.C. 435, 89 S.E. 474 (1916) (usages of a trade or business are presumed to form part of contract unless excluded by agreement). *Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus.*, 304 S.C. 101, 107 (S.C. Ct. App. 1991).

Clearly the implied term that the loans would be renewed on an "Interest Only" basis became a part of the loans by operation of law.

The Respondent repudiated the agreement and breached the contracts by informing Appellants that Respondent was not going to honor its agreement to finance the loans on an "Interest Only" basis.

Further, the breach was accompanied by fraudulent act and with fraudulent intent since by demanding and receiving sums of money to pay down the principal on the loans, the Respondent had placed the Appellants in a vicarious financial position.

Further, Smith never informed Appellants when he solicited Appellants business with Respondent that the loans would cease to be refinanced on an "Interest Only" basis.

The Respondent by engaging in the actions, conduct and/or omissions described herein breached the covenant of good faith and fair dealing that is implied in every contract. There exists in every contract an implied covenant of good faith and fair dealing. *Williams v. Riedman*, 339 S.C. 251, 273 (S.C. Ct. App. 2000).

III. Breach of Fiduciary Duty

South Carolina holds the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature. ... However, a bank may be held to a fiduciary duty if it undertakes to advise a depositor as part of services the bank offers. ... Such a relationship charges the bank with a duty to disclose material facts that may affect its customer's interests. *Regions Bank v. Schmauch*, 354 S.C. 648, 671 (S.C. Ct. App. 2003).

Clearly the facts bear out the Smith advised the Appellants if they refinanced the lots with Respondent that Respondent would refinance the loans on an "Interest Only" basis as Smith had been while he was employed with Community First.

A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. ... A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. ... To establish the existence of a fiduciary relationship, the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will act not in his own behalf but in the interest of the party so reposing. ... The evidence must show the entrusted party actually accepted or induced the confidence placed in him. ... Parties in a fiduciary relationship must fully disclose to

each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud. ...*Moore v. Moore*, 360 S.C. 241, 250-251 (S.C. Ct. App. 2004).

It is clear Appellants placed a special trust in their relationship with Smith, Respondent's employee, and continued to business with Respondent.

Further, Smith induced Appellants to do business with his employer and failed to disclose that Respondent was going to later refuse refinance the loans on an "Interest Only" basis.

Appellants have established a breach of fiduciary claim at the Summary Judgment stage of this proceeding.

IV. South Carolina Unfair Trade Practices Act

To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s). S.C. Code Ann. §§ 39-5-10 to -560. *Wright v. Craft*, 372 S.C. 1, 23 (S.C. Ct. App. 2006).

A deceptive act is any act which has a tendency to deceive. ... "Even a truthful statement may be deceptive if it has a capacity or tendency to deceive." ... Whether an act or practice is unfair or deceptive within the meaning of the UTPA depends on the surrounding facts and the impact of the transaction on the marketplace.... "An act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive." *Wright v. Craft*, 372 S.C. 1, 26 (S.C. Ct. App. 2006).

Clearly Smith's representations that Respondent would refinance at "Interest Only" had a tendency to deceive, especially when coupled with the sums of money Appellants had to pay to obtain "Interest Only" refinancing from Respondent when such was not required of Appellants when Smith was employed by Community First.

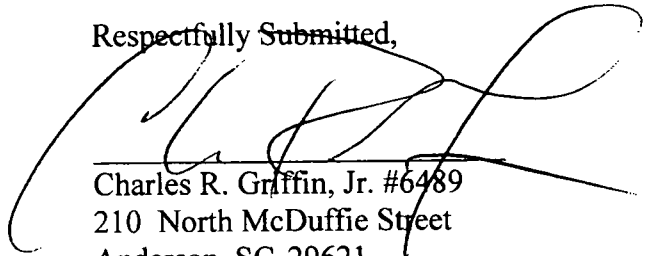
The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts... These two ways are not the only means for showing the potential for repetition or public impact, and each case must be evaluated on its own merits to determine what a plaintiff must show to satisfy the potential for repetition/public impact prong of the UTPA... Nevertheless, a plaintiff proves an adverse effect on public interests if he proves facts that demonstrate the potential for repetition. The plaintiff need not allege or prove anything further in relation to the public interest requirement. *Wright v. Craft*, 372 S.C. 1, 30 (S.C. Ct. App. 2006).

The fact that both Appellants on separate loans have been affected by Respondent's conduct clearly satisfies the potential for repetition since the actions, conduct and/or omissions affected both Appellants in who brought separate actions but the cases were consolidated.

CONCLUSION

For the reasons stated above, the Appellants ask that the Order of the Court appealed from be reversed.

Respectfully Submitted,

A large, stylized handwritten signature in black ink, likely belonging to Charles R. Griffin, Jr., is written over the typed name and address.

Charles R. Griffin, Jr. #6489
210 North McDuffie Street
Anderson, SC 29621
864-231-8870
888-682-7317 (fax)
Attorney for Appellants

January 25, 2015

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
HON. ALEXANDER S. MACAULAY

APPELLATE CASE NO.. 2014-000220

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK ... RESPONDENT

VS

J. CHARLES GRAY ... APPELLANT

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK ... RESPONDENT

VS

PEGGY B. GRAY ... APPELLANT

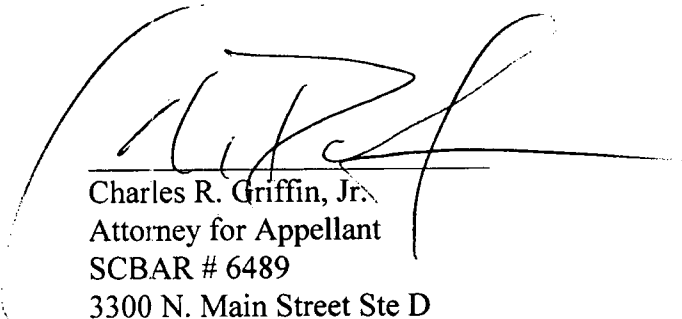
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SC Court of Appeals

CERTIFICATION

Certificate of Counsel. I certify that the Final Brief complies with Rule 211(b). SCACR



Charles R. Griffin, Jr.
Attorney for Appellant
SCBAR # 6489
3300 N. Main Street Ste D
Anderson, SC 29621
864-231-8870
Fax 888-682-7317

Dated: January 25, 2015

App. 000028

THE STATE OF SOUTH CAROLINA
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COURT OF COMMON PLEAS
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PLANTATION FEDERAL BANK as successor in interest to
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VS

J. CHARLES GRAY and WATERFORD RIDGE
OWNERS ASSOCIATION, INC., DEFENDANTS,
Of whom J. CHARLES GRAY is an APPELLANT

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK . . . RESPONDENT

VS

PEGGY B. GRAY and WATERFORD RIDGE
OWNERS ASSOCIATION, INC., DEFENDANTS,
Of whom PEGGY B. GRAY is an APPELLANT

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30 2015

of Appeals

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on January 28, 2015 he served the Appellants' Final Brief on the Respondent by depositing with the U.S. Mail with postage prepaid a copy of same to the office Bradley Richardson, 133 Straight Drive Anderson, SC 29625

BY:

THE GRIFFIN FIRM, LLC

Charles R. Griffin, Jr. #6489

Attorney for Appellants

210 N. McDuffie Street Ste 103

Anderson, SC 29621

864-231-8870

Fax 888-682-7317

Dated: January 28, 2015

App. 000029

Other Counsel of Record

Brad Richardson
Attorney for Respondent
133 Straight Drive
Anderson, SC 29625
864-222-0292

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
HON. ALEXANDER S. MACAULAY

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Of Whom J. CHARLES GRAY...APPELLANT

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Of Whom PEGGY B. GRAY...APPELLANT

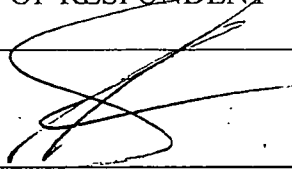
FINAL BRIEF OF RESPONDENT

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SC Court of Appeals

February 12, 2015



Bradley K. Richardson, Esq. (S.C. Bar #: 68385)
133 Straight Drive
Anderson, SC 29625
(864) 222-0292
(864) 222-0892(fax)
Brad@bkrlaw.net
Attorney for the Respondent

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Floyd v. Country Squire Mobile Homes, Inc., 287 S.C. 51, 336 S.E.2d 502 (Ct. App. 1985)
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Robertson vs. First Union Nat'l Bank, 350 S.C. 339, 565 S.E.2d 309 (Ct. App. 2002)
Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 746 S.E.2d 35 (2013)
Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus., 304 S.C. 101, 107 (S.C. Ct. App. 1991)

STATEMENT OF ISSUE ON APPEAL

I. DID THE COURT ERR IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE RESPONDENT?

STATEMENT OF THE CASE

These two consolidated actions arise from the Appellants' refinancing of purchase money mortgages that were used to purchase Lot 27 and Lot 29 of Waterford Ridge (hereinafter "the Lots"). Said lots, which are interior lots located on Lake Keowee, were purchased at a real estate auction.¹ Appellants purchased the lots with the intent to construct speculative homes for resale.²

In 2008, Respondent extended one-year mortgage loans to Appellants which provided for interest only payments. Said mortgage loans refinanced Appellants original purchase money mortgages which were used to purchase the real property which is the subject of this foreclosure action.³ When the 2008 mortgage loans with Respondent matured in 2009, Appellants renewed the mortgage loans with Respondent. Said renewal loans provided interest only repayment terms as well.⁴

The Appellants in their respective Amended Answers as well as in their deposition testimony admitted that they executed the mortgage loan documents that are the subject of this matter.⁵ There is no dispute that the mortgage loans which are the subject matter of the foreclosure action were commercial transactions. The lots which are pledged as collateral for the Respondent's mortgage loans were purchased at an auction held by or on the behalf of Crescent Communities of S.C., LLC.⁶ The Appellants arrived

¹ Deposition of J. Charles Gray dated March 25, 2013 at Page 10, lines 8-24. (R. p. 230; lines 8-24).

² Deposition of J. Charles Gray dated March 25, 2013 at Page 13 lines 15-25 and page 14 lines 1-3. (R. p. 233, lines 15-25; R. p. 234, lines 1-3).

³ Deposition of J. Charles Gray dated March 25, 2013 at Page 53, lines 2-21. (R. p. 273, lines 2-21).

⁴ Deposition of J. Charles Gray dated March 25, 2013 at Page 57, lines 9-12. (R. p. 277, lines 9-12).

⁵ Deposition of Peggy B. Gray dated March 25, 2013 at Page 12, lines 16-17, at Page 10, lines 16-24, at Page 15, lines 12-15. See also deposition of J. Charles dated March 25, 2013 at Page 46, lines 8-16, at Page 58, lines 17-25, at Page 59, lines 1-10, at Page 57, lines 12-25, and Page 58, lines 1-3. (R. p. 358, lines 16-17; R. p. 356, lines 16-24; R. p. 361, lines 12-15). (See also R. p. 266, lines 8-16; R. p. 278, lines 17-25; R. p. 279, lines 1-10; R. p. 277, lines 12-25; R. p. 278, lines 1-3).

⁶ Deposition of J. Charles Gray dated March 25, 2013 at Page 10, lines 8-21. (R. p. 230, lines 8-21).

at the purchase price they were willing to pay for the lots through an auction process.⁷

The Appellants acknowledge that they had attended, participated in and purchased real property at several auctions such as the one that resulted in the purchase of the lots which are the subject of this action.⁸ The Appellants acknowledge that they purchased the lots with the intention to build speculative construction for resale⁹. Aside from this transaction, Appellants have purchased and sold multiple investment properties; have developed subdivisions; built speculative homes for resale¹⁰ and arranged financing through several different banks for properties they have purchased over the years.¹¹ Appellants are well versed in real estate financing and had full knowledge of the loan terms being extended by Respondent prior to executing the loan documents.

Due to the downturn in the economy the Appellants were unable to sell these lots prior to the loans maturing as they had planned. The Appellants testified that that the downturn in the economy led to a depressed market for real estate on Lake Keowee. The lack of interest in Lake Keowee real estate along with a decline in the economy led to Appellants inability to sell the lots.¹²

The Appellants' pleadings allege that the Respondent represented that the mortgage loans obtained in 2008 would be renewed by Respondent at the same or similar

⁷ Deposition of J. Charles Gray dated March 25, 2013 at Page 20, lines 10-25; Page 21; Page 22, lines 16-25; Page 23, line 1-3. (R. p. 240, lines 10-25; R. p. 241; R. p. 242, lines 16-25; R. p. 243, lines 1-3).

⁸ Deposition of J. Charles Gray dated March 25, 2013 at Page 17, lines 6-13. (R. p. 237, lines 6-13).

⁹ Deposition of J. Charles Gray dated March 25, 2013 at Page 13, lines 13-25; Page 14, Line 1-3. (R. p. 233, lines 13-25; R. p. 234, lines 1-3).

¹⁰ Deposition of J. Charles Gray dated March 25, 2013 at Page 15, lines 4-11. (R. p. 235, lines 4-11).

¹¹ Deposition of J. Charles Gray dated March 25, 2013 at Page 34, lines 4-25; Page 35, lines 1-7; Page 43, lines 7-10; Pages 73-76. (R. p. 254, lines 4-25; R. p. 255, lines 1-7; R. p. 263, lines 7-10; R. pp. 293-296).

¹² Deposition of Peggy B. Gray dated March 25, 2013 at Page 20, lines 5-9; Page 23, lines 2-25. See also deposition of J. Charles Gray dated March 25, 2013 at page 69, lines 23-25, Pages 70 and 71, Page 72, lines 1-11. (R. p. 366, lines 5-9; R. p. 369, lines 2-25) (*See also*, R. p. 289, lines 23-25; R. pp. 290-291; R. p. 292, lines 1-11).

terms until such time the real property which secured said loans could be sold. In essence the Appellants allege that the Respondent promised or represented that the 2008 interest only loans would be renewed in perpetuity upon the same or similar loan terms. At no time did Respondent or any of its agents or employees represent, promise or otherwise imply that Respondent would renew the interest only loans upon the same or similar terms at maturity. In fact, Appellants depositions indicate that no such promises or representations were made.

9. Q. What was your understanding of the note with First
10. Savers? Did you understand that it would be interest
11. only in perpetuity?"
12. A. Uh-huh (affirmative).
13. Q. Did someone promise you that?
14. A. (Affirmative nod)
20. Q. Yes, that they would continue to refinance it, as long
21. as it took, at interest only?
22. A. Yes.
23. Q. And who did you understand that from?
24. A. Just talking to Shane Smith at the bank.
25. Q. Shane?
1. A. At First Savers.
2. Q. Did he say that?
3. A. **Well, as long as everything was going good at Keowee**
4. and all, there was no problem, he said. Now, forever?
5. I don't know about forever." Deposition of Peggy B. Gray at Pages
18-19. (Bold Added)
(R. p. 364-365).

1. A. I figured when we got ready to sign one in 2009, it
2. would be interest only.
3. Q. And why did you think that?
4. A. It was just my thinking.
5. **Q. Did anyone promise you?**
6. **A. No, nobody. I don't have it in writing or anything,**
7. **no.** Deposition of Peggy B. Gray at Page 20 (Bold Added)
(R. p. 366)

Further, the Appellant, Peggy Gray admits that Respondent's employee, Shane

Smith, did not make any fraudulent statement to her concerning the terms of the loans.

18. Q. Do you think Mr. Smith made any fraudulent statements
19. to you, to you in particular?
20. A. No. I think Mr. Smith did exactly what he thought was
21. going to happen, you know. I think he was truthful
22. with us... Deposition of Peggy B. Gray at page 21.
(R. p. 367).

In 2009 when the Appellants' loans with Respondent were nearing maturity, the market on Lake Keowee had drastically declined and property values had plummeted.¹³ When the original notes matured in 2009, the Respondent provided Appellant with an option to renew their loans with Respondent with interest only repayment terms for one more year provided the Appellants paid some principal down.¹⁴ At the time of the 2009 renewals Respondent informed the Appellants that Respondent would not provide further renewal loans that provided interest only payments at maturity.¹⁵

Appellants admit that prior to executing the renewal loans with Respondent in 2009, neither Appellant contacted any other banks for financing options. The Appellants admit they found it fruitless to try as no bank was offering to make interest only notes.¹⁶

Subsequently after executing the 2009 renewal loans with Respondent, the Appellants ceased making payments in December 2009. Appellants ceased making payments due under the notes and mortgages as a result of the Appellants financial circumstances.

¹³ Deposition of Peggy B. Gray dated March 25, 2013 at Page 20, lines 18-25, and page 21, lines 1-6. (R. p. 366, lines 18-25; R. p. 367, lines 1-6).

¹⁴ Deposition of J. Charles Gray dated March 25, 2013 at Page 63, lines 4-16. (R. p. 283, lines 4-16).

¹⁵ Deposition of J. Charles Gray dated March 25, 2013 at Page 60, line 25, at page 61, lines 1-3, and page 63, lines 18-21. (R. p. 280, line 25; R. p. 281, lines 1-3; R. p. 283, lines 18-21).

¹⁶ Deposition of J. Charles Gray dated March 25, 2013 at Page 64, lines 22-25, at page 65, lines 1-6. See also Deposition of Peggy B. Gray dated March 25, 2013 at Page 24, lines 10-14. (R. p. 284, lines 22-25; R. p. 285, lines 1-6) (See also R. p. 370, lines 10-14).

8. of this whole mess. But because I, you know, lost all
9. my equipment, dump trucks, the whole nine yards-- I
10. had to sell everything. And I lost over somewhere in
11. that neighborhood of one to one-point five million
12. dollars. Deposition of J. Charles Gray at Page 67.
(R. p. 287).

20. In 2005 my taxable income was--off my 1040 Form-- was
21. \$205,467; 2006, it was \$41,532; 2007, it was
22. 50,959. In 2008, it was 32,890. 2009 it had
23. dropped, \$25,140.00. 2010 it was 24,329... Depositions of J. Charles Gray
at Page 68.
(R. p. 288).

Prior to maturity of the 2009 renewal loans, Appellants defaulted upon their repayment obligations and Respondent initiated the foreclosure action which is the subject of this appeal. It is significant to note that at the time of default, Appellants were obligated to make interest only payments under the terms of the renewal loans. The Appellants admit that according to the terms of the loan documents Respondent has the right to foreclose and further admits that the circumstances leading to this action are a result of the economy and depressed real estate market on Lake Keowee.¹⁷

ARGUMENTS

I. The Court did not err in granting Summary Judgment in favor of Respondent

“An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56, SCRPC” *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 425, 746 S.E.2d 35, 37 (2013) (citation omitted). Rule 56(c) of the

¹⁷ Deposition of J. Charles Gray dated March 25, 2013 at page 80, lines 18-22, at page 72, lines 9-12. See also Deposition of Peggy B. Gray dated March 25, 2013 at page 23, lines 23-25, at page 21, lines 7-11, and page 27, lines 21-23. (R. p. 300, lines 18-22; R. p. 292, lines 9-12). (See also R. p. 369, lines 23-25; R. p. 367, lines 7-11; R. p. 373, lines 21-23).

SCRCP states summary judgment may be granted if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. Cnty. Of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted).

II. Breach of Contract Accompanied by a Fraudulent Act and/or Fraudulent Intent

At the Summary Judgment stage, the Appellants have failed to satisfy the elements of a claim for Breach of Contract Accompanied by a Fraudulent Act and/or Fraudulent Intent.

“In order to have a claim for breach of contract accompanied by a fraudulent act, the plaintiff must establish three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach” *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002). In *Conner v. City of Forest Acres*, the court defines a fraudulent act as “any act characterized by dishonesty in fact or unfair dealing” *Id.* at 466, 560 S.E.2d at 612. Normally fraudulent intent is proved by circumstances surrounding the breach of contract (*Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 54, 336 S.E.2d 502, 503-04 (Ct. App. 1985).

The Appellants have failed to point to any breach of contract by Respondent. The Appellants accepted the loan terms and executed all loan documents at a closing

conducted by independent counsel of their own choosing who had represented them in several real estate transactions over the years. The Appellants do not dispute executing the notes and admit they mortgaged the properties as collateral for the notes. The terms of the notes and mortgages are unambiguous and speak for themselves. The Appellants admit no employee or agent of Respondent ever stated that the terms of the original loans from Respondent would be renewed with identical terms. The Appellants received exactly what they bargained and contracted for and can point to no evidence of a fraudulent act having been committed by Respondent.

The Appellants argue that a course of dealing or usage of trade had developed between Shane Smith and the Appellants while he was with Community First and that this course of dealing carried over to Respondent.

“A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement” S.C. Code Ann. §36-1-205(3), See also *Burden v. Woodside Cotton Mills*, 104 S.C. 435, 89 S.E. 474 (1916). A usage of trade or business is presumed to form part of a contract unless the usage of trade is excluded by agreement (*Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus.*, 304 S.C. 101, 107 (S.C. Ct. App. 1991)). In the deposition of Peggy Gray, she states that Shane Smith informed her that Respondent would continue to renew the notes at interest only “as long as everything was going good at Keowee.”¹⁸ As stated previously, the Appellants admitted throughout their depositions that the market on Lake Keowee was in an economic decline which resulted in drastically decreased property values. The

¹⁸ Deposition of Peggy B. Gray dated March 25, 2013 at page 19, line 3. (R. p. 365, line 3).

Appellants acknowledge that the Respondent is not responsible for or believed to have caused the economic downturn and subsequent depressed real estate market. Therefore, any usage of trade to continually renew the notes at interest only into perpetuity were excluded from the contract.

In the alternative, should it have been deemed that such a usage of trade was incorporated into the contract, the usage of trade in the lending industry had changed prior to the Appellants executing the renewal notes with Respondent. Charles Gray admits in his deposition that he was unsure any bank would have talked to him about refinancing the loans and that he did not think any other bank would refinance the loans at interest only. Therefore any usage of trade wherein the lending institutions continually renewed notes at interest only had been dispelled.

The Appellants further argue that a course of dealing had been established. Charles Gray admits in his deposition he did not have a banking relationship with Respondent prior to signing the initial notes.¹⁹ Since this was the first banking relationship the Appellants had with Respondent, no course of dealing can be established. The Appellants have asserted that their course of dealing with Shane Smith carried over to Respondent and became part of the contract. As stated previously Peggy Gray states that Shane Smith only guaranteed interest only notes "as long as everything was going good at Keowee."²⁰ Therefore, any course of dealing wherein the notes were renewed with interest only payments into perpetuity should not form part of the contract as it was specifically excluded by Respondent.

¹⁹ Deposition of J. Charles Gray dated March 25, 2013 at page 52, lines 7-9. (R. p. 272, lines 7-9).

²⁰ Deposition of Peggy B. Gray dated March 25, 2013 at page 19, line 3. (R. p. 365, line 3).

The Appellants have failed to establish any usage of trade or course of dealing wherein the notes would be extended with interest only terms into perpetuity and therefore the Appellants have failed to establish any breach of contract by Respondent. The Appellants admit executing the notes and pledging the property as collateral for the loans. The Appellants further admit they accepted the interest only terms for one year and that Respondent had the right to foreclose once the Appellants breached the contract by failing to make their monthly interest payments.

The terms of the notes and mortgages are clear, unambiguous and speak for themselves. The Appellants' own admissions detail that no employee or agent of Respondent ever promised interest only terms into perpetuity. Therefore the Appellants' claim for Breach of Contract Accompanied by a Fraudulent Act and/or Fraudulent Intent must fail.

As the Appellants have failed to establish any breach of contract, the Appellants claim lies solely on a claim for fraud. "In the absence of a breach of contract, the plaintiffs proper cause of action will generally be for fraud in the inducement" *Floyd v. Country Squire Mobile Homes, Inc.* 287 S.C. 51, 54, 336 S.E.2d 502, 503 (Ct. App. 1985).

III. Appellants have failed to set forth facts stating a claim for Fraud.

Kahn Construction co. vs. South Carolina National Bank of Charleston restates the well established rule concerning fraud in South Carolina.

"In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either the knowledge of its falsity or a reckless disregard of its truth and falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon;

(9) the hearer's consequent and proximate injury. Failure to prove any one of the foregoing elements is fatal to recover." *Kahn Construction Co. vs. South Carolina Nation Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d. 414 (1980).

At the summary judgment stage, the Appellants failed to demonstrate all nine elements of Fraud. The Appellants' allege that the Respondent represented that identical renewal loan terms would be extended into perpetuity. However, The Appellants admit in their depositions that no one employed by Respondent ever stated that the terms of the original loans from Respondent would be renewed with identical terms into perpetuity. Peggy Gray details in her deposition that Shane Smith stated that the loans would be renewed at interest only as long as Keowee was doing well. The Appellants both admit that when the loans matured, the market on Keowee was in an economic decline. Peggy Gray further admits in her depositions that she would estimate the value of the lot she purchased to be \$50,000.00.²¹ See Deposition of Peggy B. Gray at Page 21, line 11. (See R. p. 367, line 11).

When asked during her deposition if Respondent's employee had made a fraudulent statement to her, the Appellant, Peggy Gray, stated that no employee or agent of Respondent had. Therefore the Appellants have failed to establish any false representation made by Respondent. Absent a representation that could be considered false and material there is no genuine issue as to any material fact in regards to the Appellants' counterclaim for Fraud.

²¹ Deposition of Peggy B. Gray dated March 25, 2013 at page 21, line 11. (R. p. 367, line 11).

IV. Breach of Fiduciary Duty

A fiduciary relationship exists when a person places special trust or confidence in another. *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). However, "The normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature." *Burwell v. South Carolina National Bank*, 288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986). The Appellants admit neither Respondent, its agents or employees advised the Appellants on the purchase of the properties that are the subject matter of this litigation, nor did Respondent ever misrepresent the terms of the loan documents they signed. The Appellants are seasoned and experienced real estate investors. Charles Gray admits that he has worked in the real estate business for over ten years and was familiar with the risk/rewards of investment opportunities. It is clear the Appellants knew the risks of real estate investing and understood the loan terms being extended to them by Respondent at all times. The Appellants own depositions establish there was no reason for them to place special trust in the Respondent or its employees as they are sophisticated real estate investors and experienced borrowers. The relationship between the Appellants and the Respondent was that of a creditor-debtor and not fiduciary in nature. Therefore Respondent owed no fiduciary duty to The Appellants. Even if a fiduciary relationship existed the Appellants fail to identify any action of Respondent which would have resulted in a breach of a fiduciary relationship. Once again the Appellants received what they requested from Respondent.

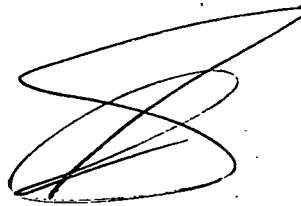
V. South Carolina Unfair Trade Practices Act

As set out hereinabove, Respondent acted in good faith in making the mortgage loans which are the subject of this litigation. Respondent never misrepresented the loan

terms to the Appellants and has fully complied with all agreed upon loan terms. The Appellants point to no deceptive, willful acts that would rise to the level of unfair trade practices. The Appellants have provided no evidence that there was any bank conduct in making their loans which adversely affected the public interest. The Appellants have failed to establish any evidence that shows that there is a genuine issue of material fact that the Respondent has violated the unfair trade practices Act. Accordingly, their claim must fail. *Robertson vs. First Union Nat'l Bank*, 350 S.C. 339, 565 S.E.2d 309 (Ct. App. 2002).

CONCLUSION

As shown herein, Respondent never guaranteed that Appellants' loans would be renewed with interest only payments into perpetuity. The Appellants were seasoned real estate investors with full knowledge and understanding of mortgage loan transactions. The Appellants received precisely what they bargained for. Respondent has complied with the terms of the notes and mortgages and Appellants have failed to provide any evidence of a fraudulent statement, breach of contract, breach of fiduciary duty or unfair trade practices.



Bradley K. Richardson, Esq. (S.C. Bar #: 68385)
133 Straight Drive
Anderson, SC 29625
(864) 222-0292
(864) 222-0892(fax)
Brad@bkrlaw.net
Attorney for the Respondent

February 12, 2015

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
HON. ALEXANDER S. MACAULAY

APPELLATE CASE NO. 2014-000220

PLANTATION FEDERAL BANK as Successor in Interest to
FIRST SAVERS BANK, RESPONDENT

v.

J. CHARLES GRAY and WATERFORD RIDGE OWNERS ASSOCIATION, INC.,
DEFENDANTS,

Of Whom J. CHARLES GRAY is an APPELLANT

PLANTATION FEDERAL BANK as Successor in Interest to
FIRST SAVERS BANK, RESPONDENT

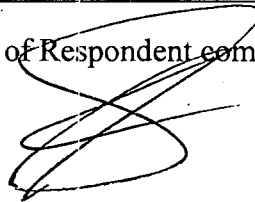
v.

PEGGY B. GRAY and WATERFORD RIDGE OWNERS ASSOCIATION, INC.,
DEFENDANTS,

Of Whom PEGGY B. GRAY is an APPELLANT

CERTIFICATE OF COUNSEL

I hereby certify that The Final Brief of Respondent complies with Rule 211(b).



Bradley K. Richardson, Esq. (S.C. Bar #: 68385)
133 Straight Drive
Anderson, SC 29625
(864)222-0292
(864) 222-0892(fax)
Brad@bkrlaw.net
Attorney for the Respondent

February 12, 2015

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APPEALS

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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COURT OF COMMON PLEAS
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v.

PEGGY B. GRAY and WATERFORD RIDGE OWNERS ASSOCIATION, INC.,
DEFENDANTS,

Of Whom PEGGY B. GRAY is an APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2015 a copy of the Final Brief of Respondent was served by regular United States Mail to:

Charles R. Griffin, Jr.
Attorney for Appellants
210 N. McDuffie Street Ste. 103
Anderson, SC 29621



Michael T. Bagwell (S.C Bar #: 101110)
133 Straight Drive
Anderson, SC 29625
(864) 222-0292
(864) 222-0892(fax)
Michael@bkrlaw.net

February 18, 2015

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
HON. ALEXANDER S. MACAULAY

APPELLATE CASE NO. 2014-000220

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v.

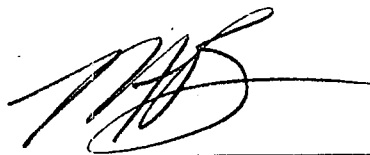
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Charles R. Griffin, Jr.
Attorney for Appellants
210 N. McDuffie Street Ste. 103
Anderson, SC 29621



Michael T. Bagwell (S.C Bar #: 101110)
133 Straight Drive
Anderson, SC 29625
(864) 222-0292
(864) 222-0892(fax)
Michael@bkrlaw.net

February 18, 2015

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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

HON. ALEXANDER S. MACAULAY

APPELLATE CASE NO.: 2014-000220

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SC Court of Appeals

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK . . . RESPONDENT

VS

J. CHARLES GRAY and WATERFORD RIDGE
OWNERS ASSOCIATION, INC., DEFENDANTS,
Of whom J. CHARLES GRAY is an APPELLANT

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK . . . RESPONDENT

VS

PEGGY B. GRAY and WATERFORD RIDGE
OWNERS ASSOCIATION, INC., DEFENDANTS,
Of whom PEGGY B. GRAY is an APPELLANT

RECORD ON APPEAL

Charles R. Griffin, Jr., Esquire, SCBAR # 6489
210 N. McDuffie Street Ste 103
Anderson, SC 29621
864-231-8870
Attorney for Appellants

Brad Richardson, Esquire
133 Straight Dr
Anderson, SC 29625
864-222-0292
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

HON. ALEXANDER S. MACAULAY

APPELLATE CASE NO.: 2014-000220

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK . . . RESPONDENT

VS

J. CHARLES GRAY and WATERFORD RIDGE
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Of whom J. CHARLES GRAY is an APPELLANT

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK . . . RESPONDENT

VS

PEGGY B. GRAY and WATERFORD RIDGE
OWNERS ASSOCIATION, INC., DEFENDANTS,
Of whom PEGGY B. GRAY is an APPELLANT

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STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
Plantation Federal Bank as successor)
in interest to First Savers Bank,)
vs.)
Plaintiff,)
J. Charles Gray and Waterford Ridge)
Owners Association, Inc.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-37-417

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
Plantation Federal Bank as successor)
in interest to First Savers Bank,)
vs.)
Plaintiff,)
Peggy B. Gray and Waterford Ridge)
Owners Association, Inc.,)
Defendants.)

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FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

THIS MATTER came before the Court on Plaintiff's motion for summary judgment. Arguments were heard on September 3, 2013 at the Oconee County Courthouse. Plaintiff was represented at the hearing by Bradley K. Richardson and the Defendants, J. Charles Gray and Peggy B. Gray, were represented by Charles R. Griffin. Based upon oral arguments, the deposition of Peggy B. Gray, the deposition of J. Charles Gray, Plaintiff's Memorandum in

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Support of Summary Judgment, the case law presented by counsel and for the reasons set forth herein, the Plaintiff's motion for summary judgment is granted.

FINDINGS OF FACT

The following facts have been established by the pleadings and the depositions of the Defendants, J. Charles Gray and Peggy B. Gray (hereinafter "the Grays"). The Grays are seasoned, sophisticated real estate investors who have purchased and sold numerous parcels of real estate. They have purchased lots to "flip" or resell at a profit, built speculative homes for resale and developed subdivisions. They have conducted business with and obtained mortgage loans from several different financial institutions.

The Grays purchased the properties that are the subject of Plaintiff's foreclosure action at auction in 2006. The Grays had attended several auctions and purchased real estate at auctions in the past. After contracting to purchase the subject properties from a third party the Grays elected to finance their purchases by obtaining first mortgage secured, purchase money loans from Community First Bank. The Community First mortgage loans provided interest only payments for a term of twelve months with balloon payments due at maturity. At maturity the Community First mortgages were renewed for one year. In 2008 Community First Bank informed the Grays that they would no longer renew their loans with interest only repayment terms.

The Grays subsequently refinanced their mortgage loans with First Savers Bank. The terms of the new mortgage loans provided for interest only monthly payments for a period of twelve months with balloon payments due at maturity. The Grays admit in their depositions that no employee or agent of the Plaintiff represented to them that the mortgage loans would be renewed upon the same terms extended in 2008. At maturity First Savers Bank agreed to renew the loans with interest only repayment terms for twelve months. At the time renewal terms were

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extended First Savers Bank informed the Grays that all future renewals or modifications of the mortgage loans would require monthly payments of principal and interest. The Grays do not dispute that they were represented by their independent counsel, James S. Belk, when all loan documents referenced herein were executed.

In 2009 the Grays stopped making payments on the mortgage loans because they were no longer able to meet their repayment obligations as a result of lack of or loss of income. Furthermore they were unable to generate income from their real estate investments due to a downturn in the global real estate market. The Defendants acknowledge that this litigation would never have occurred if it were not for the decline in the real estate market as they would have been able to resell their real estate investments.

CONCLUSIONS OF LAW

I. Standard of Review/Summary Judgment

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S.C.R.P. 56(c). Summary judgment is appropriate when "plain, palpable, and undisputable facts exist on which reasonable minds cannot differ." McNaughton-McKay Electric Co. of N.C., Inc. vs. Andrich, 324 S.C. 275, 279, 482 S.E.2d 564 (Ct. App. 1997). After consideration of the issues framed by the parties, the Court finds that summary judgment in favor of the Plaintiff is appropriate as to all of the causes of action.

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a.

II. Breach of Contract Accompanied by a Fraudulent Act and/or Fraudulent Intent and Fraud

This action was commenced by the Plaintiff filing this action for foreclosure of its mortgages. The Grays have counterclaimed alleging breach of contract accompanied by a fraudulent act and/or with fraudulent intent. The Grays have also filed a separate counterclaim alleging fraud. In order to maintain either cause of action the Grays must establish that all of the elements of fraud are present.

"In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either the knowledge of its falsity or a reckless disregard of its truth and falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. Failure to prove any one of the foregoing elements is fatal to recover." Kahn Construction Co. vs. South Carolina Nation Bank of Charleston, 275 S.C. 381, 384, 271 S.E.2d. 414 (1980).

The Grays have failed to establish any false representations made by First Savers Bank in regards to their mortgage loans. Furthermore, the Grays have failed to provide any evidence or testimony that establishes all nine elements of fraud. The Grays admit that they executed and delivered the notes and mortgages that are the subject matter of this litigation. The Grays' depositions show that they received precisely what they bargained for. The Grays admit they were given loans with interest only repayment terms for a period of twelve months with balloon payments due at maturity. While the Grays' pleadings allege that the Plaintiff represented that identical loan terms would be extended at maturity, the Grays admitted in their depositions that no one at First Savers Bank ever stated that the terms of the original loans from First Savers Bank would be renewed with identical terms.

Upon maturity of the initial loans, the Grays contracted with First Savers Bank for renewal terms that provided interest only repayment terms for a period of twelve months with

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balloon payments due at maturity. The Grays accepted the new loan terms and executed all loan documents at a closing conducted by independent counsel of their own choosing who had represented them in several real estate transactions over the years. The Grays do not dispute executing the notes and admit they mortgaged the properties as collateral for the notes. The terms of the notes and mortgages are unambiguous and speak for themselves. The Grays admit no one at First Savers Bank ever stated that the terms of the original loans from First Savers Bank would be renewed with identical terms. The Grays received exactly what they bargained and contracted for.

The Grays have failed to establish that First Savers Bank made any representation that was false or material. Absent a representation that could be considered false and material there is no genuine issue as to any material fact in regards to the Grays' counterclaim for breach of contract accompanied by a fraudulent act or with fraudulent intent. Furthermore there is no genuine issue as to any material fact in regards to the Grays' counterclaim for fraud. The Court grants Plaintiff's motion for summary judgment as to both causes of action.

III. Breach of Fiduciary Duty

A fiduciary relationship exists when a person places special trust or confidence in another. (O'Shea v. Lesser, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992)) However, "The normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature." (Burwell v. South Carolina National Bank, 288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986)). The Grays admit neither First Savers Bank, nor its agents or employees advised the Grays on the purchase of the properties that are the subject matter of this litigation, nor did First Savers Bank ever misrepresent the terms of the loan documents they signed. The Grays are seasoned and experienced real estate investors. Mr. Gray admits that he has worked in the real estate business

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for over ten years and was familiar with the risk/rewards of investment opportunities. It is clear the Grays knew the risks of real estate investing and understood the loan terms being extended to them by First Savers Bank at all times. The Grays' own depositions establish there was no reason for them to place special trust in the Plaintiff or its employees as they are sophisticated real estate investors. The relationship between the Grays and the Plaintiff was that of a creditor-debtor and not fiduciary in nature. Therefore First Savers Bank owed no fiduciary duty to The Grays. Even if a fiduciary relationship existed the Grays fail to identify any action of Plaintiff which would have resulted in a breach of a fiduciary relationship. Once again the Grays received what they requested from Plaintiff, no other commitment was ever made to the Grays and there is no evidence to the contrary. As the Grays have failed to provide any evidence as to the creation of a fiduciary relationship with First Savers Bank or a breach of any purported fiduciary duty, the Court grants Plaintiff's motion for summary judgment for this cause of action.

IV. Violation of Unfair Trade Practices Act

As set out hereinabove, First Savers Bank acted in good faith in making the mortgage loans which are the subject of this litigation. First Savers Bank never misrepresented the loan terms to the Grays and has fully complied with all agreed upon loan terms. The Grays point to no deceptive, willful acts that would rise to the level of unfair trade practices. The Grays have provided no evidence that there was any bank conduct in making their loans which adversely affected the public interest. The Grays have failed to establish any evidence that shows that there is a genuine issue of material fact that the Plaintiff has violated the unfair trade practices Act. Accordingly, their claim must fail. *Robertson vs. First Union Nat'l Bank*, 350 S.S.389, 565 S.E.2d.309 (Cl. App. 2002). Summary Judgment is granted in favor of the Plaintiff in regards to this counterclaim.

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V. Tortious Interference with Present and Prospective Economic Opportunities

The Grays testified that during the pendency of this action they have successfully purchased a new primary residence and were able to obtain financing for their new home with satisfactory loan terms. The Grays testified that their financial difficulties were caused by a variety of factors such as loss of income, the inability to sell real property and the overall state of the economy for the past few years. The Grays admit that they were parties to a separate foreclosure action commenced by First Citizens Bank and Trust Company, Inc. filed in 2010. The Grays testified that if the economy had continued to flourish they would have been able to make all loan payments and this action would never have been initiated. The Grays also testified that the Plaintiff did not cause their financial difficulties. Based upon the forgoing there is no genuine issue of material fact that Plaintiff is the cause of the Grays' financial difficulties. Therefore the Court grants summary judgment in favor of the Plaintiff as to this cause of action.

VI. Foreclosure of Mortgages

The Plaintiff originally commenced this action by filing two separate foreclosures in regards to its notes and mortgages. The Grays admit to having executed the loan documents; pledging the real property which is the subject of this action as collateral; and to having defaulted on the repayment terms of the notes. In regards to the foreclosure action, this matter is referred to the Oconee County Master-in-Equity for further proceedings

VII. Attorney's Fees

The South Carolina Supreme Court in the matter of Citizens and Southern National Bank of South Carolina vs. Easton, 310 S.C. 458 S.E.2d 640 (1993), held that "with regard to the notes which provide for attorney's fees at a specific rate in the event collection becomes necessary, it

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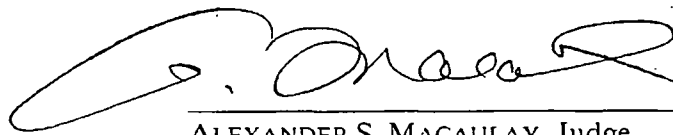
is a well established principle of law that when there is a contract providing for such, the amount of attorney's fees is governed by the contract." In the Grays case, the notes include a provision for attorney's fees and costs to the extent allowed by law.

NOW THEREFORE, based upon the foregoing,

IT IS ORDERED that the Plaintiff's motion for summary judgment is granted as to all of the Defendants counterclaims.

IT IS FURTHER ORDERED that this matter shall be referred to the Oconee County Master-in-Equity for further proceedings.

AND IT IS SO ORDERED.

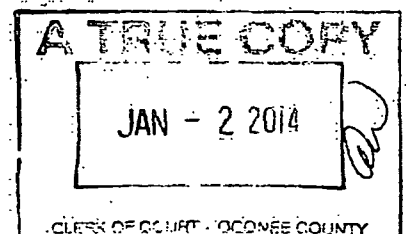


ALEXANDER S. MACAULAY, Judge

December 31, 2013
Walhalla, South Carolina

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 STATE OF SOUTH CAROLINA
 COUNTY OF OCONEE
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 IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO. 2010-CP-37-417
 LIS PENDENS #2010-LP-37-153
 Plantation Federal Bank as successor in
 interest to First Savers Bank,
 Plaintiff,
 J. Charles Gray a/k/a Charles Gray and
 Waterford Ridge Owners Association, Inc.,
 Defendants.
 LIS PENDENS
 (Non-jury)
 Mortgage Foreclosure

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this Court upon the Complaint of the above named Plaintiff against the above named Defendants for foreclosure of that certain mortgage upon real estate given by J. Charles Gray to First Savers Bank as recorded in Book 2627 at Page 187 in the Office of the Register of Deeds for Oconee County, South Carolina. The premises affected by said mortgage is described as follows:

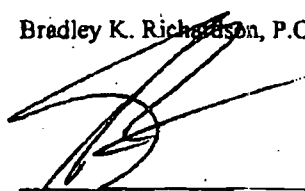
All that certain, piece, parcel or lot of land, situate lying and being in the State of South Carolina, County of Oconee being shown and designated as Lot Number Twenty-Seven (27), on plat of record in the Office of the Register of Deeds for Oconee County, South Carolina in Plat Book B129 at Pages 1-8. The metes, bounds, courses and distances as upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

Property Address: 103 Dove Cove Lane, Westminster, SC 29693

Tax Map Number: 165-08-01-027

This being a portion of the same property conveyed to Charles Gray by deed of Crescent Communities S.C., LLC, dated May 12, 2006 and recorded June 6, 2006 in Book 1508 at Page 35 in the Office of the Register of Deeds for Oconee County, South Carolina.

Bradley K. Richardson, P.C.



Bradley K. Richardson, Esq. (S.C. Bar #: 68385)
 1211 N. Main Street
 Anderson, SC 29621
 (864) 222-0292
 (864) 222-0892(fax)
 Brad@bkrlaw.net
 Attorney for the Plaintiff

Anderson, South Carolina
 March 29, 2010

ENTERED
 3/30/10
 CLERK

COUNTY OF OCONEE

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT

IN THE COURT OF COMMON PLEAS

Plantation Federal Bank as successor in interest to
First Savers Bank,

CIVIL ACTION COVERSHEET

Plaintiff(s)

2010-CP - 37- 417

vs.

J. Charles Gray a/k/a Charles Gray and Waterford
Ridge Owners Association, Inc.,

Defendant(s)

(Please Print)

Submitted By: Bradley K. Richardson

Address: 1211 N. Main Street, Anderson, SC 29621

SC Bar #: 68385

Telephone #: (864) 222-0292

Fax #: (864) 222-0892

Other:

E-mail: brad@bkrlaw.net

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

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

☐ Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	☐ Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20-CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	☐ Torts - Personal Injury ☐ Assault/Slander/Label (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	☐ Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☒ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
☐ Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	☐ Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	☐ Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	☐ Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
☐ Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-Country Action (660) ☐ Sexual Predator (690)	Copies to: pd \$150.00 ch Atty. (P) <u>DSS</u> other <u>mailed</u> Boxed <u>handed</u>	

Submitting Party Signature: _____

Date: March 29, 2010

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

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

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

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

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
2010 MAR 30 A 10:15
IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-37-417

Plantation Federal Bank as successor in
interest to First Savers Bank,

Plaintiff,

vs.

J. Charles Gray a/k/a Charles Gray and
Waterford Ridge Owners Association, Inc.,
Defendants.

CERTIFICATE OF
EXEMPTION/WITHDRAWAL FROM
ARBITRATION AND MEDIATION

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE:

- ☐ Monetary relief requested in this case exceeds \$25,000.00;
- ☐ This is a class action
- ☐ There is substantial claim for injunction or declaratory relief requested in this case;
- ☒ This case involves (check one or more of the following):
 - ☐ Title in real estate;
 - ☐ Wills, trusts and decedents' estates;
 - ☒ Mortgage foreclosure;
 - ☐ Partition
- ☐ This is a special proceeding or action seeking extraordinary relief such as mandamus, habeus corpus, or prohibition;
- ☐ Monetary relief requested in this case is unspecified but exceeds \$25,000.00;
- ☐ This is a companion or related similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue;
- ☐ This action is appellate in nature;
- ☐ This is a post-conviction relief matter;
- ☐ This is a forfeiture proceeding brought by the State; or
- ☐ This is a contempt of Court proceeding.

Bradley K. Richardson, P.C.

Bradley K. Richardson, Esq. (S.C. Bar #: 68385)
1211 N. Main Street
Anderson, SC 29621
(864) 222-0292 (864) 222-0892 (fax)
Brad@bkrlaw.net
Attorney for the Plaintiff

March 29, 2010

ENTERED
FILED
MAR 30 2010
CLERK OF COURT

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE)
2010 MAR 30 A 10 CIVIL ACTION NO. 2010-CP-37-417

Plantation Federal Bank as successor)
in interest to First Savers Bank,)

Plaintiff,)

vs.)

J. Charles Gray a/k/a Charles Gray)
and Waterford Ridge Owners)
Association, Inc.,)

Defendants.)

SUMMONS AND NOTICES

(NON- JURY)

FORECLOSURE OF MORTGAGE

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint, upon the subscriber at 1211 N. Main Street, Anderson, South Carolina 29621 within thirty (30) days after service hereof, exclusive of the day of service. If you fail to answer the Complaint within that time, the Plaintiff(s) will apply to the court for the relief demanded in the Complaint and a judgment by default will be rendered against you for the relief demanded in the Complaint.

TO MINORS OVER FOURTEEN YEARS OF AGE, AND/OR MINORS UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY: (AN IMPRISONED PERSON):

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem to represent you in this action within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

YOU WILL ALSO TAKE NOTICE that pursuant to rule 53(b0 of the South

ENTERED
CTDL
COMPLETE

App. 000067

Carolina Rules of Civil Procedure, as amended effective September 1, 2002, the Plaintiff will move for a general Order of Reference to the Master in Equity for Anderson County, which Order shall, pursuant to Rule 53(b) of the SCRCF, specifically provide that the said Master in Equity is authorized and empowered to enter a final judgment in this action.

Bradley K. Richardson, P.C.



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Anderson, SC 29621
(864)222-0292
(864) 222-0892(fax)
Brad@bkrlaw.net
Attorney for the Plaintiff

Anderson, South Carolina
March 29, 2010

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA 2010 MAR 30

COUNTY OF OCONEE

Plantation Federal Bank as successor in
interest to First Savers Bank,

Plaintiff,

v.

J. Charles Gray a/k/a Charles Gray and
Waterford Ridge Owners Association, Inc.
Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-37-417

COMPLAINT
(Non-jury)

**FORECLOSURE OF REAL ESTATE
MORTGAGE
(DEFICIENCY JUDGMENT DEMANDED)**

The Plaintiff alleges and would respectfully show unto this Court the following:

1. That the Plaintiff is a corporation duly authorized to do business in the County of Oconee, State of South Carolina.
2. That the Plaintiff is the holder of Notes and Mortgages encumbering real property located in the County of Oconee, State of South Carolina.
3. That this is an action for the foreclosure of mortgages upon real estate, as described more fully herein, located in the County of Oconee.
4. That the Defendant, Waterford Ridge Owners Association, Inc., is a made a party hereto as said Defendant may claim an interest in the subject real property by virtue of any homeowner's lien or assessments that are currently due or which may become due in the future. Any such lien is not recorded in the Oconee County Register of Deeds Office.
5. That upon information and belief, none of the Defendants are in the military service of United States of America pursuant to the provisions of the Soldiers' and Sailors' Relief Act of

10, as amended

App. 000069

ENTERED
CLERK
MAR 30 2010

6. That on or about 07/09/2009 the Defendant, J. Charles Gray a/k/a Charles Gray, made, executed and delivered unto Plaintiff a promissory note (hereinafter "Note") in the principal sum of One Hundred Seventy-five thousand dollars (\$175,000.00). Said note was a renewal of promissory note dated 06/05/2008 in the principal amount of One Hundred Eighty thousand dollars (\$180,000.00)

7. In order to secure payment of the promissory note dated 06/05/2008 and all renewals thereof, including that certain note dated 07/09/2009, the Defendant, The J. Charles Gray a/k/a Charles Gray, made, executed and delivered unto the Plaintiff a real estate mortgage (hereinafter "Mortgage") covering the following described real property and any and all improvements situated thereon:

All that certain, piece, parcel or lot of land, situate lying and being in the State of South Carolina, County of Oconee being shown and designated as Lot Number Twenty-Seven (27), on plat of record in the Office of the Register of Deeds for Oconee County, South Carolina in Plat Book B129 at Pages 1-8. The metes, bounds, courses and distances as upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

Property Address: Lot 27 Waterford Ridge, Seneca, SC 29672

Tax Map Number: 165-08-01-027

This being a portion of the same property conveyed to Charles Gray by deed of Crescent Communities S.C., LLC, dated May 12, 2006 and recorded June 6, 2006 in Book 1508 at Page 35 in the Office of the Register of Deeds for Oconee County, South Carolina.

8. The Mortgage was signed, witnessed and probated on 06/05/2008 and was subsequently recorded in the Office of the Register of Deeds for Oconee County in Book 2627 at Page 187 on 06/11/2008. ("Exhibit A").

9. The Mortgage evidences and secures repayment of all sums advanced under the Note by Plaintiff to or on the behalf of the Defendant, J. Charles Gray a/k/a Charles Gray, and constitutes a valid lien on the mortgaged premises.

10. The balance due upon the Note and Mortgage is in Default. The Defendant, J. Charles Gray a/k/a Charles Gray, has been unable or unwilling to pay the balance due.

11. Any notices required by state or federal law, if applicable, have been given to the Defendant, J. Charles Gray a/k/a Charles Gray, prior to the commencement of this action.

12. Plaintiff elects and hereby declares the entire balance of said indebtedness to be due and payable. The current balance owed to Plaintiff as of March 15, 2010 equals \$177,890.39. Said account is currently accruing interest at the rate of \$29.17 per day plus the costs of bringing this action including attorney's fees.

13. Plaintiff has employed counsel in bringing this action and asserts it is entitled to an award of reasonable attorney's fees and costs pursuant to the terms of the Mortgage.

14. That the Plaintiff demands a deficiency judgment against the Defendant, J. Charles Gray a/k/a Charles Gray, in the event the sale of the real estate described herein does not yield a sum sufficient to satisfy all indebtedness due Plaintiff, including the costs and attorney's fees.

15. Plaintiff would further show unto the Court that the Note and Mortgage referenced herein are not secured by the Defendant's primary residence and said loan is commercial in nature. Furthermore, said mortgage is not owned, securitized or guaranteed by FNMA or FHLMC, and the servicing agent has not executed an agreement under the HMP.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and that:

1. The amount due upon the Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

2. That Plaintiff's Mortgage be declared a valid first mortgage lien upon the real property described herein and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, insurance premiums and any other expenses incurred by Plaintiff, with a reasonable sum for attorney's fees and for the costs of this action.

3. That the Court declare that Plaintiff's Note dated 07/09/2009 is secured by Plaintiff's Mortgage.

4. Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

5. Under the direction of the Court, sell the encumbered premises free and clear of the interests of all Defendants, bar any equity of redemption and apply the proceeds of the sale as follows:

First, to the costs and expenses of the within action and sale.

Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage together with attorney's fees as aforesaid, and

Third, the surplus, if any be distributed according to law.

6. An Order be entered directing and empowering the Sheriff of Oconee County, South Carolina, to place the successful purchaser at the foreclosure sale in possession of the property described above should the same become necessary.

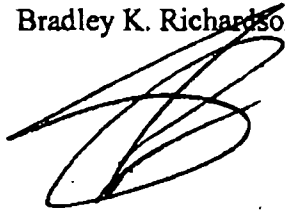
7. An Order to be entered for the ejectment of the defendants in possession herein

and all person claiming there under and removal from the subject premises all fixtures, furnishings and other items not subject to the Plaintiff's lien, which personal property if not removed shall be deemed abandoned and shall be removed by the Plaintiff or it's agents from the subject property by placing the same upon the public street or highway.

8. An Order be entered for a deficiency judgment against the Defendant, J. Charles Gray, in the event the sale of the real estate described herein does not yield a sum sufficient to satisfy all indebtedness due Plaintiff, including the costs and attorney's fees.

9. An Order for such other and further relief as this Court may deem just and proper.

Bradley K. Richardson, P.C.



Bradley K. Richardson, Esq. (S.C. Bar #: 68385)
1211 N. Main Street
Anderson, SC 29621
(864)222-0292
(864) 222-0892(fax)
Brad@bkrlaw.net
Attorney for the Plaintiff

Anderson, South Carolina
March 29, 2010

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICE ACT
15 U.S.C. SECTION 1601 As Amended**

1. The amount of the debt owed as of March 15, 2010 is the sum of \$177,890.39 plus the costs and disbursements of bringing this action, including attorney's fees.
2. Plantation Federal Bank is the Creditor to whom the debt is owed.
3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If you, the Debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the Debtor by the Creditor's law firm.
5. If the Creditor named in this notice is not the original Creditor and if you make a request to the Creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Bradley K. Richardson, P.C., Attention: Bradley K. Richardson, 1211 N. Main St, Anderson, SC 29621.
7. This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE.**

8800024927 not 101

Record P. 22

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDSDoc ID: 001477450008 Type: MTO
EX 2627 PG 187-194

2008 JUN 11 P 2:42

Ret. JAMES S. BELK, ATTORNEY
1202 NORTH MAIN STREET
ANDERSON, SC 29621
ew

1400

019276

Space Above This Line For Recording Date

This document was prepared by Dawn Bailey, First Savers Bank, 935 South Main Street, Suite 300, Greenville, South Carolina 29601

MORTGAGE

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is June 5, 2008. The parties and their addresses are:

MORTGAGOR:J CHARLES GRAY
103 Dove Cove Lane
Westminster, South Carolina 29693**LENDER:**FIRST SAVERS BANK
Organized and existing under the laws of South Carolina
935 South Main Street, Suite 300
Greenville, South Carolina 296011. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property:

SEE ATTACHED EXHIBIT A

The property is located in Oconee County at Lot 27 Waterford Ridge, Seneca, South Carolina 29672.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

2. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time will not exceed \$360,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenantsJ Charles Gray
South Carolina Mortgage
SCN4XLabel00009900005886010060302Y©1999 Bankers Systems, Inc., St. Cloud, MN ~~Bankers~~

Page 1

EXHIBIT A

App. 000075

contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 101, dated June 5, 2008, from Mortgagor to Lender, with a loan amount of \$180,000.00.

B. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

5. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

6. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor has the right and authority to enter into this Security Instrument. The execution and delivery of this Security Instrument will not violate any agreement governing Mortgagor or to which Mortgagor is a party.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

EXHIBIT A

EXHIBIT A

of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

23. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

24. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

25. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

26. AGREEMENT TO ARBITRATE. Lender or Mortgagor may submit to binding arbitration any dispute, claim or other matter in question between or among Lender and Mortgagor that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as Lender and Mortgagor agree to in writing. For purposes of this section, this Transaction includes this Security Instrument and any other document relating to the Secured Debts, and proposed loans or extensions of credit that relate to this Security Instrument. Lender or Mortgagor will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws.

Lender and Mortgagor must consent to arbitrate any Dispute concerning the Secured Debt secured by real estate at the time of the proposed arbitration. Lender may foreclose or exercise any powers of sale against real property securing the Secured Debt underlying any Dispute before, during or after any arbitration. Lender may also enforce the Secured Debt secured by this real property and underlying the Dispute before, during or after any arbitration.

Lender or Mortgagor may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law; seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to Lender or Mortgagor; or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

Lender and Mortgagor acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among Lender and Mortgagor involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Security Instrument, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Security Instrument or another writing.

27. WAIVER OF TRIAL FOR ARBITRATION. Lender and Mortgagor understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes

EXHIBIT A

12L-5
JAMES S. BELK, ATTORNEY
1202 NORTH MAIN STREET
ANDERSON, SC 29821

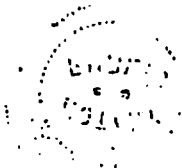


EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
PLANTATION FEDERAL BANK)
As successor in interest to FIRST)
SAVERS BANK,)

PLAINTIFF,)

-VS-)

J. CHARLES GRAY a/k/a)
CHARLES GRAY and)
WATERFORD RIDGE)
OWNERS ASSOCIATION, INC.,)

DEFENDANTS.)

IN THE COURT OF COMMON PLEAS

C.A.# 2010-CP-37-417

ANSWER
JURY TRIAL DEMANDED

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2010 MAY 18 A 10:51

Defendant, J. Charles Gray a/k/a Charles Gray (hereinafter referred to as Defendant) by and through his undersigned attorney, for his answer to Plaintiff's Complaint, states as follows:

Defendant denies each and every allegation of the Plaintiff's Complaint, not expressly, admitted explained and/ or qualified.

1. Defendant admits the allegations contained in Paragraph 1 of the Plaintiff's Complaint (hereafter references to paragraphs of Plaintiff's Complaint will be stated as "Paragraph__").

2. With respect to Paragraphs 2 and 3, Defendant admits executing the Note and mortgage. The terms of the note and mortgage speak for themselves, and any allegations contained in these paragraphs not consistent with the terms of the note and mortgage are denied, and Defendant demands strict proof thereof.

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3. Defendant does not have sufficient information to admit or deny the allegations contained in Paragraph 4, thus Defendant must deny same and demand strict proof thereof.

4. Defendant admits the allegations contained in Paragraph 5.

5. With respect to Paragraphs 6, 7, 8 and 9, Defendant admits executing the Note and mortgage. The terms of the note and mortgage speak for themselves, and any allegations contained in these paragraphs not consistent with the terms of the note and mortgage are denied, and Defendant demands strict proof thereof.

6. With respect to Paragraph 10, the allegations that "The Balance due upon the Note and Mortgage is in Default" and "The Defendant J. Charles Gray a/k/a Charles Gray has been unable or unwilling to pay the balance due" is a legal conclusion to which no response is required. Further, Defendant denies same, and demands strict proof thereof.

7. Defendant denies the allegations contained in Paragraph 11 and demands strict proof thereof.

8. With respect to Paragraph 12, Defendant admits that Plaintiff has declared the entire balance due but does not have sufficient information to admit or deny the remaining allegations contained in Paragraph 12, thus must deny same and demand strict proof thereof.

9. With respect to Paragraph 13, Defendant admits executing the Note and mortgage. The terms of the note and mortgage speak for themselves, and any allegations contained in these paragraphs not consistent with the terms of the note and mortgage are denied, and Defendant demands strict proof thereof.

10. The allegations contained in Paragraph 14 are denied and strict proof thereof is demanded.

11. Defendant does not have sufficient information to admit or deny the allegations contained in Paragraph 15, thus must deny same and demand strict proof thereof.

12. Defendant denies the allegations contained in the Paragraphs following the word Wherefore, and demands strict proof thereof.

FIRST AFFIRMATIVE DEFENSE

13. Defendant incorporates herein by reference the above allegations.

14. Plaintiff is barred from recovery by the equitable doctrine of estoppel.

SECOND AFFIRMATIVE DEFENSE

15. Defendant incorporates herein by reference the above allegations.

16. Defendant is barred from recovery pursuant to the equitable doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

17. Defendant incorporates herein by reference the above allegations.

18. Defendant is barred from recovery pursuant to the equitable doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

19. Defendant incorporates herein by reference the above allegations.

20. Defendant is barred from recovery pursuant to the doctrine of illegality.

FIFTH AFFIRMATIVE DEFENSE

21. Defendant incorporates herein by reference the above allegations.

22. Defendant is barred from recovery pursuant to the doctrine of economic duress.

SIXTH AFFIRMATIVE DEFENSE

23. Defendant incorporates herein by reference the above allegations.

24. Plaintiff's complaint fails to state facts sufficient to constitute a cause of action, thus must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendant expressly denies that Plaintiff is entitled to any relief requested in the Complaint, demands judgment be entered in favor of Defendant on all matters claimed in the Complaint, including an award of his costs herein, and for all other relief that this Court deems just and appropriate.

JURY DEMAND

Gray demands a jury trial of all issues so triable.

DATED: May 14, 2010

THE GRIFFIN FIRM, LLC

BY: Charles R. Griffin, Jr.
136 North Main Street
Anderson, SC 29621
(864) 231-8870
(864) 231-7797 fax

Attorney for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	C.A.# 2010-CP-37-417
PLANTATION FEDERAL BANK	)	
As successor in interest to FIRST	)	
SAVERS BANK,	)	
	)	
PLAINTIFF,	)	AMENDED ANSWER AND
	)	COUNTERCLAIM
-VS-	)	JURY TRIAL DEMANDED
	)	
J. CHARLES GRAY a/k/a	)	
CHARLES GRAY and	)	
WATERFORD RIDGE	)	
OWNERS ASSOCIATION, INC.,	)	
	)	
DEFENDANTS.	)	

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT

2010 JUN 17 A 9:08

Defendant, J. Charles Gray a/k/a Charles Gray (hereinafter referred to as Defendant) by and through his undersigned attorney, for his answer to Plaintiff's Complaint, states as follows:

Defendant denies each and every allegation of the Plaintiff's Complaint, not expressly, admitted explained and/ or qualified.

1. Defendant admits the allegations contained in Paragraph 1 of the Plaintiff's Complaint (hereafter references to paragraphs of Plaintiff's Complaint will be stated as "Paragraph__").

2. With respect to Paragraphs 2 and 3, Defendant admits executing the Note and mortgage. The terms of the note and mortgage speak for themselves, and any allegations contained in these paragraphs not consistent with the terms of the note and mortgage are denied, and Defendant demands strict proof thereof.

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Copies to:
Atty. / (P) (D)
DSS other
Mailed / Boxed / handed

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5. With respect to Paragraphs 6, 7, 8 and 9, Defendant admits executing the Note and mortgage. The terms of the note and mortgage speak for themselves, and any allegations contained in these paragraphs not consistent with the terms of the note and mortgage are denied, and Defendant demands strict proof thereof.

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11. Defendant does not have sufficient information to admit or deny the allegations contained in Paragraph 15, thus must deny same and demand strict proof thereof.

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SIXTH AFFIRMATIVE DEFENSE

23. Defendant incorporates herein by reference the above allegations.

24. Plaintiff's complaint fails to state facts sufficient to constitute a cause of action, thus must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendant expressly denies that Plaintiff is entitled to any relief requested in the Complaint, demands judgment be entered in favor of Defendant on all matters claimed in the Complaint, including an award of his costs herein, and for all other relief that this Court deems just and appropriate.

COUNTERCLAIM

Defendant/Gray, (hereinafter referred to as "Defendant" or "Gray"), complains of the Plaintiff/Plantation Federal Bank as successor in interest to First Savers Bank (hereafter referred to as "Plaintiff" or "Plantation Federal Bank" and alleges as follows:

PRELIMINARY STATEMENT

Gray is a citizen and resident of Oconee County, South Carolina who was victimized by the wrongful conduct by Plantation Federal Bank described herein in a number of ways. Additionally, Plantation Federal Bank's acts underlying the Actions, Conduct and/ or omissions are unfair and deceptive acts and practices in violation of the South Carolina Unfair Trade Practices Act, constitutes a breach of contract accompanied by fraudulent act and/or with fraudulent intent, constitute breach of fiduciary duty, common law abuse of process and common law fraud.

PARTIES

1. Gray is an adult individual who is a citizen and resident of Oconee County, South Carolina.
2. Plantation Federal Bank, on information and belief is a corporation, and which is engaged in trade or commerce in Oconee County, South Carolina as defined by SC Code Ann., §39-5-10(b). Further, Plantation Federal Bank, by and through its agents, servants, and/ or employees is a financial institution. Additionally, at all times mentioned herein, Plantation Federal Bank advertised and advertises through the mass media that Plantation Federal Bank has a team of experienced bankers who look after their customers' best interests, help their customers make their customers' assets more productive, and further Plantation Federal Bank advertises that its bankers can help their customers anticipate what Plantation Federal Bank may need in the future.

FACTS

3. At all times mentioned herein, Plantation Federal Bank, by and through its agents, servants, and/ or employees, expressly or by implication, held itself out to the public and to Gray to be experts in their respective fields, and further, at all times mentioned herein, Plantation Federal Bank, its agents, servants, and/or employees nurtured Gray's trust and confidence in Gray, and Gray reposed great trust and confidence in Plantation Federal Bank, its agents, servants, and/or employees, who at all times were acting within the course and scope of their agency and/or employment with Plantation Federal Bank.
4. Prior to June 5, 2008, Gray had a business relationship with First Savers Bank's agents, servants, and/or employees, to wit, Shane Smith (hereinafter "Smith").

5. In 2006 pursuant to First Savers Bank's agents, servants, and/or employees solicitations, Defendant purchased and financed Lot 27 Waterford Ridge (hereinafter "the Lot").

6. Subsequently, Smith became employed with First Savers Bank, and Defendant refinanced the Lot with First Savers Bank.

7. On June 5, 2008 pursuant to Smith's solicitations and/or representations, Gray refinanced Lot 27 with First Savers Bank.

8. At the time Defendant refinanced the Lot with Smith represented, expressly or by implication, that the loan would be an interest only loan and any further subsequent refinances would be interest only loans at or near the same interest rate.

9. When the loan came up for renewal in 2009, Smith demanded that Defendant refinance the loan pursuant to, on information and belief, a fixed 15 year amortization loan.

10. Defendant informed Smith that Defendant could not afford to make payments under a fixed 15 year amortization loan, then Smith demanded that Defendant pay approximately \$5,000.00 cash per lot to pay down on the principal and Smith stated that First Savers Bank would refinance, but at a higher interest rate.

11. Smith then informed Defendant that if Defendant paid approximately \$10,000.00 per lot down, then First Savers Bank would refinance at a lower interest rate, but Defendant could not afford that.

12. Defendant had no other choice but to pay the approximate amount of \$5,000.00 down per lot in order to refinance the loan on an interest only basis, although the loan was at a higher interest rate.

13. Smith, advised and/or induced Defendant to execute the note and mortgage on June 5, 2008, and further, Smith advised Defendant that it would be in his best interests to execute the note and mortgage on June 5, 2008 and/ or further discouraged alternative financing.

14. At all times mentioned herein, Plantation Federal Bank, its agents, servants, and/or employees, knew or should have known Defendant did not have the assets or the economic ability to repay or satisfy the note and mortgage executed on June 5, 2008 according to its strict terms. Plantation Federal Bank, its agents, servants, and/ or employees, knew that Defendant was vulnerable, lacking means to protect himself from Plantation Federal Bank, its agents, servants, and/ or employees, actions without incurring substantial harm.

15. Rather than honoring its agreements with Gray, Plantation Federal Bank began aggressive collection actions against Gray.

16. Plantation Federal Bank has further wrongfully, unlawfully, intentionally, willfully and/or illegally declared Gray to be in default, and/or has wrongfully, unlawfully, intentionally, willfully and illegally accelerated the balance due on the note and mortgage..

17. At all times mentioned herein, Defendant has complied with the conditions and terms on his part to be performed and/or Plantation Federal Bank, its agents, servants, and/or employees has frustrated Defendant's ability to comply with the terms and conditions on his part to be performed.

18. Plantation Federal Bank's actions and conduct were not justifiable efforts to collect Plantation Federal Bank's alleged debt; they were oppressive and

arbitrary threatening acts and conduct calculated to coerce Defendant's payment of the alleged debt, to extort monies from Defendant and/or force Defendant to loose his property and/or to enhance or maximize Plantation Federal Bank's collections to further Plantation Federal Bank's own economic self interests at the expense of Defendant.

19. Plantation Federal Bank, its agents, servants, and/or employees, was, and still is, engaged in a campaign of continuous personal harassment of Defendant in an attempt to vilify or expose Defendant to public ridicule. The aforementioned actions were taken with deliberate indifference to the rights, interests and legitimate expectations of Defendant.

20. The continuing acts of Plantation Federal Bank, its agents, servants, and/or employees caused and still cause Defendant embarrassment, humiliation, loss of sleep, loss of income, and extreme mental and physical suffering.

INJURY AND DAMAGE

21. As a direct result of the actions, conduct and/or omissions of Plantation Federal Bank, its agents, servants, and/or employees, Gray has suffered embarrassment, humiliation, loss of sleep and emotional distress, loss of income, and his creditworthiness has been damaged, among other things.

**FOR A FIRST CAUSE OF ACTION
BREACH OF CONTRACT ACCOMPANIED BY
FRAUDULENT ACTO AND/OR WITH FRAUDULENT INTENT**

22. Gray incorporates by reference all allegations set forth above.

23. The aforementioned actions, conduct and/or omissions constitute a breach of the terms of the agreement between the parties as described above, and

further Gray is informed and believes that said breach was accompanied by fraudulent act(s) and/or fraudulent intent.

24. Further, Plantation Federal Bank, its agents, servants, and/or employees has breached the covenant of good faith and fair dealing which is implied in all South Carolina contracts and/or as prescribed by § 36-1-203 S.C. Code of Laws Ann.

25. As a direct and proximate result of the breach of contract accompanied by fraudulent act and/or with fraudulent intent, Gray has been damaged and has incurred attorney fees and costs for which damages, costs and attorney fees Plantation Federal Bank is liable.

**FOR A SECOND CAUSE OF ACTION
BREACH OF FIDICIARY DUTY**

26. Gray incorporates by reference all allegations set forth above.

27. Once Plantation Federal Bank had obtained Gray's signatures on the note and mortgage, Plantation Federal Bank placed itself in a dominant standing and/or superior bargaining position regarding Gray and Gray's assets and finances.

28. Further, Plantation Federal Bank, its agents, servants, and/or employees, expressly or by implication held themselves out to be experts in their respective fields, nurtured Gray's trust and confidence, and Gray reposed great confidence and trust in Plantation Federal Bank, its agents, servants, and/or employees.

29. At all times mentioned herein, a fiduciary relationship existed between Gray and Plantation Federal Bank, its agents, servants, and/or employees wherein Plantation Federal Bank, its agents, servants, and/or employees owed a fiduciary duty to Gray.

30. The aforementioned actions, conduct and/or omissions by Plantation Federal Bank, its agents, servants, and/or employees constitutes a breach of fiduciary duty owed to Gray by Plantation Federal Bank, its agents, servants, and/or employees.

31. As a direct and proximate result of Plantation Federal Bank's breach of fiduciary duty, Gray has been damaged, both actual and punitive for which damages the Plantation Federal Bank is liable.

**FOR A THIRD CAUSE OF ACTION
FRAUD**

32. Gray incorporates by reference all allegations set forth above.

33. At or near the time Gray executed the note and mortgage, Plantation Federal Bank, its agents, servants, and/or employees represented, expressly or by implication, to Gray, that the loan would be an interest only loan and any further subsequent refinances would be interest only loans at or near the same interest rate.

34. As a result of said representations made by the Plantation Federal Bank, its agents, servants, and/or employees, Gray executed the note and mortgage described in Exhibits A and became obligated on the note and mortgage described in Exhibit A to Plantation Federal Bank.

35. Plantation Federal Bank, its agents, servants, and/or employees' representations were false at the time they were made and/or they were made with reckless disregard for their truth or falsity.

36. Plantation Federal Bank, Plantation Federal Bank, its agents, servants, and/or employees, knew that as a direct and proximate result of the representations that Gray would rely on said representations in order to induce Gray to execute the note and mortgage.

37. The representations to the transaction were material and had Gray known the true facts, he would not have executed the note and mortgage.

38. Gray was ignorant of the falsity of said representations and/or Gray had a right to rely on the truthfulness of said representations and did so.

39. Plantation Federal bank, its agents, servants, and/or employees', as set forth above constitute actual and/or constructive fraud, and as a direct and proximate result of the actual and/or constructive fraud practiced on Gray by Plantation Federal Bank, its agents, servants, and/or employees, Gray has been damaged, for which damages the Plantation Federal Bank is liable.

**FOR A FOURTH CAUSE OF ACTION
Violations of §§ 39-5-10, et seq,
Unfair Trade Practices Act**

40. Gray incorporates by reference all allegations set forth above.

41. Plantation Federal Bank's conduct, actions, and/or omissions described above violate the South Carolina Unfair Trade Practices Act.

42. Plantation Federal Bank's acts as set forth above constitute unfair and/or deceptive trade practices intended to relieve Gray of his money and/or property; that such acts are capable of repetition; that such conduct was willful, and the Plantation Federal Bank knew or should have known that its conduct violated the Unfair Trade Practices Act, and as a direct and proximate result of which Gray is entitled to his actual damages, that such damages be trebled and that he recover attorney fees and costs.

**FOR A FIFT CAUSE OF ACTION
Tortuous Inference With Present and Prospective
Economic Opportunities**

43. Gray incorporates by reference all allegations set forth above.

44. Plantation Federal Bank's actions, conduct and/or omissions as set forth above constitute intentional Tortious Interference with Present and Prospective Economic Opportunities and Contractual Relationships.

45. As a direct and proximate result of Plantation Federal Bank's intentional Tortious Interference with Gray's Present and Prospective Economic Opportunities, Gray has been damaged, for which damages the Plantation Federal Bank is liable.

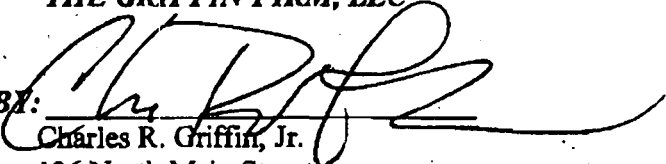
WHEREFORE, Gray demands judgment against Plantation Federal Bank for actual damages, punitive damages, attorney fees and costs, and for such other and further relief that this Court deems just and proper under the circumstances.

JURY DEMAND

Gray demands a jury trial of all issues so triable.

DATED: June 14, 2010

THE GRIFFIN FIRM, LLC

BY: 

Charles R. Griffin, Jr.
136 North Main Street
Anderson, SC 29621
(864) 231-8870
(864) 231-7797 fax
Attorney for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO. 2010-CP-37-417
COUNTY OF OCONEE	)	
	)	
Plantation Federal Bank as successor in	)	
interest to First Savers Bank,	)	
	)	
Plaintiff,	)	PLAINTIFF'S REPLY TO
	)	THE COUNTERCLAIMS OF
	)	J. CHARLES GRAY
	)	
vs.	)	
	)	
J. Charles Gray and Waterford Ridge	)	
Owners Association, Inc.,	)	
Defendants.	)	

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2010 JUL 15 P 2:15

The Plaintiff, Plantation Federal Bank, as successor in interest to First Savers Bank, (hereinafter "Plantation Federal Bank") hereby makes its Reply to the Counterclaim of J. Charles Gray (hereinafter "Gray") and would respectfully show unto the Court as follows:

Any allegations raised in the Counterclaim of the Defendant, Gray, not specifically admitted, qualified or otherwise explained herein are specifically denied and strict proof thereof demanded.

FOR A FIRST DEFENSE

1. That the Complaint fails to state facts sufficient to constitute any cause of action or any claim upon which relief may be granted against Plantation Federal Bank as a matter of law.

FOR A SECOND DEFENSE

2. Plantation Federal Bank denies each and every allegation of the Counterclaim not specifically admitted herein and demands strict proof thereof.

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3. Plantation Federal Bank denies each and every statement contained in the Paragraph entitled "Preliminary Statement" and demands strict proof of any allegations contained therein.

4. Plantation Federal Bank admits the facts contained in Paragraph 1 of the Counterclaim.

5. In regards to the allegations contained in Paragraph 2 of the Defendant's Counterclaim, Plantation Federal Bank admits only that it is a financial institution with an office located in Oconee County. All other remaining allegations are denied and strict proof demanded thereof.

6. Plantation Federal Bank denies the allegations contained in Paragraphs 3, 4 and 5 of the Counterclaim and demands strict proof thereof.

7. As to the allegations contained in Paragraph 6 of the Counterclaim, Plantation Federal Bank admits only that Shane Smith was employed by First Savers Bank at the time the loan(s), which are the subject of this foreclosure action, were made. All other allegations are denied and strict proof demanded thereof.

8. As to the allegations contained in Paragraph 7 of the Counterclaim, Plantation Federal Bank admits only that the Defendant refinanced Lot 27 with First Savers Bank. All other allegations are denied and strict proof demanded thereof.

9. As to the allegations contained in Paragraph 8 of the Counterclaim, the terms of the note that Gray admits to have executed speaks for itself. Any allegations inconsistent with the terms of the note are denied. All other allegations are specifically denied and strict proof demanded thereof.

10. Plantation Federal Bank denies all allegations contained in Paragraphs

9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the Counterclaim and specifically demands strict proof thereof of all allegations.

11. Plantation Federal Bank denies the allegations of Paragraph 21 of the Counterclaim and demands strict proof of all alleged injuries suffered by the Defendant, Gray.

12. As to Paragraph 22 of the Counterclaim, Plantation Federal Bank restates its prior responses.

13. Plantation Federal Bank denies all allegations contained in Paragraphs 23, 24, and 25 of the Counterclaim and specifically demands strict proof thereof.

14. As to Paragraph 26 of the Counterclaim, Plantation Federal Bank restates its prior responses.

15. Plantation Federal Bank denies all allegations contained in Paragraphs 27, 28, 29, 30 and 31 of the Counterclaim and specifically demands strict proof thereof.

16. As to Paragraph 32 of the Counterclaim, Plantation Federal Bank restates its prior responses.

17. As to the allegations contained in paragraph 33, the terms of the note that Gray admits to have executed speaks for itself. Any allegations inconsistent with the terms of the note are denied. All other allegations are specifically denied and strict proof demanded thereof.

18. Plantation Federal Bank denies all allegations contained in Paragraphs 34, 35, 36, 37, 38 and 39 of the Counterclaim and specifically demands strict proof thereof.

19. As to Paragraph 40 of the Counterclaim, Plantation Federal Bank restates

its prior responses.

20. Plantation Federal Bank denies all allegations contained in Paragraphs 41 and 42 of the Counterclaim and specifically demands strict proof thereof.

21. As to Paragraph 43 of the Counterclaim, Plantation Federal Bank restates it's prior responses.

22. Plantation Federal Bank denies all allegations contained in Paragraphs 44 and 45 of the Counterclaim and specifically demands strict proof thereof.

23. Plantation Federal Bank denies Gray is entitled to judgment or any other relief as requested in the prayer for relief.

FOR A THIRD DEFENSE AND AN AFFIRMATIVE DEFENSE

24. That any injuries or damages allegedly suffered by Gray were due to or caused by or resulted from the actions, inactions, omissions and/or conduct of other people, parties and/or entities over whom Plantation Federal Bank had no responsibility or control, which is herewith pled and asserted as an affirmative defense and complete or partial bar to any recovery sought by Gray herein as a matter of law.

FOR A FOURTH DEFENSE AND AN AFFIRMATIVE DEFENSE

25. That any injuries or damages allegedly suffered by Gray were due to or caused by preceding, superseding and/or intervening acts, omissions, occurrences, events, developments, transactions, or circumstances beyond the control of Plantation Federal Bank such that the preceding, superseding and/or intervening acts, omissions, occurrences, events, complications, conditions or circumstances are the proximate cause of the claimed injuries and damages, if any, as a matter of law.

FOR A FIFTH DEFENSE AND AN AFFIRMATIVE DEFENSE

26. That any injury or damage allegedly sustained by Gray as a result of matters alleged in the Counterclaim, could not be avoided and/or were the result of circumstances, conditions, conduct, or information and/or developments, events, acts, omissions, errors, complications, occurrences, transactions, precedents, representations or actions by others for which these Plantation Federal Bank is not legally responsible as a matter of law; and, thus, Plantation Federal Bank herewith pleads and asserts this as an affirmative defense and/or avoidance and complete bar to this action and any monetary relief sought.

FOR A SIXTH DEFENSE AND AN AFFIRMATIVE DEFENSE

27. That Gray's claims are barred under the doctrine or principle of the statute of frauds which is pled as and serves as an affirmative defense and bar to the within action.

FOR A SEVENTH DEFENSE AND AN AFFIRMATIVE DEFENSE

28. That Gray's claims are barred under the doctrines or principles of assumption of risk and/or comparative or contributory negligence, under applicable law, all of which doctrines or principles of law are herewith pled as and serve as affirmative defenses or bars to the within action.

FOR A EIGHTH DEFENSE AND AN AFFIRMATIVE DEFENSE

29. That Gray has not suffered any damages proximately caused by the conduct of Plantation Federal Bank under any legal theory advanced in the Counterclaim.

FOR A NINTH DEFENSE AND AN AFFIRMATIVE DEFENSE

30. That Gray's claims are barred under the doctrine or principle of waiver which is pled as and serves as an affirmative defense and bar to the within action.

FOR AN TENTH DEFENSE AND AN AFFIRMATIVE DEFENSE

31. That Gray's claims are barred under the doctrine or principle of consent which is pled as and serves as an affirmative defense and bar to the within action.

FOR A ELEVENTH DEFENSE AND AN AFFIRMATIVE DEFENSE

32. That Gray's claims are barred under the doctrine or principle of ratification which is pled as and serves as an affirmative defense and bar to the within action.

FOR A TWELVTH DEFENSE AND AN AFFIRMATIVE DEFENSE

33. That the conduct of Plantation Federal Bank is not the proximate cause of Gray's damages and injuries, if any, which Plantation Federal Bank specifically deny.

FOR A THIRTEENTH DEFENSE AND AN AFFIRMATIVE DEFENSE

34. That Gray is not entitled to any purported costs or any purported attorneys fees based on any matter advanced in the Counterclaim as a matter of law.

**FOR A FOURTEENTH DEFENSE AND AN AFFIRMATIVE DEFENSE TO ANY
PUNITIVE DAMAGES SOUGHT**

35. That to the extent the Counterclaim seeks to collect punitive damages brought against Plantation Federal Bank, such an action for punitive damages is barred as a matter of law for a number of reasons, including: the due process clause of the Fifth Amendment as applied to the states through the Fourteenth Amendment to the United States Constitution; an arguable extension of the prohibition of the excessive fines clause

of the Eighth Amendment, as applied to the states through the Fourteenth Amendment; an arguable extension of the provisions of the Sixth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment; and relevant provisions of the South Carolina Constitution, including, but not limited to, Article I, Section 3, and the relevant state laws applicable to the matters in this case; all of which are asserted as bars to recovery of punitive damages against Plantation Federal Bank.

36. That, moreover, as the present case and statutory law standard to measure and confer power to a jury to award punitive damages under applicable state law has not been formulated to comport with federal or state constitutional rights and guarantees, lacks objective criteria, lacks a meaningful standard, is void for vagueness, and violates constitutional due process and equal protection procedural protection; an award of punitive damages would violate Plantation Federal Bank's constitutional rights and guarantees.

37. That, further, Gray has failed as a matter of law to state a claim for which punitive damage relief is available against Plantation Federal Bank.

WHEREFORE, having fully answered the Counterclaim herein, Plantation Federal Bank, demands that the Counterclaim and all claims asserted be dismissed with prejudice as to them in all capacities; requests that Plantation Federal Bank be awarded its costs and attorneys' fees under applicable statutory provisions, rules and case law, and the South Carolina Rules of Civil Procedure; and requests that the Court award such other and further relief as deemed just and proper.

Furthermore as this matter was referred to the Master in Equity for Oconee County, Plantation Federal Bank requests that all causes of action be tried before the Honorable Ellis B. Drew, Jr. as Master in Equity for Oconee County. The right to a jury trial is hereby waived.

Bradley K. Richardson, P.C.



Bradley K. Richardson, Esq. (S.C. Bar #: 68385)
1211 N. Main Street
Anderson, SC 29621
(864)222-0292
(864) 222-0892(fax)
Brad@bkrlaw.net
Attorney for the Plaintiff

Anderson, South Carolina
July 12, 2010

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) 2010 MAR 30 A 10:14 ACTION NO. 2010-CP-37-
)
)
Plantation Federal Bank as successor)
in interest to First Savers Bank,)
)
Plaintiff,)
vs.)
Peggy B. Gray and Waterford Ridge)
Owners Association, Inc.,)
)
Defendants.)

**SUMMONS AND NOTICES
(NON- JURY)
FORECLOSURE OF MORTGAGE**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint, upon the subscriber at 1211 N. Main Street, Anderson, South Carolina 29621 within thirty (30) days after service hereof, exclusive of the day of service. If you fail to answer the Complaint within that time, the Plaintiff(s) will apply to the court for the relief demanded in the Complaint and a judgment by default will be rendered against you for the relief demanded in the Complaint.

TO MINORS OVER FOURTEEN YEARS OF AGE, AND/OR MINORS UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY: (AN IMPRISONED PERSON):

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem to represent you in this action within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

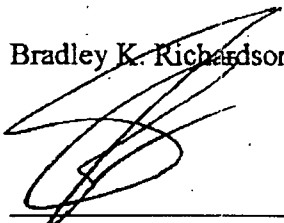
YOU WILL ALSO TAKE NOTICE that pursuant to rule 53(b0 of the South

ENTERED
FILED

App. 000107

Carolina Rules of Civil Procedure, as amended effective September 1, 2002, the Plaintiff will move for a general Order of Reference to the Master in Equity for Anderson County, which Order shall, pursuant to Rule 53(b) of the SCRCP, specifically provide that the said Master in Equity is authorized and empowered to enter a final judgment in this action.

Bradley K. Richardson, P.C.



Bradley K. Richardson, Esq. (S.C. Bar #: 68385)
1211 N. Main Street
Anderson, SC 29621
(864)222-0292
(864) 222-0892(fax)
Brad@bkrlaw.net
Attorney for the Plaintiff

Anderson, South Carolina
March 29, 2010

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

Plantation Federal Bank as successor in
interest to First Savers Bank,

Plaintiff,

v.

Peggy B. Gray and Waterford Ridge
Owners Association, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
A 10 CIVIL ACTION NO. 2010-CP-37-

**COMPLAINT
(Non-jury)**

**FORECLOSURE OF REAL ESTATE
MORTGAGE
(DEFICIENCY JUDGMENT DEMANDED)**

The Plaintiff alleges and would respectfully show unto this Court the following:

1. That the Plaintiff is a corporation duly authorized to do business in the County of Oconee, State of South Carolina.
2. That the Plaintiff is the holder of Notes and Mortgages encumbering real property located in the County of Oconee, State of South Carolina.
3. That this is an action for the foreclosure of mortgages upon real estate, as described more fully herein, located in the County of Oconee.
4. That the Defendant, Waterford Ridge Owners Association, Inc., is a made a party hereto as said Defendant may claim an interest in the subject real property by virtue of any homeowner's lien or assessments that are currently due or which may become due in the future. Any such lien is not recorded in the Oconee County Register of Deeds Office.
5. That upon information and belief, none of the Defendants are in the military service of United States of America pursuant to the provisions of the Soldiers' and Sailors' Relief Act of 1940, as amended

ENTERED
10/10/10
CLERK

6. That on or about 07/09/2009 the Defendant, Peggy B. Gray, made, executed and delivered unto Plaintiff a promissory note (hereinafter "Note") in the principal sum of One Hundred Seventy-five thousand dollars (\$175,000.00). Said note was a renewal of promissory note dated 06/05/2008 in the principal amount of One Hundred Eighty thousand dollars (\$180,000.00)

7. In order to secure payment of the promissory note dated 06/05/2008 and all renewals thereof, including that certain note dated 07/09/2009, the Defendant, The Peggy B. Gray, made, executed and delivered unto the Plaintiff a real estate mortgage (hereinafter "Mortgage") covering the following described real property and any and all improvements situated thereon:

All that certain, piece, parcel or lot of land, situate lying and being in the State of South Carolina, County of Oconee being shown and designated as Lot Number Twenty-Nine (29), on plat of record in the Office of the Register of Deeds for Oconee County, South Carolina in Plat Book B129 at Pages 1-8. The metes, bounds, courses and distances as upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

Property Address: Lot 29 Waterford Ridge, Seneca, SC 29672

Tax Map Number: 165-08-01-029

This being a portion of the same property conveyed to Peggy B. Gray by deed of Crescent Communities S.C., LLC, dated May 12, 2006 and recorded June 6, 2006 in Book 1508 at Page 43 in the Office of the Register of Deeds for Oconee County, South Carolina.

8. The Mortgage was signed, witnessed and probated on 06/05/2008 and was subsequently recorded in the Office of the Register of Deeds for Oconee County in Book 2627 at Page 195 on 06/11/2008. ("Exhibit A").

9. The Mortgage evidences and secures repayment of all sums advanced under the Note by Plaintiff to or on the behalf of the Defendant, Peggy B. Gray, and constitutes a valid lien on the mortgaged premises.

10. The balance due upon the Note and Mortgage is in Default. The Defendant, Peggy B. Gray, has been unable or unwilling to pay the balance due.
11. Any notices required by state or federal law, if applicable, have been given to the Defendant, Peggy B. Gray, prior to the commencement of this action.
12. Plaintiff elects and hereby declares the entire balance of said indebtedness to be due and payable. The current balance owed to Plaintiff as of March 15, 2010 equals \$177,890.39. Said account is currently accruing interest at the rate of \$29.17 per day plus the costs of bringing this action including attorney's fees.
13. Plaintiff has employed counsel in bringing this action and asserts it is entitled to an award of reasonable attorney's fees and costs pursuant to the terms of the Mortgage.
14. That the Plaintiff demands a deficiency judgment against the Defendant, Peggy B. Gray, in the event the sale of the real estate described herein does not yield a sum sufficient to satisfy all indebtedness due Plaintiff, including the costs and attorney's fees.
15. Plaintiff would further show unto the Court that the Note and Mortgage referenced herein are not secured by the Defendant's primary residence and said loan is commercial in nature. Furthermore, said mortgage is not owned, securitized or guaranteed by FNMA or FHLMC, and the servicing agent has not executed an agreement under the HMP.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and that:

1. The amount due upon the Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

2. That Plaintiff's Mortgage be declared a valid first mortgage lien upon the real property described herein and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, insurance premiums and any other expenses incurred by Plaintiff, with a reasonable sum for attorney's fees and for the costs of this action.

3. That the Court declare that Plaintiff's Note dated 07/09/2009 is secured by Plaintiff's Mortgage.

4. Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

5. Under the direction of the Court, sell the encumbered premises free and clear of the interests of all Defendants, bar any equity of redemption and apply the proceeds of the sale as follows:

First, to the costs and expenses of the within action and sale.

Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage together with attorney's fees as aforesaid, and

Third, the surplus, if any be distributed according to law.

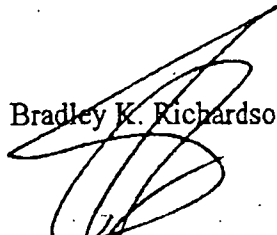
6. An Order be entered directing and empowering the Sheriff of Oconee County, South Carolina, to place the successful purchaser at the foreclosure sale in possession of the property described above should the same become necessary.

7. An Order to be entered for the ejectment of the defendants in possession herein and all person claiming there under and removal from the subject premises all fixtures, furnishings and other items not subject to the Plaintiff's lien, which personal property if not

removed shall be deemed abandoned and shall be removed by the Plaintiff or it's agents from the subject property by placing the same upon the public street or highway.

8. An Order be entered for a deficiency judgment against the Defendant, Peggy B. Gray, in the event the sale of the real estate described herein does not yield a sum sufficient to satisfy all indebtedness due Plaintiff, including the costs and attorney's fees.

9. An Order for such other and further relief as this Court may deem just and proper.


Bradley K. Richardson, P.C.

Bradley K. Richardson, Esq. (S.C. Bar #: 68385)
1211 N. Main Street
Anderson, SC 29621
(864)222-0292
(864) 222-0892(fax)
Brad@bkrlaw.net
Attorney for the Plaintiff

Anderson, South Carolina
March 29, 2010

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICE ACT
15 U.S.C. SECTION 1601 As Amended**

1. The amount of the debt owed as of March 15, 2010 is the sum of \$177,890.39 plus the costs and disbursements of bringing this action, including attorney's fees.
2. Plantation Federal Bank is the Creditor to whom the debt is owed.
3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If you, the Debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the Debtor by the Creditor's law firm.
5. If the Creditor named in this notice is not the original Creditor and if you make a request to the Creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Bradley K. Richardson, P.C., Attention: Bradley K. Richardson, 1211N. Main St, Anderson, SC 29621.
7. This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE.**

86 1024901
note 101Doc ID: 001477460008 Type: RTG
BK 2627 PG 195-203Ret.
JAMES S. BELK, ATTORNEY
1202 NORTH MAIN STREET
ANDERSON, SC 296211500
019277

Space Above This Line For Recording Date

This document was prepared by Dawn Bailey, First Savers Bank, 935 South Main Street, Suite 300, Greenville, South Carolina 29601

MORTGAGE**DATE AND PARTIES.** The date of this Mortgage (Security Instrument) is June 5, 2008. The parties and their addresses are:**MORTGAGOR:**PEGGY B GRAY
103 Dove Cove Lane
Westminster, South Carolina 29693**LENDER:**FIRST SAVERS BANK
Organized and existing under the laws of South Carolina
935 South Main Street, Suite 300
Greenville, South Carolina 29601**1. CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property:

The property is located in Oconee County at Lot Waterford Ridge, Seneca, South Carolina 29693.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time will not exceed \$360,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenantsPeggy B Gray
South Carolina Mortgage
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Page 1

EXHIBIT A
FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2008 JUN 11 PM 2:42

contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 101, dated June 5, 2008, from Mortgagor to Lender, with a loan amount of \$180,000.00.

B. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

5. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

6. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor has the right and authority to enter into this Security Instrument. The execution and delivery of this Security Instrument will not violate any agreement governing Mortgagor or to which Mortgagor is a party.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

Peggy B Gray
South Carolina Mortgage
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EXHIBIT A

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. **Payments.** Mortgagor fails to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.
- C. **Death or Incompetency.** Mortgagor dies or is declared legally incompetent.
- D. **Failure to Perform.** Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Secured Debts.
- F. **Other Agreements.** Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.
- G. **Misrepresentation.** Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgment.** Mortgagor fails to satisfy or appeal any judgment against Mortgagor.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.
- K. **Property Transfer.** Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.
- L. **Property Value.** Lender determines in good faith that the value of the Property has declined or is impaired.
- M. **Insecurity.** Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

13. REMEDIES. On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-85-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the

EXHIBIT A

collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

15. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of

Peggy B Grey
South Carolina Mortgage
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Page 4

EXHIBIT A

any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

16. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

17. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals will include a standard "mortgage clause" and, where applicable, "loss payee clause." If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include coverages not originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

18. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

EXHIBIT A

19. CO-SIGNERS. If Mortgagor signs this Security Instrument but is not otherwise obligated to pay the Secured Debts, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debts and Mortgagor does not agree by signing this Security Instrument to be personally liable on the Secured Debts. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

20. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

21. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

22. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

23. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

24. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

25. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

26. AGREEMENT TO ARBITRATE. Lender or Mortgagor may submit to binding arbitration any dispute, claim or other matter in question between or among Lender and Mortgagor that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as Lender and Mortgagor agree to in writing. For purposes of this section, this Transaction includes this Security Instrument and any other document relating to the Secured Debts, and proposed loans or extensions of credit that relate to this Security Instrument. Lender or Mortgagor will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws. Lender and Mortgagor must consent to arbitrate any Dispute concerning the Secured Debt secured by real estate at the time of the proposed arbitration. Lender may foreclose or exercise any powers of sale against real property

EXHIBIT A

securing the Secured Debt underlying any Dispute before, during or after any arbitration. Lender may also enforce the Secured Debt secured by this real property and underlying the Dispute before, during or after any arbitration.

Lender or Mortgagor may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law; seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to Lender or Mortgagor; or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

Lender and Mortgagor acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among Lender and Mortgagor involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Security Instrument, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Security Instrument or another writing.

27. WAIVER OF TRIAL FOR ARBITRATION. Lender and Mortgagor understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes through arbitration instead of litigation. If any Dispute is arbitrated, Lender and Mortgagor voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

Peggy B. Gray (Seal)
Peggy B Gray
Individually

(Witness)

(Witness)

FILED FOR RECORD
OCEAN COUNTY, S.C.
REGISTER OF DEEDS
2008 JUN 11 P 2:42

EXHIBIT A

ACKNOWLEDGMENT.

(Individual)

I, James S. Beck a notary public for South Carolina, do hereby certify that Peggy B Gray, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 5th day of June, 2008.

Signature of Notary Public

My commission expires: 10-18-14



FILED FOR RECORD
DOORIE COUNTY, S.C.
REGISTER OF DEEDS
2008 JUN 11 P 2:42

Peggy B Gray
South Carolina Mortgage
SC#4Xdb5ley0000680000658801 1080308Y

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Page 6

EXHIBIT A



EXHIBIT A
JAMES S. BELK, ATTORNEY
1202 NORTH MAIN STREET
ANDERSON, SC 29621
G-770

G-770

Exhibit "A"

PROPERTY DESCRIPTION

All that certain piece, parcel or lot of land situate, lying and being in the County of Oconee, State of South Carolina and being shown and designated as Lot Number Twenty Nine (29), as shown on that certain plat of record in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book B129 at Page 1-8. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This conveyance is specifically made subject to any and all recorded rights-of-way, easements, conditions and restrictions pertaining to the property herein conveyed, and in addition are subject to any of the foregoing which may appear from an inspection of the premises.

This being a portion of that property conveyed unto Peggy B. Gray herein by Deed of Crescent Communities S.C., LLC., dated May 12, 2006 and recorded June 6, 2006 of record in the Office of the Clerk of Court for Oconee County, South Carolina in Book 1508 at Page 43 .

TMS# P/O 165-00-01-001

EXHIBIT A

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

Plantation Federal Bank as successor in
interest to First Savers Bank,

Plaintiff,

Peggy B. Gray and Waterford Ridge
Owners Association, Inc.,

Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-37-416

LIS PENDENS # 2010-LP-37-152

LIS PENDENS
(Non-jury)
Mortgage Foreclosure

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2010 MAR 30 A 10:

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this Court upon the Complaint of the above named Plaintiff against the above named Defendants for foreclosure of the certain mortgage upon real estate given by Peggy B. Gray to First Savers Bank as recorded in Book 2627 at Page 195 in the Office of the Register of Deeds for Oconee County, South Carolina. The premises affected by said mortgage is described as follows:

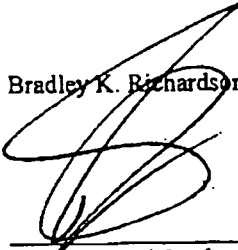
All that certain, piece, parcel or lot of land, situate lying and being in the State of South Carolina, County of Oconee being shown and designated as Lot Number Twenty-Nine (29), on plat of record in the Office of the Register of Deeds for Oconee County, South Carolina in Plat Book B129 at Pages 1-8. The metes, bounds, courses and distances as upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

Property Address: 103 Dove Cove Lane, Westminster, SC 29693

Tax Map Number: 165-08-01-029

This being a portion of the same property conveyed to Peggy B. Gray by deed of Crescent Communities S.C., LLC, dated May 12, 2006 and recorded June 6, 2006 in Book 1508 at Page 43 in the Office of the Register of Deeds for Oconee County, South Carolina.

Bradley K. Richardson, P.C.


Bradley K. Richardson, Esq. (S.C. Bar #: 68385)
1211 N. Main Street
Anderson, SC 29621
(864) 222-0292
(864) 222-0892 (fax)
Brad@bkrlaw.net
Attorney for the Plaintiff

Anderson, South Carolina
March 29, 2010

ENTERED
COMPUTER

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
PLANTATION FEDERAL BANK)
As successor in interest to FIRST)
SAVERS BANK,)

PLAINTIFF,)

-VS-)

PEGGY B. GRAY and)
WATERFORD RIDGE OWNERS)
ASSOCIATION, INC.,)

DEFENDANTS.)

IN THE COURT OF COMMON PLEAS

C.A.# 2010-CP-37-416

ANSWER
JURY TRIAL DEMANDED

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2009 MAY 18 A 10:50

Defendant, Peggy B. Gray, by and through her undersigned attorney, for her answer to Plaintiff's Complaint, states as follows:

Defendant denies each and every allegation of the Plaintiff's Complaint, not expressly, admitted explained and/ or qualified.

Defendant denies each and every allegation of the Plaintiff's Complaint, not expressly, admitted explained and/ or qualified.

1. Defendant admits the allegations contained in Paragraph 1 of the Plaintiff's Complaint (hereafter references to paragraphs of Plaintiff's Complaint will be stated as "Paragraph __").

2. With respect to Paragraphs 2 and 3, Defendant admits executing the Note and mortgage. The terms of the note and mortgage speak for themselves, and any allegations contained in these paragraphs not consistent with the terms of the note and mortgage are denied, and Defendant demands strict proof thereof.

FILED
CLERK OF COURT
MAY 18 2009
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(Renu)

3. Defendant does not have sufficient information to admit or deny the allegations contained in Paragraph 4, thus Defendant must deny same and demand strict proof thereof.

4. Defendant admits the allegations contained in Paragraph 5.

5. With respect to Paragraphs 6, 7, 8 and 9, Defendant admits executing the Note and mortgage. The terms of the note and mortgage speak for themselves, and any allegations contained in these paragraphs not consistent with the terms of the note and mortgage are denied, and Defendant demands strict proof thereof.

6. With respect to Paragraph 10, the allegations that "The Balance due upon the Note and Mortgage is in Default" and "The Defendant Peggy B. Gray has been unable or unwilling to pay the balance due" is a legal conclusion to which no response is required. Further, Defendant denies same, and demands strict proof thereof.

7. Defendant denies the allegations contained in Paragraph 11 and demands strict proof thereof.

8. With respect to Paragraph 12, Defendant admits that Plaintiff has declared the entire balance due but does not have sufficient information to admit or deny the remaining allegations contained in Paragraph 12, thus must deny same and demand strict proof thereof.

9. With respect to Paragraph 13, Defendant admits executing the Note and mortgage. The terms of the note and mortgage speak for themselves, and any allegations contained in these paragraphs not consistent with the terms of the note and mortgage are denied, and Defendant demands strict proof thereof.

10. The allegations contained in Paragraph 14 are denied and strict proof thereof is demanded.

11. Defendant does not have sufficient information to admit or deny the allegations contained in Paragraph 15, thus must deny same and demand strict proof thereof.

12. Defendant denies the allegations contained in the Paragraphs following the word Wherefore, and demands strict proof thereof.

FIRST AFFIRMATIVE DEFENSE

13. Defendant incorporates herein by reference the above allegations.

14. Plaintiff is barred from recovery by the equitable doctrine of estoppel.

SECOND AFFIRMATIVE DEFENSE

15. Defendant incorporates herein by reference the above allegations.

16. Defendant is barred from recovery pursuant to the equitable doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

17. Defendant incorporates herein by reference the above allegations.

18. Defendant is barred from recovery pursuant to the equitable doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

19. Defendant incorporates herein by reference the above allegations.

20. Defendant is barred from recovery pursuant to the doctrine of illegality.

FIFTH AFFIRMATIVE DEFENSE

21. Defendant incorporates herein by reference the above allegations.

22. Defendant is barred from recovery pursuant to the doctrine of economic duress.

SIXTH AFFIRMATIVE DEFENSE

23. Defendant incorporates herein by reference the above allegations.

24. Plaintiff's complaint fails to state facts sufficient to constitute a cause of action, thus must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

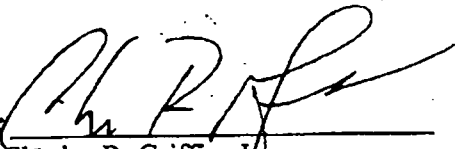
WHEREFORE, Defendant expressly denies that Plaintiff is entitled to any relief requested in the Complaint, demands judgment be entered in favor of Defendant on all matters claimed in the Complaint, including an award of his costs herein, and for all other relief that this Court deems just and appropriate.

JURY DEMAND

Defendant demands a jury trial of all issues so triable.

THE GRIFFIN FIRM, LLC

DATED: May 14, 2010

BY: 

Charles R. Griffin, Jr.
136 North Main Street
Anderson, SC 29621
(864) 231-8870
(864) 231-7797 fax

Attorney for Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
PLANTATION FEDERAL BANK)
As successor in interest to FIRST)
SAVERS BANK,)

PLAINTIFF,)

-VS-)

PEGGY B. GRAY and)
WATERFORD RIDGE OWNERS)
ASSOCIATION, INC.,)

DEFENDANTS.)

IN THE COURT OF COMMON PLEAS

C.A.# 2010-CP-37-416

AMENDED ANSWER AND
COUNTERCLAIM
JURY TRIAL DEMANDED

2010 JUN 17 A 8:36

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

Defendant, Peggy B. Gray, by and through her undersigned attorney, for her answer to Plaintiff's Complaint, states as follows:

Defendant denies each and every allegation of the Plaintiff's Complaint, not expressly, admitted explained and/ or qualified.

Defendant denies each and every allegation of the Plaintiff's Complaint, not expressly, admitted explained and/ or qualified.

1. Defendant admits the allegations contained in Paragraph 1 of the Plaintiff's Complaint (hereafter references to paragraphs of Plaintiff's Complaint will be stated as "Paragraph__").

2. With respect to Paragraphs 2 and 3, Defendant admits executing the Note and mortgage. The terms of the note and mortgage speak for themselves, and any allegations contained in these paragraphs not consistent with the terms of the note and mortgage are denied, and Defendant demands strict proof thereof.

Copies to:
Atty ☒ (P) ☐ (D)
DSS ☐ other ☐
Mailed ☒ Boxed ☐ banded ☐

ENTERED
COMPUTER

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5. With respect to Paragraphs 6, 7, 8 and 9, Defendant admits executing the Note and mortgage. The terms of the note and mortgage speak for themselves, and any allegations contained in these paragraphs not consistent with the terms of the note and mortgage are denied, and Defendant demands strict proof thereof.

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SIXTH AFFIRMATIVE DEFENSE

23. Defendant incorporates herein by reference the above allegations.

24. Plaintiff's complaint fails to state facts sufficient to constitute a cause of action, thus must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendant expressly denies that Plaintiff is entitled to any relief requested in the Complaint, demands judgment be entered in favor of Defendant on all matters claimed in the Complaint, including an award of her costs herein, and for all other relief that this Court deems just and appropriate.

COUNTERCLAIM

Defendant/Gray, (hereinafter referred to as "Defendant" or "Gray"), complains of the Plaintiff/Plantation Federal Bank as successor in interest to First Savers Bank (hereafter referred to as "Plaintiff" or "Plantation Federal Bank" and alleges as follows:

PRELIMINARY STATEMENT

Gray is a citizen and resident of Oconee County, South Carolina who was victimized by the wrongful conduct by Plantation Federal Bank described herein in a number of ways. Additionally, Plantation Federal Bank's acts underlying the Actions, Conduct and/ or omissions are unfair and deceptive acts and practices in violation of the South Carolina Unfair Trade Practices Act, constitutes a breach of contract accompanied by fraudulent act and/or with fraudulent intent, constitute breach of fiduciary duty, common law abuse of process and common law fraud.

PARTIES

1. Gray is an adult individual who is a citizen and resident of Oconee County, South Carolina.

2. Plantation Federal Bank, on information and belief is a corporation, and which is engaged in trade or commerce in Oconee County, South Carolina as defined by SC Code Ann., §39-5-10(b). Further, Plantation Federal Bank, by and through its agents, servants, and/ or employees is a financial institution. Additionally, at all times mentioned herein, Plantation Federal Bank advertised and advertises through the mass media that Plantation Federal Bank has a team of experienced bankers who look after their customers' best interests, help their customers make their customers' assets more productive, and further Plantation Federal Bank advertises that its bankers can help their customers anticipate what Plantation Federal Bank may need in the future.

FACTS

3. At all times mentioned herein, Plantation Federal Bank, by and through its agents, servants, and/ or employees, expressly or by implication, held itself out to the public and to Gray to be experts in their respective fields, and further, at all times mentioned herein, Plantation Federal Bank, its agents, servants, and/or employees nurtured Gray's trust and confidence in Gray, and Gray reposed great trust and confidence in Plantation Federal Bank, its agents, servants, and/or employees, who at all times were acting within the course and scope of their agency and/or employment with Plantation Federal Bank.

4. Prior to June 5, 2008, Gray had a business relationship with First Savers Bank's agents, servants, and/or employees, to wit, Shane Smith (hereinafter "Smith").

5. In 2006 pursuant to First Savers Bank's agents, servants, and/or employees solicitations, Defendant purchased and financed Lot 29 Waterford Ridge (hereinafter "the Lot").

6. Subsequently, Smith became employed with First Savers Bank, and Defendant refinanced the Lot with First Savers Bank.

7. On June 5, 2008 pursuant to Smith's solicitations and/or representations, Gray refinanced Lot 29 with First Savers Bank.

8. At the time Defendant refinanced the Lot with Smith represented, expressly or by implication, that the loan would be an interest only loan and any further subsequent refinances would be interest only loans at or near the same interest rate.

9. When the loan came up for renewal in 2009, Smith demanded that Defendant refinance the loan pursuant to, on information and belief, a fixed 15 year amortization loan.

10. Defendant informed Smith that Defendant could not afford to make payments under a fixed 15 year amortization loan, then Smith demanded that Defendant pay approximately \$5,000.00 cash per lot to pay down on the principal and Smith stated that First Savers Bank would refinance, but at a higher interest rate.

11. Smith then informed Defendant that if Defendant paid approximately \$10,000.00 per lot down, then First Savers Bank would refinance at a lower interest rate, but Defendant could not afford that.

12. Defendant had no other choice but to pay the approximate amount of \$5,000.00 down per lot in order to refinance the loan on an interest only basis, although the loan was at a higher interest rate.

13. Smith, advised and/or induced Defendant to execute the note and mortgage on June 5, 2008, and further, Smith advised Defendant that it would be in her best interests to execute the note and mortgage on June 5, 2008 and/ or further discouraged alternative financing.

14. At all times mentioned herein, Plantation Federal Bank, its agents, servants, and/or employees, knew or should have known Defendant did not have the assets or the economic ability to repay or satisfy the note and mortgage executed on June 5, 2008 according to its strict terms. Plantation Federal Bank, its agents, servants, and/ or employees, knew that Defendant was vulnerable, lacking means to protect himself from Plantation Federal Bank, its agents, servants, and/ or employees, actions without incurring substantial harm.

15. Rather than honoring its agreements with Gray, Plantation Federal Bank began aggressive collection actions against Gray.

16. Plantation Federal Bank has further wrongfully, unlawfully, intentionally, willfully and/or illegally declared Gray to be in default, and/or has wrongfully, unlawfully, intentionally, willfully and illegally accelerated the balance due on the note and mortgage.

17. At all times mentioned herein, Defendant has complied with the conditions and terms on her part to be performed and/or Plantation Federal Bank, its agents, servants, and/or employees has frustrated Defendant's ability to comply with the terms and conditions on her part to be performed.

18. Plantation Federal Bank's actions and conduct were not justifiable efforts to collect Plantation Federal Bank's alleged debt; they were oppressive and

arbitrary threatening acts and conduct calculated to coerce Defendant's payment of the alleged debt, to extort monies from Defendant and/or force Defendant to loose her property and/or to enhance or maximize Plantation Federal Bank's collections to further Plantation Federal Bank's own economic self interests at the expense of Defendant.

19. Plantation Federal Bank, its agents, servants, and/or employees, was, and still is, engaged in a campaign of continuous personal harassment of Defendant in an attempt to vilify or expose Defendant to public ridicule. The aforementioned actions were taken with deliberate indifference to the rights, interests and legitimate expectations of Defendant.

20. The continuing acts of Plantation Federal Bank, its agents, servants, and/or employees caused and still cause Defendant embarrassment, humiliation, loss of sleep, loss of income, and extreme mental and physical suffering.

INJURY AND DAMAGE

21. As a direct result of the actions, conduct and/ or omissions of Plantation Federal Bank, its agents, servants, and/or employees, Gray has suffered embarrassment, humiliation, loss of sleep and emotional distress, loss of income, and her creditworthiness has been damaged, among other things.

**FOR A FIRST CAUSE OF ACTION
BREACH OF CONTRACT ACCOMPANIED BY
FRAUDULENT ACTO AND/OR WITH FRAUDULENT INTENT**

22. Gray incorporates by reference all allegations set forth above.

23. The aforementioned actions, conduct and/or omissions constitute a breach of the terms of the agreement between the parties as described above, and

further Gray is informed and believes that said breach was accompanied by fraudulent act(s) and/or fraudulent intent.

24. Further, Plantation Federal Bank, its agents, servants, and/or employees has breached the covenant of good faith and fair dealing which is implied in all South Carolina contracts and/or as prescribed by § 36-1-203 S.C. Code of Laws Ann.

25. As a direct and proximate result of the breach of contract accompanied by fraudulent act and/or with fraudulent intent, Gray has been damaged and has incurred attorney fees and costs for which damages, costs and attorney fees Plantation Federal Bank is liable.

**FOR A SECOND CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY**

26. Gray incorporates by reference all allegations set forth above.

27. Once Plantation Federal Bank had obtained Gray's signatures on the note and mortgage, Plantation Federal Bank placed itself in a dominant standing and/or superior bargaining position regarding Gray and Gray's assets and finances.

28. Further, Plantation Federal Bank, its agents, servants, and/or employees, expressly or by implication held themselves out to be experts in their respective fields, nurtured Gray's trust and confidence, and Gray reposed great confidence and trust in Plantation Federal Bank, its agents, servants, and/or employees.

29. At all times mentioned herein, a fiduciary relationship existed between Gray and Plantation Federal Bank, its agents, servants, and/or employees wherein Plantation Federal Bank, its agents, servants, and/or employees owed a fiduciary duty to Gray.

30. The aforementioned actions, conduct and/or omissions by Plantation Federal Bank, its agents, servants, and/or employees constitutes a breach of fiduciary duty owed to Gray by Plantation Federal Bank, its agents, servants, and/or employees.

31. As a direct and proximate result of Plantation Federal Bank's breach of fiduciary duty, Gray has been damaged, both actual and punitive for which damages the Plantation Federal Bank is liable.

**FOR A THIRD CAUSE OF ACTION
FRAUD**

32. Gray incorporates by reference all allegations set forth above.

33. At or near the time Gray executed the note and mortgage, Plantation Federal Bank, its agents, servants, and/or employees represented, expressly or by implication, to Gray, that the loan would be an interest only loan and any further subsequent refinances would be interest only loans at or near the same interest rate.

34. As a result of said representations made by the Plantation Federal Bank, its agents, servants, and/or employees, Gray executed the note and mortgage described in Exhibits A and became obligated on the note and mortgage described in Exhibit A to Plantation Federal Bank.

35. Plantation Federal Bank, its agents, servants, and/or employees' representations were false at the time they were made and/or they were made with reckless disregard for their truth or falsity.

36. Plantation Federal Bank, Plantation Federal Bank, its agents, servants, and/or employees, knew that as a direct and proximate result of the representations that Gray would rely on said representations in order to induce Gray to execute the note and mortgage.

37. The representations to the transaction were material and had Gray known the true facts, he would not have executed the note and mortgage.

38. Gray was ignorant of the falsity of said representations and/or Gray had a right to rely on the truthfulness of said representations and did so.

39. Plantation Federal bank, its agents, servants, and/or employees', as set forth above constitute actual and/or constructive fraud, and as a direct and proximate result of the actual and/or constructive fraud practiced on Gray by Plantation Federal Bank, its agents, servants, and/or employees, Gray has been damaged, for which damages the Plantation Federal Bank is liable.

**FOR A FOURTH CAUSE OF ACTION
Violations of §§ 39-5-10, et seq,
Unfair Trade Practices Act**

40. Gray incorporates by reference all allegations set forth above.

41. Plantation Federal Bank's conduct, actions, and/or omissions described above violate the South Carolina Unfair Trade Practices Act.

42. Plantation Federal Bank's acts as set forth above constitute unfair and/or deceptive trade practices intended to relieve Gray of his money and/or property; that such acts are capable of repetition; that such conduct was willful, and the Plantation Federal Bank knew or should have known that its conduct violated the Unfair Trade Practices Act, and as a direct and proximate result of which Gray is entitled to her actual damages, that such damages be trebled and that he recover attorney fees and costs.

**FOR A FIFT CAUSE OF ACTION
Tortuous Inference With Present and Prospective
Economic Opportunities**

43. Gray incorporates by reference all allegations set forth above.

44. Plantation Federal Bank's actions, conduct and/or omissions as set forth above constitute intentional Tortious Interference with Present and Prospective Economic Opportunities and Contractual Relationships.

45. As a direct and proximate result of Plantation Federal Bank's intentional Tortious Interference with Gray's Present and Prospective Economic Opportunities, Gray has been damaged, for which damages the Plantation Federal Bank is liable.

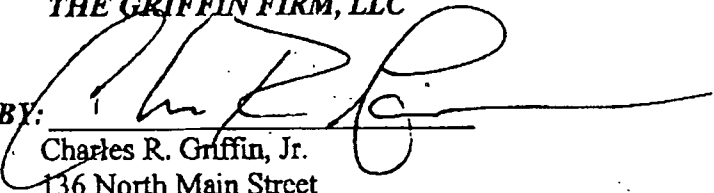
WHEREFORE, Gray demands judgment against Plantation Federal Bank for actual damages, punitive damages, attorney fees and costs, and for such other and further relief that this Court deems just and proper under the circumstances.

JURY DEMAND

Gray demands a jury trial of all issues so triable.

DATED: June 14, 2010

THE GRIFFIN FIRM, LLC

BY: 

Charles R. Griffin, Jr.
136 North Main Street
Anderson, SC 29621
(864) 231-8870
(864) 231-7797 fax
Attorney for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Plantation Federal Bank as successor in
interest to First Savers Bank,

Plaintiff,

VS.

Peggy B. Gray and Waterford Ridge
Owners Association, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-37-416

PLAINTIFF'S REPLY TO
THE COUNTERCLAIMS OF
PEGGY B. GRAY

2010 JUL 15 P 2:13

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

The Plaintiff, Plantation Federal Bank, as successor in interest to First Savers Bank, (hereinafter "Plantation Federal Bank") hereby makes its Reply to the Counterclaim of Peggy B. Gray (hereinafter "Gray") and would respectfully show unto the Court as follows:

Any allegations raised in the Counterclaim of the Defendant, Gray, not specifically admitted, qualified or otherwise explained herein are specifically denied and strict proof thereof demanded.

FOR A FIRST DEFENSE

1. That the Complaint fails to state facts sufficient to constitute any cause of action or any claim upon which relief may be granted against Plantation Federal Bank as a matter of law.

FOR A SECOND DEFENSE

2. Plantation Federal Bank denies each and every allegation of the Counterclaim not specifically admitted herein and demands strict proof thereof.

ENTERED
COMPUTER

3. Plantation Federal Bank denies each and every statement contained in the Paragraph entitled "Preliminary Statement" and demands strict proof of any allegations contained therein.
4. Plantation Federal Bank admits the facts contained in Paragraph 1 of the Counterclaim.
5. In regards to the allegations contained in Paragraph 2 of the Defendant's Counterclaim, Plantation Federal Bank admits only that it is a financial institution with an office located in Oconee County. All other remaining allegations are denied and strict proof demanded thereof.
6. Plantation Federal Bank denies the allegations contained in Paragraphs 3, 4 and 5 of the Counterclaim and demands strict proof thereof.
7. As to the allegations contained in Paragraph 6 of the Counterclaim, Plantation Federal Bank admits only that Shane Smith was employed by First Savers Bank at the time the loan(s), which are the subject of this foreclosure action, were made. All other allegations are denied and strict proof demanded thereof.
8. As to the allegations contained in Paragraph 7 of the Counterclaim, Plantation Federal Bank admits only that the Defendant refinanced Lot 29 with First Savers Bank. All other allegations are denied and strict proof demanded thereof.
9. As to the allegations contained in Paragraph 8 of the Counterclaim, the terms of the note that Gray admits to have executed speaks for itself. Any allegations inconsistent with the terms of the note are denied. All other allegations are specifically denied and strict proof demanded thereof.
10. Plantation Federal Bank denies all allegations contained in Paragraphs

9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the Counterclaim and specifically demands strict proof thereof of all allegations.

11. Plantation Federal Bank denies the allegations of Paragraph 21 of the Counterclaim and demands strict proof of all alleged injuries suffered by the Defendant, Gray.

12. As to Paragraph 22 of the Counterclaim, Plantation Federal Bank restates its prior responses.

13. Plantation Federal Bank denies all allegations contained in Paragraphs 23, 24, and 25 of the Counterclaim and specifically demands strict proof thereof.

14. As to Paragraph 26 of the Counterclaim, Plantation Federal Bank restates its prior responses.

15. Plantation Federal Bank denies all allegations contained in Paragraphs 27, 28, 29, 30 and 31 of the Counterclaim and specifically demands strict proof thereof.

16. As to Paragraph 32 of the Counterclaim, Plantation Federal Bank restates its prior responses.

17. As to the allegations contained in paragraph 33, the terms of the note that Gray admits to have executed speaks for itself. Any allegations inconsistent with the terms of the note are denied. All other allegations are specifically denied and strict proof demanded thereof.

18. Plantation Federal Bank denies all allegations contained in Paragraphs 34, 35, 36, 37, 38 and 39 of the Counterclaim and specifically demands strict proof thereof.

19. As to Paragraph 40 of the Counterclaim, Plantation Federal Bank restates

its prior responses.

20. Plantation Federal Bank denies all allegations contained in Paragraphs 41 and 42 of the Counterclaim and specifically demands strict proof thereof.

21. As to Paragraph 43 of the Counterclaim, Plantation Federal Bank restates it's prior responses.

22. Plantation Federal Bank denies all allegations contained in Paragraphs 44 and 45 of the Counterclaim and specifically demands strict proof thereof.

23. Plantation Federal Bank denies Gray is entitled to judgment or any other relief as requested in the prayer for relief.

FOR A THIRD DEFENSE AND AN AFFIRMATIVE DEFENSE

24. That any injuries or damages allegedly suffered by Gray were due to or caused by or resulted from the actions, inactions, omissions and/or conduct of other people, parties and/or entities over whom Plantation Federal Bank had no responsibility or control, which is herewith pled and asserted as an affirmative defense and complete or partial bar to any recovery sought by Gray herein as a matter of law.

FOR A FOURTH DEFENSE AND AN AFFIRMATIVE DEFENSE

25. That any injuries or damages allegedly suffered by Gray were due to or caused by preceding, superseding and/or intervening acts, omissions, occurrences, events, developments, transactions, or circumstances beyond the control of Plantation Federal Bank such that the preceding, superseding and/or intervening acts, omissions, occurrences, events, complications, conditions or circumstances are the proximate cause of the claimed injuries and damages, if any, as a matter of law.

FOR A FIFTH DEFENSE AND AN AFFIRMATIVE DEFENSE

26. That any injury or damage allegedly sustained by Gray as a result of matters alleged in the Counterclaim, could not be avoided and/or were the result of circumstances, conditions, conduct, or information and/or developments, events, acts, omissions, errors, complications, occurrences, transactions, precedents, representations or actions by others for which these Plantation Federal Bank is not legally responsible as a matter of law; and, thus, Plantation Federal Bank herewith pleads and asserts this as an affirmative defense and/or avoidance and complete bar to this action and any monetary relief sought.

FOR A SIXTH DEFENSE AND AN AFFIRMATIVE DEFENSE

27. That Gray's claims are barred under the doctrine or principle of the statute of frauds which is pled as and serves as an affirmative defense and bar to the within action.

FOR A SEVENTH DEFENSE AND AN AFFIRMATIVE DEFENSE

28. That Gray's claims are barred under the doctrines or principles of assumption of risk and/or comparative or contributory negligence, under applicable law, all of which doctrines or principles of law are herewith pled as and serve as affirmative defenses or bars to the within action.

FOR A EIGHTH DEFENSE AND AN AFFIRMATIVE DEFENSE

29. That Gray has not suffered any damages proximately caused by the conduct of Plantation Federal Bank under any legal theory advanced in the Counterclaim.

FOR A NINTH DEFENSE AND AN AFFIRMATIVE DEFENSE

30. That Gray's claims are barred under the doctrine or principle of waiver which is pled as and serves as an affirmative defense and bar to the within action.

FOR AN TENTH DEFENSE AND AN AFFIRMATIVE DEFENSE

31. That Gray's claims are barred under the doctrine or principle of consent which is pled as and serves as an affirmative defense and bar to the within action.

FOR A ELEVENTH DEFENSE AND AN AFFIRMATIVE DEFENSE

32. That Gray's claims are barred under the doctrine or principle of ratification which is pled as and serves as an affirmative defense and bar to the within action.

FOR A TWELVTH DEFENSE AND AN AFFIRMATIVE DEFENSE

33. That the conduct of Plantation Federal Bank is not the proximate cause of Gray's damages and injuries, if any, which Plantation Federal Bank specifically deny.

FOR A THIRTEENTH DEFENSE AND AN AFFIRMATIVE DEFENSE

34. That Gray is not entitled to any purported costs or any purported attorneys fees based on any matter advanced in the Counterclaim as a matter of law.

**FOR A FOURTEENTH DEFENSE AND AN AFFIRMATIVE DEFENSE TO ANY
PUNITIVE DAMAGES SOUGHT**

35. That to the extent the Counterclaim seeks to collect punitive damages brought against Plantation Federal Bank, such an action for punitive damages is barred as a matter of law for a number of reasons, including: the due process clause of the Fifth Amendment as applied to the states through the Fourteenth Amendment to the United States Constitution; an arguable extension of the prohibition of the excessive fines clause

of the Eighth Amendment, as applied to the states through the Fourteenth Amendment; an arguable extension of the provisions of the Sixth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment; and relevant provisions of the South Carolina Constitution, including, but not limited to, Article I, Section 3, and the relevant state laws applicable to the matters in this case; all of which are asserted as bars to recovery of punitive damages against Plantation Federal Bank.

36. That, moreover, as the present case and statutory law standard to measure and confer power to a jury to award punitive damages under applicable state law has not been formulated to comport with federal or state constitutional rights and guarantees, lacks objective criteria, lacks a meaningful standard, is void for vagueness, and violates constitutional due process and equal protection procedural protection; an award of punitive damages would violate Plantation Federal Bank's constitutional rights and guarantees.

37. That, further, Gray has failed as a matter of law to state a claim for which punitive damage relief is available against Plantation Federal Bank.

WHEREFORE, having fully answered the Counterclaim herein, Plantation Federal Bank, demands that the Counterclaim and all claims asserted be dismissed with prejudice as to them in all capacities; requests that Plantation Federal Bank be awarded its costs and attorneys' fees under applicable statutory provisions, rules and case law, and the South Carolina Rules of Civil Procedure; and requests that the Court award such other and further relief as deemed just and proper.

Furthermore as this matter was referred to the Master in Equity for Oconee County, Plantation Federal Bank requests that all causes of action be tried before the Honorable Ellis B. Drew, Jr. as Master in Equity for Oconee County. The right to a jury trial is hereby waived.

Bradley K. Richardson, P.C.



Bradley K. Richardson, Esq. (S.C. Bar #: 68385)
1211 N. Main Street
Anderson, SC 29621
(864)222-0292
(864) 222-0892(fax)
Brad@bkrlaw.net
Attorney for the Plaintiff

Anderson, South Carolina
July 12, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

Plantation Federal Bank as successor in
interest to First Savers Bank,

Plaintiff,)

vs.)

J. Charles Gray a/k/a Charles Gray and
Waterford Ridge Owners Association, Inc.,

Defendant.)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2010-CP-37-00417

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

Bradley K. Richardson, Bar No. 68385

Address:

133 Straight Drive, Anderson, SC 29625

Phone: 864-222-0292 Fax 864-222-0892

E-mail: brad@bkrlaw.net Other: _____

Defendant's Attorney:

Charles R. Griffin, Jr., Bar No. _____

Address:

3300 North Main Street, Suite D #339,
Anderson, SC 29621

Phone: 864-231-8870 Fax 864-231-7797

E-mail: _____ Other: _____

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/☐ Defendant

June 3, 2013

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF O'CONNOR)

JUDICIAL CIRCUIT)

CASE NO.: 2010-CP-37-00416)

Plantation Federal Bank as successor in
interest to First Savers Bank,

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

Peggy B. Gray and Waterford Ridge Owners
Association, Inc.,

Defendant.)

Plaintiff's Attorney: Bradley K. Richardson, Bar No. 68385 Address: 133 Straight Drive, Anderson, SC 29625 Phone: 864-222-0292 Fax 864-222-0892 E-mail: brad@bkrlaw.net Other: _____	Defendant's Attorney: Charles R. Griffin, Jr., Bar No. _____ Address: 3300 North Main Street, Suite D #339, Anderson, SC 29621 Phone: 864-231-8870 Fax 864-231-7797 E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☒ Plaintiff / ☐ Defendant June 3, 2013 Date submitted	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
)
Plantation Federal Bank as successor)
in interest to First Savers Bank,)
)
vs.)
)
Plaintiff,)
)
J. Charles Gray and Waterford Ridge)
Owners Association, Inc.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-37-417

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
)
Plantation Federal Bank as successor)
in interest to First Savers Bank,)
)
Plaintiff,)
)
vs.)
)
Peggy B. Gray and Waterford Ridge)
Owners Association, Inc.,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-37-416

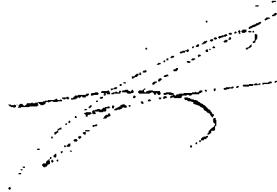
MOTION FOR SUMMARY JUDGMENT

TO: Charles R. Griffin, Jr., Attorney for J. Charles Gray and Peggy B. Gray, Defendants

PLEASE TAKE NOTICE that the Plaintiff by and through their undersigned counsel,
will move before the Chief Administrative Judge for the Tenth Judicial circuit not sooner than
ten day after the service hereof or as soon thereafter as may be heard by the Court, for Motion for

Summary Judgment against Defendants, J. Charles Gray and Peggy B. Gray. The Motion is based upon the Memorandum of Law and deposition testimony of said Defendants filed simultaneously herewith.

I certify that consultation with opposing counsel would serve no useful purposes.



Bradley K. Richardson
(S.C. Bar # 68385)
133 Straight Drive
Anderson, SC 29625
Telephone: (864) 222-0292
Facsimile: (864) 222-0892
Attorney for the Plaintiff

Anderson, South Carolina
June 3, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
)
Plantation Federal Bank as successor)
in interest to First Savers Bank,)
)
vs.)
)
Plaintiff,)
)
J. Charles Gray and Waterford Ridge)
Owners Association, Inc.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-37-417

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
)
Plantation Federal Bank as successor)
in interest to First Savers Bank,)
)
Plaintiff,)
)
vs.)
)
Peggy B. Gray and Waterford Ridge)
Owners Association, Inc.,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-37-416

MEMORANDUM IN SUPPPORT OF SUMMARY JUDGMENT

I. INTRODUCTION

Plantation Federal Bank as successor in interest to First Savers Bank. ("Plantation Federal") commenced a foreclosure action by the filing of a Summons and Complaint on March 30, 2010. The Defendants, J. Charles Gray and Peggy B. Gray (collectively the "Grays") filed their counterclaims against Plantation Federal by filing their Amended Answer and Counterclaims on June 14, 2010 alleging causes of action for Violation of the South Carolina Unfair Trade

Practices Act, Breach of Contract Accompanied by Fraudulent Act and/or with Fraudulent Intent, Breach of Fiduciary Duty, Fraud and Tortious Interference with Present and Prospective Economic Opportunities.

The foreclosure actions filed by Plantation Federal involves causes of action for the foreclosure of two separate promissory notes as follows.

(FORECLOSURE LOT #29 Waterford Ridge)

A Commercial Note to Bank dated June 5, 2008, (hereinafter "Note 1") containing a promise to pay the principal sum of One Hundred Eighty Thousand and 00/100 Dollars (\$180,000.00) together with interest thereon upon such terms as are contained in said Note 1, a copy of which is attached hereto, marked "Exhibit A" and incorporated herein by reference.

Note 1 is secured by that certain mortgage executed by Peggy B. Gray and delivered to Bank on June 5, 2008, whereby there was conveyed unto Bank by way of said Mortgage the property described as follows:

All that certain, piece, parcel or lot of land, situate lying and being in the State of South Carolina, County of Oconee being shown and designated as Lot Number Twenty-Nine (29), on plat of record in the Office of the Register of Deeds for Oconee County, South Carolina in Plat Book B129 at Pages 1-8. The metes, bounds, courses and distances as upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This being a portion of the same property conveyed to Peggy B. Gray by deed of Crescent Communities S.C., LLC, dated May 12, 2006 and recorded June 6, 2006 in Book 1508 at Page 43 in the Office of the Register of Deeds for Oconee County, South Carolina.

Tax Map Number: 165-08-01-029

Said Mortgage was recorded in Mortgage Book 2627 at Pages 195-203 on June 11, 2008, in the Register of Deeds Office for Oconee County. A copy of the aforementioned Mortgage is attached to and made a part hereof as "Exhibit B" and incorporated herein by reference.

Under the terms of Note 1 the entire obligation became due and payable on June 5, 2009. The obligation was refinanced pursuant to the terms of the Commercial Note (hereinafter "Note 2") dated July 9, 2009, a copy of which is attached as "Exhibit C".

(FORECLOSURE LOT #27 Waterford Ridge)

A Commercial Note to Bank dated June 5, 2008, (hereinafter "Note 3") containing a promise to pay the principal sum of One Hundred Eighty Thousand and 00/100 Dollars (\$180,000.00), together with interest thereon upon such terms as are contained in said Note 3, a copy of which is attached hereto, marked "Exhibit D" and incorporated herein by reference.

Note 3 is secured by that certain mortgage executed by J. Charles Gray and delivered to Bank on June 5, 2008, whereby there was conveyed unto Bank by way of said Mortgage the property described as follows:

All that certain, piece, parcel or lot of land, situate lying and being in the State of South Carolina, County of Oconee being shown and designated as Lot Number Twenty-Seven (27), on plat of record in the Office of the Register of Deeds for Oconee County, South Carolina in Plat Book B129 at Pages 1-8. The metes, bounds, courses and distances as upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This being a portion of the same property conveyed to Charles Gray by deed of Crescent Communities S.C., LLC, dated May 12, 2006 and recorded June 6, 2006 in Book 1508 at Page 35 in the Office of the Register of Deeds for Oconee County, South Carolina.

Tax Map Number: 165-08-01-027

Said Mortgage was recorded in Mortgage Book 2627 at Pages 187-194 on June 11, 2008, in the Register of Deeds Office for Oconee County. A copy of the aforementioned Mortgage is attached to and made a part hereof as "Exhibit E" and incorporated herein by reference.

Under the terms of Note 3 the entire obligation became due and payable on June 5, 2009. The obligation was refinanced pursuant to the terms of the Commercial Note (hereinafter "Note 4") dated July 9, 2009, a copy of which is attached as "Exhibit F".

Defendant Peggy B. Gray, by and through her attorney Charles R. Griffin, Jr., served an answer on or about May 14, 2010, whereby the Defendant admitted the execution and delivery of the Notes and Mortgage which are the subject of this action.

Defendant J. Charles Gray, by and through his attorney Charles R. Griffin, Jr., served an answer on or about May 14, 2010, whereby the Defendant admitted the execution and delivery of the Notes and Mortgage which are the subject of this action.

This memorandum is submitted in support of the Plaintiff's Motion for Summary Judgment. For the reasons stated herein, Plaintiff is entitled to summary judgment of all claims involved in the foreclosure actions and for an Order of Dismissal as to the counterclaims filed by the Defendants Peggy B. Gray and J. Charles Gray against Plantation Federal Bank as successor in interest to First Savers Bank.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Grays in their respective Amended Answers as well as in their deposition testimony admit that they executed the loan documents set forth in "Exhibit A"¹, "Exhibit B"², "Exhibit C"³, "Exhibit D"⁴, "Exhibit E"⁵, "Exhibit F"⁶.

There is no dispute that the loans which are the subject matter of the foreclosure action were commercial transactions. Said transactions were refinances of commercial loans previously obtained from Community First Bank in connection with the purchase of the lots which are the subject of this action. Said lots were purchased at an auction held by or on the behalf of Crescent Communities of S.C., LLC.⁷ The Grays arrived at the purchase price they were willing to pay for the lots through an auction process.⁸ The Grays acknowledge that they had attended, participated in and purchased at several auctions such as the one that resulted in the purchase of the lots.⁹

The Grays acknowledged that they purchased the lots with the intention to build speculative construction for resale¹⁰ or to resell or flip the lots for profit. Unfortunately due to the downturn in the economy the lots did not sell and the Grays were not able to pay off the two investment loans prior to the maturity of the loans as they had planned. The Grays testified that

¹ Deposition of Peggy B. Gray dated March 25, 2013 at page 12, lines 16-17.

² Deposition of Peggy B. Gray dated March 25, 2013 at page 10; lines 16-24.

³ Deposition of Peggy B. Gray dated March 25, 2013 at page 15, lines 12-15.

⁴ Deposition of J. Charles Gray dated March 25, 2013 at page 46, lines 8-16.

⁵ Deposition of J. Charles Gray dated March 25, 2013 at page 58, lines 17-25; page 59, lines 1-10.

⁶ Deposition of J. Charles Gray dated March 25, 2013 at page 57, lines 12-25; Page 58, lines 1-3.

⁷ Deposition of J. Charles Gray dated March 25, 2013 at page 10, lines 8-21.

⁸ Deposition of J. Charles Gray dated March 25, 2013 at page 20, lines 10-25; Page 21; Page 22, lines 16-25; Page 23, line 1-3.

⁹ Deposition of J. Charles Gray dated March 25, 2013 at page 17, lines 6-13;

¹⁰ Deposition of J. Charles Gray dated March 25, 2013 at page 13, lines 13-25; Page 14, Line 1-3

were it not for the downturn in the economy the lots would have sold; the loans would have been paid off and this action would not have been necessary.¹¹

Prior to the expiration of the term of the initial two loans Mr. Gray testified that he contacted representatives of Plaintiff and requested that the loans be renewed or extended. Plaintiff advised the Grays that the terms of renewal would be at a new interest rate and require a payment towards principal. The Grays testified that they were unhappy with these terms but made no efforts to obtain alternate financing from other lenders and therefore accepted Plaintiff's renewal terms on July 9, 2009.¹² The Grays do not dispute the fact that they have defaulted under the terms of the notes¹³; they do not dispute the amount due and payable; and do not dispute that Plaintiff is entitled to foreclose.¹⁴

It is undisputed that Plaintiff is the owner and holder of the Notes and Mortgages. The subject loan accounts remain in arrears. The Notes further provide that if the Bank is required to hire an attorney for purposes of collecting on the Note, the Defendant agrees to pay "collection costs to include reasonable attorney fees not to be less than 15% of the amount to be collected (unless prohibited by law)".

III. ARGUMENT

A. Standard of Review.

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answer to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S.C.R.C.P. 56(c). Summary judgment is appropriate when "plain, palpable, and undisputable facts exist on which reasonable minds cannot differ." McNaughton-McKay Electric Co. of N.C., Inc vs. Andrich, 324 S. C. 275, 279, 482 S.E.2d 564 (Ct. App. 1997).

¹¹ Deposition of Peggy B. Gray dated March 25, 2013 at page 20, lines 5-9; Page 23, lines 2-25. Deposition of J. Charles Gray dated March 25, 2013 at page 69, lines 23-25, Pages 70 and 71, Page 72, lines 1-11.

¹² Deposition of J. Charles Gray dated March 25, 2013 at page 64, lines 22-25; Page 65 and 66; Page 76, line 12-25; Page 77, line 1. Deposition of Peggy B. Gray dated March 25, 2013 at page 24, lines 1-14.

¹³ Deposition of J. Charles Gray dated March 25, 2013 at page 60, lines 8-13. Deposition of Peggy B. Gray dated March 25, 2013 at page 24, lines 15-25.

¹⁴ Deposition of J. Charles Gray dated March 25, 2013 at page 90, lines 1-7. Deposition of Peggy B. Gray dated March 25, 2013 at page 24, lines 23-25.

B. There is no genuine issue of material fact and Plaintiff is entitled to judgment as a matter of law regarding foreclosure action.

As stated above, The Grays do not contest the execution and delivery of the Notes that are the subject matter of the foreclosure action. They acknowledge that in order to secure payment of the loans they pledged the properties which were refinanced with the loan proceeds. They acknowledge that when the initial loans became due and payable they could not satisfy the obligations in full and elected to accept Plaintiff's renewal terms. The Grays main defense is that they allege Plaintiff has some obligation to extend the term of the loans indefinitely until they could sell the properties for a profit. The Grays offer no evidence to support this allegation.¹⁵ The Notes are clear and unambiguous. Mr. Gray testified that he and Mrs. Gray had purchased and sold multiple investment properties prior to the this transaction; had developed subdivisions; built speculative homes for resale¹⁶ and arranged financing through several different banks for properties he and Mrs. Gray had purchased over the years.¹⁷ The Grays were well versed in financing and had full knowledge of the loan terms being extended.

Any question as to the amount of attorney fees that can be awarded based upon a contractual provision has been resolved by the South Carolina Supreme Court in the matter of *Citizens and Southern National Bank of South Carolina vs. Easton* 310S.C. 458 S.E.2d 640 (1993). That case held that "with regard to the notes which provide for attorney's fees at a specific rate in the event collection becomes necessary, it is a well established principle of law that when there is a contract providing for such, the amount of attorney's fees is governed by the contract." In the *Citizen's* case, the note in question provided for reasonable attorney's fee of 15% of the outstanding principal and interest when the note is referred to an attorney. In this matter there is no ambiguity as it relates to provision for an award of attorney's fee as the terms of the Note have been acknowledged and admitted by the Defendants.

Accordingly, there is no material question of fact to be resolved by a trier of fact in the foreclosure action. For the reasoning stated, summary judgment should be granted to Plaintiff.

¹⁵ Deposition of J. Charles Gray dated March 25, 2013 at page 86, lines 2-20.

¹⁶ Deposition of J. Charles Gray dated March 25, 2013 at page 15, lines 4-11.

¹⁷ Deposition of J. Charles Gray dated March 25, 2013 at page 34, lines 4-25; Page 35, lines 1-7; Page 43, lines 7-10; Pages 73-76.

C. There is no genuine issue of material fact related to the allegations set forth in the Grays Complaint against Plaintiff and Plaintiff is entitled to an Order of Dismissal as a matter of law in said action.

AS TO GRAYS FIRST CAUSE OF ACTION

The Grays First Cause of Action is characterized as a claim for breach of contract accompanied by a fraudulent act and or with fraudulent intent. *Kahn Construction Co. vs. South Carolina National Bank of Charleston*¹⁸ restates the well established rule concerning fraud in South Carolina.

In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either the knowledge of its falsity or a reckless disregard of its truth and falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. Failure to prove any one of the foregoing elements is fatal to recovery.

In this case Plaintiff had nothing to do with the Grays decision to purchase the two speculative investment lots. Plaintiff agreed to refinance the two purchase money mortgages obtained from Community First Bank when said institution refused to renew with interest only terms. The only commitment made by Plaintiff was that it would provide interest only financing for twelve months. The Grays were in fact provided with the interest only loans as represented. When the original notes matured new terms were negotiated. The Grays do not dispute executing said notes and can provide no evidence that Plaintiff ever agreed to renew the original notes with identical terms.¹⁹ Furthermore, the Grays executed all loan documents in question under the guidance and supervision of their attorney, James Belk.²⁰ The Grays point to no false representations made by Plaintiff nor have the Grays provided any evidence or testimony establishing that all elements of fraud are present in this matter.²¹ At all times the Grays have received what they bargained for. The claim for breach of contract accompanied by a fraudulent act and or with fraudulent interest must fail.

¹⁸ 275 S.C. 381, 384, 271 S.E. 2d. 414 (1980)

¹⁹ Deposition of J. Charles Gray dated March 25, 2013 at page 86, lines 2-20. Deposition of Peggy B. Gray dated March 25, 2013 at page 21, lines 18-25.

²⁰ Deposition of J. Charles Gray dated March 25, 2013 at page 55, lines 7-25; Page 56. Deposition of Peggy B. Gray dated March 25, 2013 at page 8, lines 18-25; Page 9, line 1-7; Page 14, line 23-25.

²¹ Deposition of Peggy B. Gray dated March 25, 2013 at page 21, lines 18-25.

AS TO GRAYS SECOND CAUSE OF ACTION

The Grays Second Cause of Action is characterized as a claim for breach of fiduciary duty. A fiduciary relationship exists when a person places special trust or confidence in another.²² An action for breach of fiduciary duty is an action at law.²³ Plaintiff was not involved with the Grays decision to purchase the two speculative lots. The Grays are well seasoned and experienced real estate investors. They had bought and sold lots in the past and were familiar with the risk/reward consequences of investment opportunities.²⁴ The fact of the matter is that the economy turned and the Grays could not sell the lots. The fact that the real estate market suffered a down turn was not a problem created by Plaintiff which the Grays acknowledge.²⁵ No special trust was placed in the hands of any bank employee. Neither in their pleadings nor in any evidence presented by the Grays can they identify any action of Plaintiff which resulted in an establishment or breach of fiduciary relationship. Once again the Grays received what they requested, no other commitment was ever made to the Grays and there is no evidence to the contrary. The second cause of action must fail.

AS TO GRAYS THIRD CAUSE OF ACTION

The Grays Third Cause of Action is characterized as a claim of fraud. In the interest of brevity, Plaintiff will refer the Court to its argument set forth as to the First Cause of Action. The only written commitments of Plaintiff are expressly set forth in the Notes and Mortgages which are identified in the foreclosure complaint. Plaintiff loaned the monies requested and the Grays have failed to pay. The fact that the Grays are unable to sell the properties due a downturn in the real estate market is an issue beyond the control of the Plaintiff. Plaintiff cannot be held responsible for the inability to sell the properties. The Grays have failed to establish that the elements required to maintain an action for fraud are present by testimony or otherwise.

AS TO GRAYS FOURTH CAUSE OF ACTION

In the Fourth Cause of Action in the Grays Complaint it characterizes the claim as a violation of the Consumer Protection Code. However, the allegations identify an alleged

²² *O'Shea v. Lesser*, 308 S.C. 10.15, 416 S.E. 2d 629, 631 (1992)

²³ *Fulture-Group II v. Nations Bank*, 324 S.C. 89, 478 S.E. 2d 45, 50 (1996).

²⁴ Deposition of J. Charles Gray dated March 25, 2013 at page 34, lines 15-25, Page 35, lines 1-4. Deposition of Peggy B. Gray dated March 25, 2013 at page 22, lines 24-25; Page 23, line 1-10.

²⁵ Deposition of Peggy B. Gray dated March 25, 2013 at page 21, lines 24-25; Page 22, line 1-6.

violation of the South Carolina Unfair Trade Practices Act. The undisputed facts reveal that the Grays entered into Lot Purchase and Sale Agreements with Crescent Communities for the purchase of two speculative lake lots on Lake Keowee. The Grays chose the lots, arrived at the price they were willing to pay for the lots via the auction process and signed a contract to purchase. (See Exhibit 1 of the Deposition of Peggy B. Gray and Exhibit 1 of the Deposition of Joseph Charles Gray).

It is further undisputed that Plaintiff provided interest only loans as requested by the Grays for a period of one year with all notes due and payable on July 9, 2009. No other commitment was provided by Plaintiff to the Grays. At maturity said notes were renewed with new loan terms. The monies which were loaned enabled the Grays to refinance the purchase money mortgages that were used to purchase the lots in question. The Grays only complained when they were unable to resell the lots in order to satisfy the obligations and were no longer able to make payments. The Grays claim that Plaintiff had some duty or obligation to refinance the loans at interest only upon identical terms indefinitely until they could find a purchaser for the lots. They offer no testimony that Plaintiff ever gave such a commitment.²⁶ They offer testimony that they may have been able to continue to make payments had the terms of the original notes been extended but admit that they suffered a drastic reduction in income which led to their financial difficulties.²⁷ The Grays do not have any evidence that there was any bank conduct in making loans which adversely affected the public interest. Accordingly, their claim must fail. *Robertson vs. First Union Nat'l Bank*, 350 S.S.389, 565 S.E.2d.309 (Ct. App. 2002).

AS TO GRAYS FIFTH CAUSE OF ACTION

The Grays Fifth Cause of Action is characterized as a claim of tortious interference with present and prospective opportunities. Gray testified that during the pendency of this action that they have purchased a new primary residence and obtained financing with satisfactory terms. Gray further testified that their financial difficulties were caused by loss of income; inability to sell real property and the general state of the economy for the past few years.²⁸ Furthermore, the Grays were parties to a separate foreclosure action commenced by First Citizens Bank and Trust

²⁶ Deposition of Peggy B. Gray dated March 25, 2013 at page 20, lines 1-9. Deposition of J. Charles Gray dated March 25, 2013 at page 84, lines 6-25; Page 86, lines 11-21.

²⁷ Deposition of Peggy B. Gray dated March 25, 2013 at page 16, lines 12-14; Page 17, line 6-16. Deposition of J. Charles Gray dated March 25, 2013 at page 68, lines 16-25

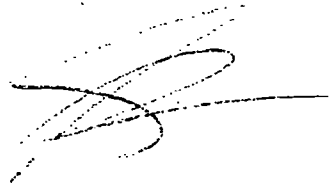
²⁸ Deposition of Peggy B. Gray dated March 25, 2013 at page 17, lines 6-16.

Company, Inc. filed in 2010.²⁹ Gray admits that they have failed to make payments due to Plaintiff and that Plaintiff is entitled to foreclose.³⁰ The Grays own testimony indicates that their economic difficulties were not caused by the Plaintiff. Neither in their pleadings nor in any evidence presented by the Grays can they identify any action of Plaintiff which supports their claim of tortious interference with present and prospective opportunities.³¹

CONCLUSION

There is no genuine issue of material fact and Plaintiff is entitled to judgment as a matter of law regarding the foreclosure action. The counterclaims of the Grays should be dismissed as there is no evidence that can be presented by the Grays that Plaintiff committed an unfair trade practice, breached a fiduciary duty, breached its contract with the Grays, or defrauded them. No evidence or testimony has been offered to show that Plaintiff has interfered with the Grays economic opportunities. Furthermore the Grays have offered no evidence of actual damages suffered. Their counterclaims fail to state any cause of action that can be maintained or supported.

Respectfully submitted.



Bradley K. Richardson
(S.C. Bar # 68385)
133 Straight Drive
Anderson, SC 29625
Telephone: (864) 222-0292
Facsimile: (864) 222-0892
Attorney for the Plaintiff

Anderson, South Carolina
June 3, 2013

²⁹ Deposition of J. Charles Gray dated March 25, 2013 at page 78 and 79; Page 80, line 1. Deposition of Peggy B. Gray dated March 25, 2013 at page 22, lines 7-12.

³⁰ Deposition of Peggy B. Gray dated March 25, 2013 at page 24, lines 15-25. Deposition of J. Charles Gray dated March 25, 2013 at page 90, lines 4-7

³¹ Deposition of Peggy B. Gray dated March 25, 2013 at page 30, lines 1-16. Deposition of J. Charles Gray dated March 25, 2013 at page 5, lines 3-14; Page 6, lines 15-20.

LOAN NUMBER	LOAN NAME	ACCT NUMBER	NOTE DATE	INITIALS
101	Peggy B Gray		06-05-08	DBS
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$180,000.00	Wall Street Journal Prime plus 0.500%	5.500%	06-05-09	Commercial

Creditor Use Only

PROMISSORY NOTE (Commercial - Single Advance)

DATE AND PARTIES The date of this Promissory Note (Note) is June 5, 2008. The parties and their addresses are:

LENDER:

FIRST SAVERS BANK
935 South Main Street, Suite 300
Greenville, South Carolina 29601
Telephone: (854) 477-2550

BORROWER:

PEGGY B GRAY
103 Dove Cove Lane
Westminster, South Carolina 29601

1. DEFINITIONS As used in this Note, the terms have the following meanings:

- A. **Pronouns** The pronouns "I," "me," and "my" refer to each Borrower signing this Note individually and together. "You" and "Your" refer to the Lender.
- B. **Note** Note refers to this document, and any extensions, amendments, modifications and substitutions of this Note.
- C. **Loan** Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. **Loan Documents** Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. **Property** Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. **Percent** Rates and rate change limitations are expressed as annualized percentages.

2. PROMISE TO PAY For value received, I promise to pay you or your order, at your address or at such other location as you may designate, the principal sum of \$180,000.00 (Principal) plus interest from June 5, 2008 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

3. INTEREST Interest will accrue on the unpaid Principal balance of this Note at the rate of 5.500 percent (Interest Rate) until June 5, 2008, after which time it may change as described in the Variable Rate subsection.

- A. **Post Maturity Interest** After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. **Maximum Interest Amount** Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. **Statutory Authority** The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-2-305, 37-2-105 and 37-10-101 et seq.
- D. **Accrual** Interest accrues using an Actual/360 days counting method.
- E. **Variable Rate** The Interest Rate may change during the term of this transaction:
 - (1) **Index** Beginning with the first Change Date, the Interest Rate will be based on the following index: the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks known as the Wall Street Journal Prime Rate.
 - (2) **The Current Index** is the most recent index figure available on each Change Date. You do not guarantee by selecting this index or the margin that the Interest Rate on this Note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers. If this index is no longer available, you will substitute a similar index. You will give me notice of your choice.
 - (3) **Change Date** Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change June 5, 2008 and daily thereafter.
 - (4) **Calculation Of Change** On each Change Date you will calculate the Interest Rate, which will be the Current Index plus 0.500 percent. The result of this calculation will be rounded to the nearest .001 percent. Subject to any limitations, this will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note.
 - (5) **Effect Of Variable Rate** A change in the Interest Rate will have the following effect on the payments: The amount of scheduled payments and the amount of the final payment will change.

4. REMEDIAL CHARGES In addition to interest or other finance charges, I agree that I will pay those additional fees based on the method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

- A. **Late Charge** If a payment is more than 15 days late, I will be charged 5.000 percent of the Amount of Payment. I will pay this late charge promptly but only once for each late payment.

5. PAYMENT I agree to pay this Note in installments of accrued interest beginning July 5, 2008, and then on the 5th day of each month thereafter, agree to pay the entire unpaid Principal and any accrued but unpaid interest on June 5, 2009.

Peggy B Gray
South Carolina Promissory Note
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Payments will be rounded to the nearest \$0.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different allocation of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payments made.

6. **PREPAYMENT.** I may prepay this loan in full or in part at any time. Any prepayment will not include any late scheduled payments until I pay in full.

7. **LOAN PURPOSE.** This is a business-purpose loan transaction.

8. **SECURITY.** The loan is secured by separate security instruments prepared together with this Note as follows:

Document Name

Parties to Document

Mortgage - Lot Waterford Ridge

Feggy B Gray

9. **DEFAULT.** I will be in default if any of the following occur:

A. **Payments.** I fail to make a payment in full when due.

B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency or appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of my status by, or the commencement of any proceeding under any present or future Federal or state insolvency, bankruptcy, reorganization, liquidation or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.

C. **Death or Incompetency.** I die or am declared legally incompetent.

D. **Failure to Perform.** I fail to perform any condition or covenant of this Note.

E. **Other Documents.** A default occurs under the terms of any other Loan Document.

F. **Other Agreements.** I am in default on any other debt or agreement I make with you.

G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate or conceals a material fact at the time it is made or provided.

H. **Judgment.** I fail to satisfy or appeal any judgment against me.

I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens condemnation by a legal authority.

J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.

K. **Property Transfer.** I transfer all or a substantial part of my money or property.

L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.

M. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the loan is impaired for any reason.

10. **DUE ON SALE OR ENCUMBRANCE.** You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of or contract for the creation of, an lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by Federal law (12 C.F.R. 591) as applicable.

11. **WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers By Borrower.** In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note:

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other cosigner.

(3) You may release, substitute or impair any Property securing this Note.

(4) You, or any institution participating in this Note, may waive your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guaranteeing or relating to this Note.

B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

12. **REMEDIES.** After I default, you may at your option do any one or more of the following:

A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Note immediately due.

B. **Sources.** You may use any and all remedies you have under state or federal law or in any Loan Document.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.

D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note and accrue interest at the highest post-maturity interest rate.

E. **Set-Off.** You may use the right of set-off. This means you may set off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you, any money owed to me on an item presented to you or in your possession for collection or exchange, and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Feggy B Gray
South Carolina Promissory Note
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Your right of setoff does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any individual Retirement Account or other tax-deferred investment account.

You will not be liable for the dishonor of any check when the dishonor occurs because of a setoff or application of my assets. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of setoff.

F. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedies. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

13. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment, and paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

14. COMMISSIONS. I understand and agree that you or your affiliate will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

15. WARRANTIES AND REPRESENTATIONS. I have the right and authority to enter into this Note. The grant and delivery of this Note will not violate any agreement governing me or to which I am a party.

16. INSURANCE. I agree to obtain the insurance described in this Loan Agreement:

A. Property Insurance. I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing the Loan.

B. Insurance Warranties. I agree to purchase any insurance coverages that are required, in the amounts you require, as described in this or any other documents I sign for the Loan. I will provide you with continuing proof of coverage. I will buy or provide insurance from a firm licensed to do business in the State where the Property is located. If I buy or provide the insurance from someone other than you, the firm will be reasonably acceptable to you. I will have the insurance company name you as loss payee on any insurance policy. You will apply the insurance proceeds toward what I owe you on the outstanding balance. I agree that if the insurance proceeds do not cover the amounts I still owe you, I will pay the difference. I will keep the insurance and all debts secured by this agreement paid. I want to buy the insurance from you. I have signed a separate statement agreeing to this purchase.

17. APPLICABLE LAW. This Note is governed by the laws of South Carolina, the United States of America, and to the extent required by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

18. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone or anyone else who is obligated on the Loan or any number of us together to collect the Loan. Extending the Loan or new obligations under the Loan will not affect my duty under the Loan and will not be a guarantee to pay the Loan. This Note shall run to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

19. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

20. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

21. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver and file any additional documents or certifications that you may consider necessary to perfect, continue and preserve my obligations under this Loan and to continue my status on any Property. Time is of the essence.

22. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency and will give me reasonable time in which to supply the information.

23. ERRORS AND OMISSIONS. I agree I requested by you to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all our closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs (including highway tolls, illustration and not limitation, actual expenses, legal fees and marketing losses) for failing to reasonably comply with your requests within thirty (30) days.

24. AGREEMENT TO ARBITRATE. You or I may submit to binding arbitration any dispute, claim or other matter in question between or among you and me that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as you and I agree to in writing. For purposes of this section, this Transaction includes this Note and the other Loan Documents and proposed loans or extensions of credit that relate to this Note. You or I will not arbitrate any Dispute within any "core proceedings" under the United States Bankruptcy laws.

You and I must consent to arbitrate any Dispute concerning a debt secured by real estate at the time of the proposed arbitration. You may foreclose or exercise any powers of sale against real property securing a debt underlying any Dispute before, during or after any arbitration. You may also enforce a debt secured by this real property and underlying the Dispute before, during or after any arbitration.

You or I may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law, seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to you or me, or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

You and I acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among you and me involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Note, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Note or another writing.

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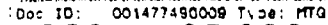
25. **WAIVER OF TRIAL FOR ARBITRATION.** You and I understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes through arbitration instead of litigation. If any Dispute is arbitrated, you and I voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

26. **SIGNATURES.** By signing and/or seal, agree to the terms contained in this Note. Also each party agrees to the copy of this Note.

BORROWER

Page 3 of 4
Indemnity

Harry B. Gray (See 1)



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MORTGAGE

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REGISTER OF DEEDS
JUN 11 P 2 42

contained in this Security instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement No. 01, dated June 5, 2008, from Mortgagor to Lender, with a loan amount of \$180,000.00.

B. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security instrument.

5. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

6. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor has the right and authority to enter into this Security instrument. The execution and delivery of this Security instrument will not violate any agreement governing Mortgagor or to which Mortgagor is a party.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. DEFAULT. Mortgagor will be in default if any of the following occur:

A. Payments. Mortgagor fails to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Death or Incompetency. Mortgagor dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Insecurity. Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

13. REMEDIES. On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the

collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

15. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 or seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of

any Hazardous Substance on, under or about the Property, (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property, or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

16. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

17. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals will include a standard "mortgage clause" and, where applicable, "loss payable clause." If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include coverages not originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

18. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

19. CO-SIGNERS. If Mortgagor signs this Security Instrument but is not otherwise obligated to pay the Secured Debts, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debts and Mortgagor does not agree by signing this Security Instrument to be personally liable on the Secured Debts. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or pre-action laws.

20. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

21. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

22. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or pre-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

23. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

24. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

25. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail in the appropriate party's address listed in the DATE AND PARTIES section, or in any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

26. AGREEMENT TO ARBITRATE. Lender or Mortgagor may submit to binding arbitration any dispute, claim or other matter in question between or among Lender and Mortgagor that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as Lender and Mortgagor agree to in writing. For purposes of this section, this Transaction includes this Security Instrument and any other document relating to the Secured Debts, and proposed loans or extensions of credit that relate to this Security Instrument. Lender or Mortgagor will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws. Lender and Mortgagor must consent to arbitrate any Dispute concerning the Secured Debt secured by real estate at the time of the proposed arbitration. Lender may foreclose or exercise any powers of sale against real property

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JAMES S. BELK, ATTORNEY
1202 NORTH MAIN STREET
ANDERSON, SC 29621
6-770

G-770

Exhibit "A"

PROPERTY DESCRIPTION

All that certain piece, parcel or lot of land situate, lying and being in the County of Oconee, State of South Carolina and being shown and designated as Lot Number Twenty Nine (29), as shown on that certain plat of record in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book B129 at Page 1-8. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This conveyance is specifically made subject to any and all recorded rights-of-way, easements, conditions and restrictions pertaining to the property herein conveyed, and in addition are subject to any of the foregoing which may appear from an inspection of the premises.

This being a portion of that property conveyed unto Peggy B. Gray herein by Deed of Crescent Communities S.C., LLC., dated May 12, 2006 and recorded June 6, 2006 of record in the Office of the Clerk of Court for Oconee County, South Carolina in Book 1508 at Page 43.

IMS# P/O 165-00-01-001

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
101	Peggy B Gray	8800024901	07-09-09	SOS
NOTE AMOUNT	INDEX (w/ Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$175,000.00	Not Applicable	6.000%	07-09-10	Commercial
Creditor Use Only				

PROMISSORY NOTE(Commercial - Single Advance)
RENEWAL NOTE

DATE AND PARTIES: The date of this Promissory Note (Note) is July 9, 2009. The parties and their addresses are:

LENDER:

PLANTATION FEDERAL BANK
AS SUCCESSOR TO FIRST SAVERS BANK
935 South Main Street, Suite 300
Greenville, SC 29603
Telephone: (864) 477-2560

BORROWER:

PEGGY B GRAY
103 Dove Cove Lane
Westminster, SC 29693

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I," "me" and "my" refer to each Borrower signing this Note, individually and together. "You" and "your" refer to the Lender.
- B. **Note.** Note refers to this document and any extensions, renewals, modifications and substitutions of this Note.
- C. **Loan.** Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. **Loan Documents.** Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. **Property.** Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. **Percent.** Rates and rate change limitations are expressed as annualized percentages.

2. RENEWAL. This Note is a renewal of the following described note:

Note Date	Note Number	Note Amount
June 5, 2009	# 8800024901 - 101	\$175,000.00

I have requested that the note listed in the table above be renewed. The remaining balance of the note listed in the table above is \$175,000.00.

3. PROMISE TO PAY. For value received, I promise to pay you or your order, at my address, or at such other location as you may designate, the principal sum of \$175,000.00 (Principal) plus interest from July 9, 2009 on the unpaid Principal balance until this Note matures or this obligation is accelerated.**4. INTEREST.** Interest will accrue on the unpaid Principal balance of this Note at the rate of 6.000 percent (Interest Rate).

- A. **Post-Maturity Interest.** After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. **Maximum Interest Amount.** Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. **Statutory Authority.** The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-305, 37-3-105 and 37-10-101 et. seq.
- D. **Accrual.** Interest accrues using an Actual/360 days counting method.

5. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

- A. **Late Charge.** If a payment is more than 15 days late, I will be charged 6.000 percent of the Amount of Payment. I will pay this late charge promptly but only once for each late payment.

6. PAYMENT. I agree to pay this Note in installments of accrued interest beginning August 9, 2009, and then on the 9th day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on July 9, 2010.

Payments will be rounded to the nearest \$ 01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

7. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

Peggy B Gray
South Carolina Promissory Note
SC:4Xdbaleyc00105100006381009070309N

©1996 Bankers Systems, Inc., St. Cloud, MN **EXTRA**

Page 1

App. 000176

8. **LOAN PURPOSE.** This is a business purpose loan transaction.

9. **SECURITY.** The loan is secured by previously executed separate security instruments described as follows:

Description	Date
Mortgage	June 5, 2009

10. **DEFAULT.** I will be in default if any of the following occur:

- A. **Payments.** I fail to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The estate, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.
- C. **Death or Incompetency.** I die or am declared legally incompetent.
- D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Note.
- E. **Other Documents.** A default occurs under the terms of any other Loan Document.
- F. **Other Agreements.** I am in default on any other debt or agreement I have with you.
- G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgment.** I fail to satisfy or appeal any judgment against me.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.
- K. **Property Transfer.** I transfer all or a substantial part of my money or property.
- L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.
- M. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the loan is impaired by any reason.

11. **DUE ON SALE OR ENCUMBRANCE.** You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 551), as applicable.

12. **WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers By Borrower.** In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take and generally waive defenses that may be available based on those actions or based on the status of a party to this Note:

- (1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.
- (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
- (3) You may release, substitute or impair any Property securing this Note.
- (4) You or any institution participating in this Note, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B. **No Waiver By Lender.** Your course of dealing or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

13. **REMEDIES.** After I default, you may at your option do any one or more of the following:

- A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Note immediately due.
- B. **Sources.** You may use any and all remedies you have under state or federal law or in any Loan Document.
- C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.
- D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.
- E. **Set-Off.** You may use the right of set-off. This means you may set off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you, any money owed to me on an item presented to you or in your possession for collection or exchange, and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

F. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

15. COMMISSIONS. I understand and agree that you or your affiliate will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

16. WARRANTIES AND REPRESENTATIONS. I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

17. APPLICABLE LAW. This Note is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

18. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

19. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan. As a result, this Loan would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

20. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

21. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

22. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

23. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you or any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

24. AGREEMENT TO ARBITRATE. You or I may submit to binding arbitration any dispute, claim or other matter in question between or among you and me that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as you and I agree to in writing. For purposes of this section, this Transaction includes this Note and the other Loan Documents, and proposed loans or extensions of credit that relate to this Note. You or I will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws.

You and I must consent to arbitrate any Dispute concerning a debt secured by real estate at the time of the proposed arbitration. You may, foreclose or exercise any powers of sale against real property securing a debt underlying any Dispute before, during or after any arbitration. You may also enforce a debt secured by this real property and underlying the Dispute before, during or after any arbitration.

You or I may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law, seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to you or me, or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

You and I acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among you and me involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Note, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Note or another writing.

25. WAIVER OF TRIAL FOR ARBITRATION. You and I understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes through arbitration instead of litigation. If any Dispute is arbitrated, you and I voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

26. SIGNATURES. By signing under seal I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER

Peggy B. Gray (Seal)
Peggy B. Gray
Individually

LOAN NUMBER	LOAN NAME	ACCT NUMBER	NOTE DATE	INITIALS
001	J. Charles Gray		06/05/08	SJS
NOTE AMOUNT	INDEX (w-Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$180,000.00	Wall Street Journal Prime Plus 0.500%	5.500%	06/25/09	Commercial

Creditor Use Only

PROMISSORY NOTE

(Commercial - Single Advance)

DATE AND PARTIES: The date of this Promissory Note (Note) is June 5, 2008. The parties and their addresses are:

LENDER:

FIRST SAVINGS BANK
275 South Main Street, Suite 200
Greenville, South Carolina 29601
Telephone: (864) 477-2550

Borrower:

J. CHARLES GRAY
103 Dove Cove Lane
Westminster, South Carolina 29690

1. DEFINITIONS: As used in this Note, the terms have the following meanings:

- A. **Principals:** The principals "I," "me," "and "my" refer to each Signer signing this Note, individually and together. "You" and "your" refer to the Lender.
- B. **Note:** Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. **Loan:** Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as, applications, security agreements, disclosures or notes, and this Note.
- D. **Loan Documents:** Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. **Property:** Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. **Percent:** Rates and rate change limitations are expressed as annualized percentages.

2. PROMISE TO PAY: For value received, I promise to pay you or your order, at your address or at such other location as you may designate, the principal sum of \$180,000.00 (Principal) plus interest from June 5, 2008 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

3. INTEREST: Interest will accrue on the unpaid Principal balance of this Note at the rate of 5.500 percent (Interest Rate) until June 5, 2008, after which time it may change as described in the Variable Rate Subsection.

A. **Post-Maturity Interest:** After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.

B. **Maximum Interest Amount:** Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any amount not so applied will be refunded to me.

C. **Statutory Authority:** The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-3-101 as to you.

D. **Accrual:** Interest accrues using an Actual/360 days counting method.

E. **Variable Rate:** The Interest Rate may change during the term of this transaction:

(1) **Index:** Beginning with the first Change Date, the Interest Rate will be based on the following index: The base rate on corporate loans posted by at least 15% of the nation's 10 largest banks known as the Wall Street Journal Prime Rate.

The Current Index is the most recent index figure available on each Change Date. You do not guarantee, by selecting this index, or the margin, that the Interest Rate on this Note will be the same rate you charge on any other class or class of loans you make to me or other borrowers. If this index is no longer available, you will substitute a similar index. You will give me notice of your choice.

(2) **Change Date:** Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change June 5, 2008 and daily thereafter.

(3) **Calculation Of Change:** On each Change Date, you will calculate the Interest Rate, which will be the Current Index plus 0.500 percent. The result of this calculation will be rounded in the nearest 001 percent. Subject to any limitations, this will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note.

(4) **Effect Of Variable Rate:** A change in the Interest Rate will have the following effect on the payments: The amount of scheduled payments and the amount of the final payment will change.

4. REMEDIAL CHARGES: In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. **Late Charge:** If a payment is more than 15 days late, I will be charged 5.000 percent of the Amount of Payment. I will pay this late charge promptly, but only once for each late payment.

5. PAYMENT: I agree to pay this Note in installments of accrued interest beginning July 5, 2008 and then on the 5th day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on June 5, 2009.

J. Charles Gray
South Carolina Promissory Note
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Page 1

Payments on the loan to the nearest \$1. With my final payment I agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 25th, 30th or 31st day of a month that contains no such day, will instead, be made on the last day of such month.

Each payment made on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe. If my principal and interest, if you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on the payment record.

6. **PREPAYMENT.** I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments paid, due, or to be.

7. **LOAN PURPOSE.** This is a business purpose loan transaction.

8. **SECURITY.** The Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name	Parties to Document
Mortgage, Lot 27 Wateland Ridge	J Charles Gray

9. **DEFAULT.** I will be in default if any of the following occur:

A. **Payments.** I fail to make a payment in full when due.

B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver for or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors or, on behalf of, the voluntary or involuntary termination of existence by or the commencement of a proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.

C. **Death or Incompetency.** I die or am declared legally incompetent.

D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Note.

E. **Other Documents.** A default occurs under the terms of any other Loan Document.

F. **Other Agreements.** I am in default on any other debt or agreement I have with you.

G. **Misrepresentation.** I have any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. **Judgment.** I fail to satisfy or oppose any judgment against me.

I. **Forfeiture.** The Property is used in a manner not for a purpose that threatens confiscation by a legal authority.

J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.

K. **Property Transfer.** I transfer all or a substantial part of my money or property.

L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.

M. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

10. **DUE ON SALE OR ENCUMBRANCE.** You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

11. **WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers By Borrower.** In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

(4) You, or any institution participating in this Note, may reserve your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guaranteeing or relating to this Note.

B. **No Waiver By Lender.** Your course or dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, any power or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

12. **REMEDIES.** After I default, you may at your option do any one or more of the following:

A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Note immediately due.

B. **Sources.** You may use any and all remedies you have under state or federal law or in any Loan Document.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.

D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest past maturity interest rate.

E. **Set Off.** You may use the right of set-off. This means you may set off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you, any money owed to me on an item presented to you or in your possession for collection or exchange, and any repurchase agreement or other non-deposit obligation. Any amount due and payable under the terms of this Note means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

J Charles Gray
South Carolina Promissory Note
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12. **RIGHT OF FIRST REFUSAL.** This Note is subject to a right of first refusal in favor of the lender, which shall be exercisable by the lender at its option. This right shall not apply to any individual not named in the list of persons to whom the lender has granted a right of first refusal.

13. **COVENANTS.** You will not be liable for the payment of any taxes which the lender or others because you set off against any of the accounts. I agree to hold you harmless from any such taxes and from any such liability for the payment of any such taxes.

14. **Waiver.** Except as otherwise required by law, by executing any one or more of these notes, you do not intend to waive any other remedy. I agree to hold you harmless from any such taxes and from any such liability for the payment of any such taxes. I agree to hold you harmless from any such taxes and from any such liability for the payment of any such taxes.

15. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** In the event of default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other loan document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect at the time of this Note. All fees and expenses will be secured by the first mortgage. I agree to pay the reasonable attorneys' fees incurred by you to enforce your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

16. **COMMISSIONS.** I understand and agree that you or your affiliates and agents commissions or fees or any other remuneration and that each such fee or other services that flow through you to your affiliates.

17. **WARRANTIES AND REPRESENTATIONS.** I warrant the truth and accuracy of the information contained in this Note. The execution and delivery of this Note will not constitute any agreement governing me or to which I am a party.

18. **APPLICABLE LAW.** This Note is governed by the laws of South Carolina, the United States of America, and to the extent required by the laws of the jurisdiction where the property is located, except to the extent such state laws are preempted by federal law.

19. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** My obligation to pay the loan is independent of the obligation of any other person who has also agreed to pay it. You may sue the obligor, or anyone else who is obligated on the loan, or any number of us together to collect the loan. If one of us dies, my obligation under the loan will not affect my duty under the loan and I will still be obligated to pay the loan. This Note shall survive to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my successors and assigns, heirs and assigns.

20. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless it is in writing and executed by you and me. This Note and the other loan documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions shall still be enforceable.

21. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

22. **NOTICE FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it in person to the appropriate party's address listed in the DATA AND PARTIES section, or to any other address designated in writing. Notice to me and Borrower will be deemed to be given to all Borrowers. I will inform you in writing of any change in my home address or other such information. I will provide you with any financial statements or information you request. If financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or filings that you may consider necessary to perfect, continue, and preserve the obligations under the loan and to confirm your lien status on any property. Time is of the essence.

23. **CREDIT INFORMATION.** I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give the reasonable time or when to supply the information.

24. **ERRORS AND OMISSIONS.** I agree, if requested by you, to fully cooperate in the collection of payments in the reasonable discretion of you or any one of the loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including the way of collection and not limitation: actual expenses, legal fees and marketing costs for failing to reasonably comply with your requests with in twelve (12) days.

25. **AGREEMENT TO ARBITRATE.** You and I agree submit to binding arbitration any dispute, claim or other matter in question between or among you and me that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as you and I agree to in writing. For purposes of this section, this Transaction includes this Note and the other loan documents, and proposed loans or extensions of credit that relate to this Note. You and I will not arbitrate any Dispute with in any "core proceedings" under the United States bankruptcy laws.

You and I must consent to arbitrate any Dispute concerning a debt secured by real estate at the time of the proposed arbitration. You may to enforce or exercise any powers of sale against real property securing a debt underlying any Dispute before, during or after any arbitration. You may also enforce a debt secured by this real property and underlying the Dispute before, during or after any arbitration.

You or I may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law, seek attachment, garnishment, receivership or other process and remedies from a court having jurisdiction to preserve their rights or to prevent irreparable injury to you or me; or foreclose against any property by any method or take legal action to recover any property. Exercising or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract law, or any other matter, law or equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforceable as any other judgment or decree.

You and I acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among you and me involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Note, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Note or another writing.

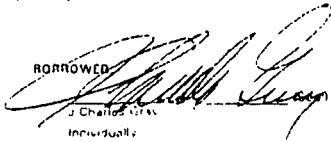
26. **WAIVER OF TRIAL FOR ARBITRATION.** You and I understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes through arbitration instead of litigation. If any Dispute is arbitrated, you and I voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

27. **SIGNATURES.** By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

J. Charles Gray
South Carolina Promissory Note
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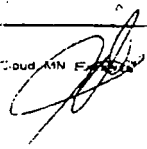
RECORDED

J. Charles Gray
Individually

RECORDED

J. Charles Gray
South Carolina Promissory Note
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 OCEENEE COUNTY, S.C.
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Ret. JAMES S. BELK, ATTORNEY
 202 NORTH MAIN STREET
 ANDERSON, SC 29621
ew

1400

019276

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This document was prepared by Dawn Bailey, First Savers Bank, 935 South Main Street, Suite 300, Greenville, South Carolina 29601

MORTGAGE

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is June 5, 2008. The parties and their addresses are:

MORTGAGOR:

J CHARLES GRAY
 103 Dove Cove Lane
 Westminster, South Carolina 29693

LENDER:

FIRST SAVERS BANK
 Organized and existing under the laws of South Carolina
 935 South Main Street, Suite 300
 Greenville, South Carolina 29601

1. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property:

SEE ATTACHED EXHIBIT A

The property is located in Oconee County at Lot 27 Waterford Ridge, Seneca, South Carolina 29672.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time will not exceed \$360,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants

J. Charles Gray
 South Carolina Mortgage
 SC:4448466300055000035880100623084

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Page 1

contained in this Security instrument. Interest under the Note will be deferred, accrued or capitalized; however Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 101 dated June 5, 2008 from Mortgagor to Lender with a loan amount of \$180,000.00.

B. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security instrument.

5. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

6. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor has the right and authority to enter into this Security instrument. The execution and delivery of this Security instrument will not violate any agreement governing Mortgagor or to which Mortgagor is a party.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

J. Charles Gray
South Carolina Mortgage
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Page 2

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. Payments.** Mortgagor fails to make a payment in full when due.
- B. Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.
- C. Death or Incompetency.** Mortgagor dies or is declared legally incompetent.
- D. Failure to Perform.** Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.
- E. Other Documents.** A default occurs under the terms of any other document relating to the Secured Debts.
- F. Other Agreements.** Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.
- G. Misrepresentation.** Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. Judgment.** Mortgagor fails to satisfy or appeal any judgment against Mortgagor.
- I. Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. Name Change.** Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.
- K. Property Transfer.** Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.
- L. Property Value.** Lender determines in good faith that the value of the Property has declined or is impaired.
- M. Insecurity.** Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

13. REMEDIES. On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the

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of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

23. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

24 INTERPRETATION. Whenever used, the singular includes the plural, and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

25. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the **DATE AND PARTIES** section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. This is of the essence.

26. AGREEMENT TO ARBITRATE. Lender or Mortgagor may submit to binding arbitration any dispute, claim or other matter in question between or among Lender and Mortgagor that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as Lender and Mortgagor agree to in writing. For purposes of this section, this Transaction includes this Security Instrument and any other document relating to the Secured Debts, and proposed loans or extensions of credit that relate to this Security Instrument. Lender or Mortgagor will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws.

Lender and Mortgagor must consent to arbitrate any Dispute concerning the Secured Debt secured by real estate at the time of the proposed arbitration. Lender may foreclose or exercise any powers of sale against real property securing the Secured Debt underlying any Dispute before, during or after any arbitration. Lender may also enforce the Secured Debt secured by this real property and underlying the Dispute before, during or after any arbitration.

Lender or Mortgagor may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law; seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to Lender or Mortgagor; or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

Lender and Mortgagor acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among Lender and Mortgagor involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Security Instrument, will govern the selection of the arbitrator and the arbitration process unless otherwise agreed to in this Security Instrument or another writing.

27. WAIVER OF TRIAL FOR ARBITRATION. Lender and Mortgagor understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes

JAMES S. BELK, ATTORNEY
1202 NORTH MAIN STREET
ANDERSON, SC 29621
2771

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Exhibit "A"

PROPERTY DESCRIPTION

All that certain piece, parcel or lot of land situate, lying and being in the County of Oconee, State of South Carolina and being shown and designated as Lot Number Twenty Seven (27), as shown on that certain plat of record in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book B129 at Page 1-8. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This conveyance is specifically made subject to any and all recorded rights-of-way, easements, conditions and restrictions pertaining to the property herein conveyed, and in addition are subject to any of the foregoing which may appear from an inspection of the premises.

This being a portion of that property conveyed unto Charles Gray herein by Deed of Crescent Communities S.C. LLC., dated May 12, 2006 and recorded June 6, 2006 of record in the Office of the Clerk of Court for Oconee County, South Carolina in Book 1508 at Page 35.

TMS= P.O 165-00-01-001

LOAN NUMBER 101	LOAN NAME J Charles Gray	ACCT. NUMBER [REDACTED]	NOTE DATE 07/09/09	INITIALS SDS
NOTE AMOUNT \$175,000.00	INDEX (w Margin) First Application	RATE 6.000%	MATURITY DATE 07/09/10	LOAN PURPOSE Commercial

Creditor Use Only

PROMISSORY NOTE(Commercial - Single Advance)
RENEWAL NOTE

DATE AND PARTIES. The date of this Promissory Note (Note) is July 9, 2009. The parties and their addresses are:

LENDER:

PLANTATION FEDERAL BANK
AS SUCCESSOR TO FIRST SAVERS BANK
935 South Main Street, Suite 300
Greenville, SC 29601
Telephone: (854) 477-2550

BORROWER:

J CHARLES GRAY
103 Dove Cove Lane
Westminster, SC 29693

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together. "You" and "Your" refer to the Lender.
- B. **Note.** Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. **Loan.** Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. **Loan Documents.** Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. **Property.** Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. **Percent.** Rates and rate change limitations are expressed as annualized percentages.

2. RENEWAL. This Note is a renewal of the following described note:

Note Date	Note Number	Note Amount
June 5, 2008	# 8800024927 - 101	\$180,000.00

I have requested that the note listed in the table above be renewed. The remaining balance of the note listed in the table above is \$175,000.00.

3. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of \$175,000.00 (Principal) plus interest from July 9, 2009 on the unpaid Principal balance until this Note matures or this obligation is accelerated.**4. INTEREST.** Interest will accrue on the unpaid Principal balance of this Note at the rate of 6.000 percent (Interest Rate).

- A. **Post-Maturity Interest.** After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. **Maximum Interest Amount.** Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. **Statutory Authority.** The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-505, 37-3-105 and 37-10-10, et seq.
- D. **Accrual.** Interest accrues using an Actual/360 days counting method.

5. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

- A. **Late Charge.** If a payment is more than 15 days late, I will be charged 6.000 percent of the Amount of Payment. I will pay this late charge promptly but only once for each late payment.

6. PAYMENT. I agree to pay this Note in installments of accrued interest beginning August 9, 2009, and then on the 9th day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on July 9, 2010.

Payments will be rounded to the nearest \$01. With the final payment, I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

7. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

J Charles Gray
South Carolina Promissory Note
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Page 1

8. **LOAN PURPOSE.** This is a business purpose loan transaction.

9. **SECURITY.** The loan is secured by previous executed, separate security instruments described as follows:

Description	Date
Mortgage	June 5, 2008

10. **DEFAULT.** I will be in default if any of the following occur:

- A. **Payments.** I fail to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law, by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.
- C. **Death or Incompetency.** I die or am declared legally incompetent.
- D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Note.
- E. **Other Documents.** A default occurs under the terms of any other Loan Document.
- F. **Other Agreements.** I am in default on any other debt or agreement I have with you.
- G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgment.** I fail to satisfy or appeal any judgment against me.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.
- K. **Property Transfer.** I transfer all or a substantial part of my money or property.
- L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.
- M. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

11. **DUE ON SALE OR ENCUMBRANCE.** You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591) as applicable.

12. **WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers By Borrower.** In addition to, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

- (1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.
- (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
- (3) You may release, substitute or impair any Property securing this Note.
- (4) You or any institution participating in this Note, may invoke your right of set off.
- (5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guaranteeing or relating to this Note.

B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

13. **REMEDIES.** After I default, you may at your option do any one or more of the following:

- A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Note immediately due.
- B. **Sources.** You may use any and all remedies you have under state or federal law or in any Loan Document.
- C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.
- D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.
- E. **Set-Off.** You may use the right of set off. This means you may set off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange, and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

F. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of my rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you. I am, in addition to the extent permitted by the United States Bankruptcy Code, agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

15. COMMISSIONS. I understand and agree that you or your affiliate will earn commissions or fees on any insurance products, and may earn such fees on other services that buy through you or your affiliate.

16. WARRANTIES AND REPRESENTATIONS. I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me to which I am a party.

17. APPLICABLE LAW. This Note is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

18. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

19. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. An amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, as a result, this Loan would become subject to Section 570 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

20. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

21. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information given you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligation under this Loan and to confirm your lien status on any Property. Time is of the essence.

22. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

23. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

24. AGREEMENT TO ARBITRATE. You or I may submit to binding arbitration any dispute, claim or other matter in question between or among you and me that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as you and I agree to in writing. For purposes of this section, this Transaction includes this Note and the other Loan Documents, and proposed loans or extensions of credit that relate to this Note. You or I will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws.

You and I must consent to arbitrate any Dispute concerning a debt secured by real estate at the time of the proposed arbitration. You may foreclose or exercise any powers of sale against real property securing a debt underlying any Dispute before, during or after any arbitration. You may also enforce a debt secured by this real property and underlying the Dispute before, during or after any arbitration.

You or I may, whether or not any arbitration has begun, pursue any self-help or similar remedies including taking property or exercising other rights under the law, seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to you or me, or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

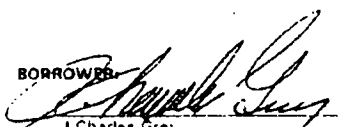
You and I acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among you and me involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Note, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Note or another writing.

25. WAIVER OF TRIAL FOR ARBITRATION. You and I understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes through arbitration instead of litigation. If any Dispute is arbitrated, you and I voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

26. SIGNATURES. By signing under seal I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER


J. Charles Gray (Seal)
Individually

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)
)
Plantation Federal Bank as successor in)
interest to First Savers Bank,)
)
Plaintiff,)
vs.)
)
Peggy B. Gray and Waterford Ridge)
Owners Association, Inc.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2010-CP-37-0416

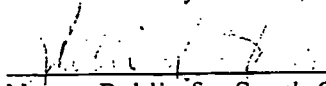
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the within **Motion for Summary Judgment and Memorandum in Support of Summary Judgment** in the above-captioned matters was served upon the persons named below by placing the same in the United States Mail with sufficient postage attached thereto at the addresses listed below as follows:

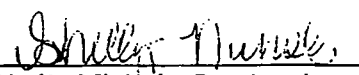
Charles R. Griffin, Jr.
3300 North Main Street, Suite D #339
Anderson, SC 29621

Dated this 6th day of June, 2013
Anderson, South Carolina

SWORN to and subscribed before
me this 6th day of June, 2013



Notary Public for South Carolina
My Commission Expires: 05/20/2021



Shelly Nichols, Paralegal to
Bradley K. Richardson, P.C.
133 Straight Drive
Anderson, SC 29625

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

Plantation Federal Bank as successor in
interest to First Savers Bank,)

Plaintiff,)

vs.)

J. Charles Gray and Waterford Ridge
Owners Association, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2010-CP-37-0417

CERTIFICATE OF SERVICE

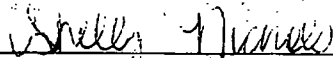
The undersigned hereby certifies that the within **Motion for Summary Judgment and Memorandum in Support of Summary Judgment** in the above-captioned matters was served upon the persons named below by placing the same in the United States Mail with sufficient postage attached thereto at the addresses listed below as follows:

Charles R. Griffin, Jr.
3300 North Main Street, Suite D #339
Anderson, SC 29621

Dated this 6th day of June, 2013
Anderson, South Carolina

SWORN to and subscribed before
me this 6th day of June, 2013.

Notary Public for South Carolina
My Commission Expires: 05/20/2021


Shelly Nichols, Paralegal to
Bradley K. Richardson, P.C.
133 Straight Drive
Anderson, SC 29625

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
PLANTATION FEDERAL BANK)
As successor in interest to FIRST)
SAVERS BANK,)
PLAINTIFF,)

-VS-

J. CHARLES GRAY a/k/a)
CHARLES GRAY and)
WATERFORD RIDGE)
OWNERS ASSOCIATION, INC.,)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS

C.A.# 2010-CP-37-417

RETURN TO MOTION FOR
SUMMARY JUDGMENT

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
PLANTATION FEDERAL BANK)
As successor in interest to FIRST)
SAVERS BANK,)
PLAINTIFF,)

-VS-

PEGGY B. GRAY and)
WATERFORD RIDGE OWNERS)
ASSOCIATION, INC.,)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS

C.A.# 2010-CP-37-416

RETURN TO MOTION FOR
SUMMARY JUDGMENT

The Defendants, Charles and Peggy Gray, hereinafter referred to as the Grays or
Defendants, returning to the Plaintiff's Motion for Summary Judgment state as follows:

BACKGROUND

Prior to June 5, 2008, the Grays had a business relationship with First Savers Bank's agents, servants, and/or employees, to wit, Shane Smith (hereinafter "Smith").

In 2006 pursuant to First Savers Bank's agents, servants, and/or employees solicitations, the Grays purchased and financed Lots 27 and 29 Waterford Ridge (hereinafter "the Lots").

Subsequently, Smith became employed with First Savers Bank, and Defendants refinanced the Lots with First Savers Bank.

At the time Defendants refinanced the Lots with Smith represented, expressly or by implication, that the loan would be an interest only loan and any further subsequent refinances would be interest only loans at or near the same interest rate.

When the loan came up for renewal, Smith demanded that Defendants refinance the loan pursuant to a fixed 15 year amortization loan.

Defendants informed Smith that Defendants could not afford to make payments under a fixed 15 year amortization loan, then Smith demanded that Defendants pay \$5,000.00 cash per lot to pay down on the principal and Smith stated that First Savers Bank would refinance, but at a higher interest rate.

Smith then informed Defendants that if Defendants paid approximately \$10,000.00 per lot down, then First Savers Bank would refinance at a lower interest rate, but Defendants could not afford that.

Defendants had no other choice but to pay the \$5,000.00 down per lot in order to refinance the loan on an interest only basis, although the loan was at a higher interest rate.

**FOR A FIRST CAUSE OF ACTION
BREACH OF CONTRACT ACCOMPANIED BY
FRAUDULENT ACTO AND/OR WITH FRAUDULENT INTENT**

To establish a claim for breach of contract accompanied by a fraudulent act, a party must show: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002). "Fraudulent act" is broadly defined as "any act characterized by dishonesty in fact or unfair dealing." *Id.* at 466, 560 S.E.2d at 612. "'Fraud,' in this sense, 'assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.'" *Id.* (quoting *Sullivan v. Calhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921)). Breach of contract accompanied by a fraudulent act requires proof of fraudulent intent relating to the breaching of the contract and not merely to its making, and such proof may or may not involve false representations. *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 276, 442 S.E.2d 620, 623 (Ct. App. 1994). "Fraudulent intent is normally proved by circumstances surrounding the breach." *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 54, 336 S.E.2d 502, 503-04 (Ct. App. 1985). "The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too

remote in either time or character." *Id.* at 54, 336 S.E.2d at 504. *D.R. Horton, Inc. v. Wescott Land Co., LLC*, 398 S.C. 528, 555-556 (S.C. Ct. App. 2012).

See attached Deposition Excerpts.

FOR A SECOND CAUSE OF ACTION BREACH OF FIDUCIARY DUTY

To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant. See generally *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004); *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335-336 (S.C. 2012).

A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817, 822 (Ct. App. 2004); *Regions Bank v. Schmauch*, 354 S.C. 648, 670, 582 S.E.2d 432, 444 (Ct. App. 2003); *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 476, 581 S.E.2d 496, 505 (Ct. App. 2003). A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003); *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992); *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 794 (1990); *Regions Bank*, 354 S.C. at 670, 582 S.E.2d at 444; *Steele v. Victory Sav. Bank*, 295 S.C. 290, 293, 368 S.E.2d 91, 93 (Ct. App. 1988). *Moore v. Moore*, 360 S.C. 241, 250-251 (S.C. Ct. App. 2004).

South Carolina holds the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature. *Burwell v. South Carolina Nat'l Bank*,

288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986); *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 497, 220 S.E.2d 116, 119 (Ct. App. 1975); *Johnson v. Serv. Mgmt., Inc.*, 319 S.C. 165, 167-68, 459 S.E.2d 900, 902 (Ct. App. 1995). However, a bank may be held to a fiduciary duty if it undertakes to advise a depositor as part of services the bank offers. *Burwell*, 288 S.C. at 40, 340 S.E.2d at 790; *Rush v. South Carolina Nat'l Bank*, 288 S.C. 560, 562, 343 S.E.2d 667, 668 (Ct. App. 1986). Such a relationship charges the bank with a duty to disclose material facts that may affect its customer's interests. *Burwell*, 288 S.C. at 40-41, 340 S.E.2d at 790. *Regions Bank v. Schmauch*, 354 S.C. 648, 671 (S.C. Ct. App. 2003).

See attached Deposition Excerpts.

FOR A THIRD CAUSE OF ACTION FRAUD

To sustain a claim of fraud, all of the following elements must be proven: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

Armstrong v. Collins, 366 S.C. 204, 218 (S.C. Ct. App. 2005).

To establish constructive fraud, all elements of actual fraud except the element of intent must be established." *Pitts v. Jackson Nat'l Life Ins. Co.*, 352 S.C. 319, 333, 574 S.E.2d 502, 509 (Ct. App. 2002) (quoting *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993)). "Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud while intent to deceive is an essential element of actual fraud." *Ardis*, 314 S.C. at 516, 431 S.E.2d at 269-70. Actual fraud is

distinguished from constructive fraud by the presence or absence of the intent to deceive. *Pitts*, 352 S.C. at 334, 574 S.E.2d at 509. *Armstrong v. Collins*, 366 S.C. 204, 219 (S.C. Ct. App. 2005).

See attached Deposition Excerpts.

**FOR A FOURTH CAUSE OF ACTION
Violations of §§ 39-5-10, et seq,
Unfair Trade Practices Act**

The SCUTPA provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." *S.C. Code Ann. § 39-5-20(a) (1985) (emphasis added)*. Although the SCUTPA provides for enforcement by the Attorney General, n12 it also provides for an action by a private party "who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by § 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages." *Id. § 39-5-140(a) (emphasis added)*; *F. Patrick Hubbard & Robert L. Felix, The South Carolina Law of Torts 415-16 (4th ed. 2011) (discussing provisions of the SCUTPA and quoting section 39-5-140 of the South Carolina Code)*. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 743 S.E.2d 808, 815-816 (S.C. 2013).

To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). "An act is 'unfair' when it is

offensive to public policy or when it is immoral, unethical, or oppressive." *Gentry v. Yonce*, 337 S.C. 1, 12, 522 S.E.2d 137, 143 (1999). "An act is 'deceptive' when it has a tendency to deceive." Id. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 743 S.E.2d 808, 816 (S.C. 2013).

To be actionable under the UTPA, an unfair or deceptive act or practice must have an impact upon the public interest. S.C. Code Ann. § 39-5-10(b) (Trade as used in this article "shall include any trade or commerce directly or indirectly affecting the people of this State.") (emphasis added); see *Haley Nursery Co. v. Forrest*, 298 S.C. 520, 524, 381 S.E.2d 906, 908 (1989). "Since 1986, South Carolina courts have required that a plaintiff bringing a private cause of action under UTPA allege and prove the defendant's actions adversely affected the public interest." *Daisy Outdoor Adver. Co. v. Abbott*, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996). "An impact on the public interest may be shown if the acts or practices have the potential for repetition." *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004) (citing *Crary v. Djebelli*, 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998)); *Wogan v. Kunze*, 366 S.C. 583, 606, 623 S.E.2d 107, 120 (Ct. App. 2005); *Noack Enters., Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 480, 351 S.E.2d 347, 350-51 (Ct. App. 1986).

The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts. *Singleton*, 358 S.C. at 379, 595 S.E.2d at 466; *Daisy*, 322 S.C. at 496, 473 S.E.2d at 51 (citing *Haley*, 298 S.C. at 524, 381 S.E.2d at 908; *Dowd v. Imperial Chrysler-Plymouth, Inc.*, 298 S.C. 439, 442, 381

S.E.2d 212, 214 (Ct. App. 1989); Barnes v. Jones Chevrolet Co., 292 S.C. 607, 613, 358 S.E.2d 156, 159-60 (Ct. App. 1987)). These two ways are not the only means for showing the potential for repetition or public impact, and each case must be evaluated on its own merits to determine what a plaintiff must show to satisfy the potential for repetition/public impact prong of the UTPA. *Daisy, 322 S.C. at 497, 473 S.E.2d at 51.*

Nevertheless, a plaintiff proves an adverse effect on public interests if he proves facts that demonstrate the potential for repetition. *Id. at 493, 473 S.E.2d at 49; see also Crary, 329 S.C. at 388, 496 S.E.2d at 23* ("The plaintiff need not allege or prove anything further in relation to the public interest requirement "). *Wright v. Craft, 372 S.C. 1, 29-30 (S.C. Ct. App. 2006).*

See attached Deposition Excerpts.

**FOR A FIFTH CAUSE OF ACTION
Tortuous Inference With Present and Prospective
Economic Opportunities**

South Carolina only recently recognized the tort of intentional interference with prospective contractual relations in *Crandall Corp. v. Navistar Int'l Transp. Corp., 302 S.C. 265, 395 S.E.2d 179 (1990).* The elements of the cause of action are (1) the intentional interference with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) causing injury to the plaintiff. *Brown v. Stewart, 348 S.C. 33, 2001 S.C. App. LEXIS 153, 557 S.E.2d 676 (S.C. Ct. App. 2001) (Shearouse Adv. Sh. No. 41 at 33, 50); Love v. Gamble, 316 S.C. 203, 214, 448 S.E.2d 876, 882 (Ct. App. 1994).* "As an alternative to establishing an improper purpose, the plaintiff may prove the defendant's method of interference was improper under the

circumstances." *Crandall*, 302 S.C. at 266, 395 S.E.2d at 180.; *United Educ. Distribs.*,

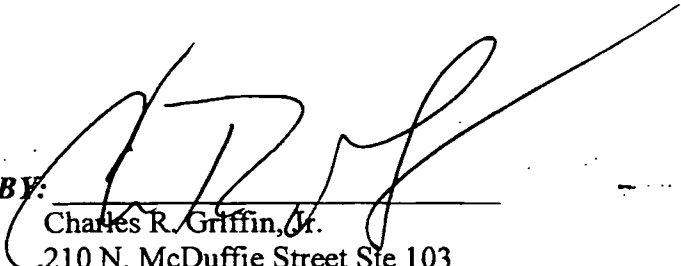
L.L.C. v. Educ. Testing Serv., 350 S.C. 7, 14 (S.C. Ct. App. 2002).

See attached Deposition Excerpts.

THE GRIFFIN FIRM, LLC

September 3, 2013

BY:


Charles R. Griffin, Jr.

210 N. McDuffie Street Ste 103

Anderson, SC 29621

(864) 231-8870

Attorney for Defendants

Charles and Peggy Gray

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS

Plantation Federal
Bank, as successor in
interest to First
Savers Bank,

Plaintiff,

-vs-

J. Charles Gray and
Waterford Ridge Owners
Association,

Defendants.)

COPY

C.A. No. 2010-CP-37-417

DEPOSITION OF JOSEPH CHARLES GRAY

PURSUANT to Notice and/or agreement between the parties, the deposition of JOSEPH CHARLES GRAY was taken at the law offices of Bradley K. Richardson, Esquire, 133 Straight Drive, Anderson, South Carolina, on Monday, March 25, 2013, commencing at the hour of approximately 11:10 a.m.

KAREN A. BELANGER, CVR-M

CAMPBELL/HADAWAY & ASSOCIATES
Deposition and Court Reporters
Post Office Box 4034
Greenville, South Carolina 29608-4034
(864) 801-4007

1 the tent, and he handles it all. And when you buy
2 something, when you won the bid for the lot, then
3 Crescent had different people in their employ that
4 developed different segments of their properties. And
5 I don't know who this fellow was.

6 Q. All right, well, let me ask you this.

7 A. But John Hamrick. --

8 Q. How did you come to be at Waterford Ridge that day, to
9 make a purchase?

10 A. Well, Crescent, I guess, contracted with John Hamrick.
11 And he advertised that there's going to be an auction
12 on such-and-such a date.

13 Q. So there was an auction?

14 A. It was an auction, yeah.

15 Q. It wasn't a scenario where they said, "Mr. Gray, we'll
16 sell this to you --

17 A. No.

18 Q. -- for \$199,000?"

19 A. No.

20 Q. So it was an auction?

21 A. It was an auction.

22 Q. How many people were at that auction, would you
23 estimate?

24 A. Probably three or four hundred.

25 Q. And you had previously mentioned you'd bought some

- 1 the purpose of getting you a lot to build on?
- 2 A. That's correct. I bought all these lots for the same
- 3 purpose.
- 4 Q. Lot 24, let me go back to that. Did you buy it in
- 5 your name, you and your wife's name --
- 6 A. Yeah, me and my wife's name.
- 7 Q. How about Lot 15?
- 8 A. I don't remember how we bought it, whether we -- I
- 9 guess we probably did. It was probably my name and
- 10 Peggy's name. I'd have to go back and look at the
- 11 paperwork. I didn't know we was going to talk about
- 12 all that today.
- 13 Q. No problem. Just the best you can recall, Mr. Gray.
- 14 Lot 24, did you finance that lot or did you pay cash?
- 15 A. I financed it.
- 16 Q. Who did you finance it with?
- 17 A. Carolina First.
- 18 Q. And what kind of loan terms did they offer you, if you
- 19 recall?
- 20 A. Don't remember whether it was interest only or not.
- 21 Q. Was it a short-term loan or a long-term loan?
- 22 A. No, it was interest only. You just signed this
- 23 contract for interest only, and you pay interest on
- 24 the loan.
- 25 Q. Would it be a 12-month loan, a 24-month loan?

1 Q. -- do what you referred to as poker?

2 A. And each -- and you could only buy one lot. If
3 there's 40 for sale, you could only buy one, one
4 person's name. So I'd buy one in my name and my wife
5 would buy one in her name. We'd get two lots.

6 Q. How many of these auctions with Crescent would you say
7 you've attended in your life?

8 A. Three or four.

9 Q. And did you buy one at each one of those?

10 A. No.

11 Q. How many lots do you think you purchased at auction,
12 you and your wife?

13 A. Oh, I'm going to say six, seven. In the neighborhood
14 of six probably, total.

15 Q. When you went to those auctions that Crescent held,
16 Mr. Hamrick ran those, --

17 A. Uh-huh (affirmative).

18 Q. -- did you have an agent of your own?

19 A. No.

20 Q. Did you have anybody with you giving you advice?

21 A. No.

22 Q. Anybody give you any kind of advice, as to whether it
23 was a good price or not?

24 A. Well, at each auction all the banks were there,
25 including First Saver, including BB&T, including

1 Carolina First, including Bank of America. They was
2 all there. And John would specify, before the auction
3 would start, which was sort of the -- let's use the
4 term "leading bank". He would let -- so the leading
5 bank would get to set up the Coca-Colas and the soft
6 drinks and donuts, and all this other good stuff.

7 Q. And take loan applications and things like that, talk
8 to people about financing? Is that what they did?

9 A. Oh, yeah, they'd be in as much competition with each
10 other as we were bidding; the banks were. They
11 couldn't -- they were buying all them lots, financed
12 them all.

13 Q. You said the banks would buy those lots?

14 A. No, they would be ready to finance the lot, the minute
15 we won the bid.

16 Q. I understand.

17 A. And they'd have their own appraisers there.

18 Q. Who would have their own appraisers there?

19 A. The banks. Or either they'd have their own people
20 there. They'd have their V.P., or whomever would be
21 there representing them.

22 Q. But did any of them ever tell you if a lot was a good
23 price or not?

24 A. They always did. I never bought one that someone
25 didn't say it was a good price.

- 1 Q. What do you mean by that? What specifically did they
2 say?
- 3 A. Well, I don't remember their exact words, Brad, but
4 --
- 5 Q. What gave you the impression that they would tell you
6 it was a good price?
- 7 A. Because they was willing to finance it.
- 8 Q. Because they were willing to take an application to
9 finance a lot?
- 10 A. Yes, sir, every single time.
- 11 Q. Did anyone ever specifically say, Mr. Gray, this is a
12 great purchase and you ought to buy it?
- 13 A. They would walk over -- most of the time, if you was
14 interested in it and they thought you was interested
15 in a lot, and you were sort of -- like in this case,
16 with this lawsuit here, First Savers. Shane Smith was
17 the vice president of First Savers. And he had just
18 come there from Community First. He was a V.P. at
19 Community First. So when that took place that day, he
20 was an employee of Community First, on this lot here.
- 21 Q. You're skipping around. Let's make sure it looks
22 right. You're talking about Lot 27?
- 23 A. Lot 27.
- 24 Q. All right. And Mr. Smith was employed by?
- 25 A. Community First, and he was on that site that day. He

- 1 was under that tent that day. And he walked over that
2 lot with me that day. And he knew that it was an
3 interior lot, and he knew that I had to pay 10 percent
4 down. And the waterfront lot was five percent down.
5 You had to pay five percent of the bid price to
6 Crescent to close on it, to close it up.
- 7 Q. While we're talking about Lot 27 -- and I don't want
8 to skip around too much, because I know you've bought
9 a lot of properties over the years.
- 10 A. Well, yeah, but this lawsuit -- I would prefer to
11 stick to what we're talking about here, 27 and 29.
12 And they're identical, because they were bought the
13 same day. I bought one and my wife bought one.
- 14 Q. Let's follow up on 27, but I am going to come back to
15 your other properties. Lot 27. You were previously
16 describing the bid process at the Crescent auctions.
17 This was a Crescent auction, correct?
- 18 A. Uh-huh (affirmative).
- 19 Q. And you said you would start off by writing on a card?
- 20 A. As well as I remember. It's been five or six years
21 ago, whenever it was I last -- when I bought these
22 lots the last time, because Crescent went bankrupt
23 later.
- 24 Q. To the best of your recollection, how did that bidding
25 process go on Lot 27?

1 A. You put down what -- Crescent would tell you. They
2 give you a piece of paper and they show it. If it was
3 40 lots, all 40 lots on that piece of paper had a
4 price that they was asking for that lot.

5 Q. Yes, sir. Do you recall what that price, the opening
6 price was, for that lot?

7 A. No, I have no idea.

8 Q. I understand.

9 A. I don't know whether we're giving a deposition or
10 whether we're educating you about it, but that's how
11 Crescent worked. And you would take the piece of --
12 you'd sign the card. And I'm sure that -- and you'd
13 put on that card what lot you wanted.

14 Q. Yes, sir. And so I'm going to assume you did the
15 first card, and you were one of the handful of people
16 who were the high bidder, or at least the interested
17 bidders.

18 A. Yeah, I don't remember how many people bid on Lot 27.

19 Q. But definitely you and somebody else?

20 A. Me and somebody else.

21 Q. It might have been one or more persons, could have
22 been ten more people?

23 A. That's right. It may have been -- all 40 of them may
24 have bid.

25 Q. So the second time, that's when you wrote down your

1 bid that ended up on the contract; is that correct?
2 Or was it a true auction, where you call out the
3 numbers?

4 A. No, you never call out the numbers. You'd write down
5 and give them the card the next time. So if you had
6 -- let's say there was six people that bid on Lot No.
7 27. There's a possibility that two of them could have
8 been the same number. But you still didn't get in the
9 typical auction, where you have an auctioneer. He
10 would tell you if two people had the same bid. And
11 then you'd send in -- you've got the third piece of
12 paper. At some point somebody eventually would be the
13 highest bidder. And the highest bidder --

14 Q. So you may have gone around more than twice?

15 A. Sure.

16 Q. Well, I'm going to ask you to pick that contract back
17 up and flip to the very first page. On No. 2, it says
18 purchase price is 199,251. Do you see where I'm
19 talking about?

20 A. (Reviewing document). 199,251, yeah, I see it now.

21 Q. And it states the purchase price?

22 A. Uh-huh (affirmative).

23 Q. Is it fair to say that when the dust settled, and it
24 went around, whether it was two times or four times,
25 that was the high bid?

- 1 A. Yeah, because the other guy may bid 250 -- 199, 250,
2 and I went \$1.00 higher.
- 3 Q. So you always went that \$1.00 higher, to make sure you
4 beat somebody out if it was an even number?
- 5 A. You'd always bid those odd numbers.
- 6 Q. Did Mr. Smith tell you to write that number down on
7 that card?
- 8 A. No. I don't remember how -- whether he was sitting
9 beside me, behind me or in front of me, or if he was
10 standing over there serving coffee to somebody. I
11 don't remember where he was. Anyways, that's how it
12 works.
- 13 Q. So you said you and your wife, over a period of a
14 couple of years y'all may have bought six or seven of
15 these lots at these Crescent auctions?
- 16 A. Uh-huh (affirmative).
- 17 Q. Who were some of these other banks at these auctions?
- 18 A. I can't recall, Brad. Community First, BB&T, Carolina
19 First. I think Bank of America was there. And a lot
20 of times -- and I'll add this, to clarify this point,
21 because I think it's important. Hamrick -- John
22 Hamrick's girls, his agents or whatever he wants to
23 call them, was usually on cellphones at these auctions
24 and people were bidding from California or Colorado,
25 or New Mexico, or New York, all over the United

1 States. Maybe even some foreign countries. I'm not
2 sure where all they came from, investors. And so I
3 don't know how the girls wrote those bids down to put
4 in the stack, because I never was privileged to that
5 information. But I know -- I do know the girls -- and
6 there was other real estate agents there. It wasn't
7 just Hamrick's shop; there was other agents there,
8 from other real estate people all over town. And they
9 would be on the cellphones to some of their clients to
10 bid, and they would bid for them.

11 Q. Sure, some phone-in bidders.

12 A. So there was probably -- there may have been 50
13 people under the tent that was serious bidders. The
14 rest of them sitting there was either spouses or just
15 interested parties. I don't know who it was. But
16 then there was nothing unusual to see four or five
17 different real estate companies around there with
18 cellphones stuck in their ears. And that's what they
19 were doing, because they had clients buying property
20 on Lake Keowee, because it was as hot as a firecracker
21 in 2006, 2007.

22 Q. Yes, sir. You had mentioned about the financing.

23 A. Uh-huh (affirmative).

24 Q. They told you it would be so much for interior, so
25 much for lakefront?

- 1 Q. Do you recall what the interest rate was?
- 2 A. The original interest rate was -- with Community
- 3 First, I don't remember the rate.
- 4 Q. Does 5.95 sound about right?
- 5 A. Because -- well, it could have been. I don't
- 6 remember. I don't remember the interest rate. Most
- 7 of the time the interest rates were based on prime at
- 8 the time -- prime plus a quarter, prime plus a half,
- 9 prime plus three-quarters. Different banks did
- 10 different things.
- 11 Q. I'll tell you this. Would you think it would have
- 12 been the same terms on Lot 26 and 27?
- 13 A. Twenty-seven and 29.
- 14 Q. Oh, excuse me, 29 and 27.
- 15 A. I'm sure it would have been.
- 16 Q. Well, I'll tell you Mr. Belk has been unable to locate
- 17 a copy of that note. We're going to have to get a
- 18 copy, I guess, from Community First. He had a copy of
- 19 your HUD and a copy of all your checks, but he didn't
- 20 have a copy of your note. I'll tell you I have a copy
- 21 of the other one.
- 22 A. 29?
- 23 Q. Lot 29. And it stated 5.95, 12-month term, interest
- 24 only.
- 25 A. That's how much interest we paid. This one here is

1 Lot 27. This is the same thing you just handed me, I
2 think.

3 Q. It looks like you might have a copy of it, right
4 there. Jim might need you to make him a copy of it.
5 He might need it for later.

6 A. Recording fees. Do you want to look at that?

7 Q. This is the exact same thing I just handed you, but I
8 see on the back of that clip --

9 A. Do you have two pages there?

10 Q. Yes, sir, I do. But I see on the back of that clip,
11 a copy of a note. It looks like a Community First
12 note.

13 A. Community First. This note was May 26, 2006,
14 Community First, at the rate of 5.950.

15 Q. Yes, sir.

16 MR. RICHARDSON:

17 Charles, do you care if we make a copy of this, so we
18 can have it?

19 MR. GRIFFIN:

20 That would be fine. That looks like the original.

21 MR. RICHARDSON:

22 If I may, I'm going to step out and have my staff make
23 a copy of this.

24 (OFF RECORD)

25 MR. RICHARDSON:

1 I'm going to hand the court reporter a copy of that
2 document you just handed me, and have her put it in as
3 Exhibit 3.

4 (Plaintiff's Exhibit No. 3 marked for identification.)

5 EXAMINATION RESUMED BY MR. RICHARDSON:

6 Q. Mr. Gray, as you said earlier, 5.95 was the rate on
7 that loan.

8 A. Yes, sir.

9 Q. Was that a fixed rate or was that a variable?

10 A. What was the question again?

11 Q. The rate was fixed or a variable?

12 A. No, it was -- I guess it was fixed.

13 Q. It looks like it was fixed.

14 A. It was fixed for that -- for this time frame of one
15 year.

16 Q. One year.

17 A. And so -- and so that was probably the derivative of
18 whatever the prime was on the -- when I signed the
19 note May 25, 2006. The prime, you know, may have been
20 five. They go three-quarters or something above
21 prime, whatever it --

22 Q. Do you recall what prime was around that time?

23 A. I never paid much attention to it on any of these
24 lots, because it was -- it was just what everybody
25 did, prime plus something. And we didn't sit down and

1 negotiate the interest rates, basically. You just
2 -- you had to listen to whatever they give you. It
3 depended on -- well, I guess in those times, this was
4 before the crash.

5 Q. Yes, sir.

6 A. What I'm recalling the real estate crash of 2008, when
7 we all got in the same boat. So the prime, at that
8 time, was probably five percent or something.

9 Q. Probably five, five and a half, --

10 A. Yeah, something like that.

11 Q. -- something in that range. This note says it matured
12 May 25th of 2007.

13 A. Uh-huh (affirmative).

14 Q. That was before you did the deal with First Savers.
15 What happened when it matured with Community First?

16 A. They renewed.

17 Q. They renewed it? Do you recall the terms?

18 A. Same thing, interest only, whatever it -- that rate
19 may have changed. I don't have a copy of that at all.

20 Q. But it was interest only?

21 A. Yeah, that's correct.

22 Q. Was it another 12-month term, would you say?

23 A. Uh-huh (affirmative).

24 Q. I'm going to go back to your other real properties.
25 Other than your Crescent lots, have you bought other

1 properties over the years? Let's start with just
2 Keowee. Any other Keowee properties or lake
3 properties?

4 A. Anything on Keowee, that I bought on Keowee, there
5 were a few that we would buy and just flip. And I
6 don't remember which properties they were, but it was
7 from an individual person, from individual realtors.

8 Q. So when you say buy it and flip, you buy it for
9 investment with the hope of reselling for a profit?

10 A. That's correct. If somebody was in trouble or
11 somebody was moving or something, whatever the deal
12 was. Once you get involved in that, the people would
13 know that you was doing that or would help, you know,
14 keep you -- you kept your ears to the grindstone.

15 Q. In your life, how many flip transactions do you think
16 you've been involved with?

17 A. A dozen, probably.

18 Q. So would you say you have pretty good experience
19 buying and selling properties?

20 A. Uh-huh (affirmative), until you know when.

21 Q. We all know what happened. I agree with you. But I'm
22 just asking you, would you consider yourself
23 sophisticated when it comes to buying and selling
24 properties? Have you done that a lot?

25 A. Yeah, I've done enough of it to know whether it was a

- 1 good deal or a bad deal. And I've had some -- some
2 lots, I'd buy it, and someone would sell it. I mean,
3 I would sell it to someone, and they'd turn around and
4 sell it back to me, and I'd sell it back to somebody
5 else. It's just --
- 6 Q. So you've made some money on some, and not on others?
- 7 A. I made some money in real estate at that time, yes.
- 8 Q. When the loan with Community First matured the second
9 time, what did you do then?
- 10 A. Well, I was told by Community First that it went from
11 May 25, 2006 to May 29, 2007 on the first loan. The
12 second one was May 29, 2007 to May 29, 2008.
- 13 Q. And that's Community First?
- 14 A. Community First.
- 15 Q. I see you've got some notes there.
- 16 A. And -- well, because I figured you were going to be
17 asking questions.
- 18 Q. And I appreciate --
- 19 A. I'm coming to a deposition. But it --
- 20 Q. So May 2008 rolls around.
- 21 A. I was informed by Community First that there were no
22 more interest on their loans. This is in 2008. It's
23 at the beginning of the crash.
- 24 Q. Who at Community First informed you of that?
- 25 A. Mr. Shane Smith.

- 1 Q. At Community First?
- 2 A. Correct.
- 3 Q. So he was not employed with First Savers at that time?
- 4 A. No. He did both of these.
- 5 Q. At Community First?
- 6 A. Uh-huh (affirmative).
- 7 Q. So how were you introduced to First Savers?
- 8 A. By Mr. Smith.
- 9 Q. Well, he couldn't have been employed by Community
- 10 First and First Savers.
- 11 A. Not at the same time, but he -- along about that time,
- 12 he made a transition to First -- whether he knew he
- 13 was going to go to First Savers or not, I don't know.
- 14 First Savers just opened up the bank. It was a brand
- 15 new bank in a little shopping center there, in Seneca,
- 16 two offices in it.
- 17 Q. I'm going to back you up, because I want to make sure
- 18 I understand what you're saying. You're saying when
- 19 May 2008 came around, Shane Smith, to your
- 20 recollection, was still at Community First?
- 21 A. Uh-huh (affirmative).
- 22 Q. And he told you Community First would not renew your
- 23 loan?
- 24 A. Not -- he -- they would not do an interest only.
- 25 Q. Did they offer you an alternative?

1 A. I don't remember. They probably did. But I knew Mr.
2 Hamrick, had done business with Mr. Hamrick, had known
3 him at all the auctions. And he knew we'd buy lots.
4 So he -- we knew him. He was also on the Board of
5 Directors for Community First.

6 Q. John Hamrick?

7 A. John Hamrick was and is, I guess, to this day. I
8 don't know. But either John or Shane Smith, one.
9 Somebody at Community First said there was no -- they
10 would do no more interest only loans. And whether I
11 was offered an alternative to that or not, I don't
12 remember. But my main interest was to go and look and
13 see if I could find it -- BB&T, or go somewhere, and
14 see who -- if I could get a loan on this same lot at
15 this price, in interest only.

16 Q. Do you recall talking to some other banks?

17 A. I may have. I don't know. I just -- I had a
18 daughter-in-law that worked at BB&T. I may have
19 discussed in private -- not in private, just it
20 probably came up in conversation over dinner or
21 something. I don't know. But it was a known fact
22 that we weren't going to be able to keep it there. If
23 we wanted to do that, we had two choices, either make
24 a decision to stay there with a fixed loan -- you
25 know, a 15-year or 30-year loan, ever how you could

1 finance it. I would -- but anyway, we found -- when
2 Shane -- I don't remember the time frame, when Shane
3 Smith left Community First. I don't know. You'd have
4 to look at the records for Shane Smith. We'd have to
5 depose him, I guess, to find out. He's no longer in
6 the banking business. He works -- he's an Allstate
7 agent in Seneca. Clemson, rather.

8 Q. But come May of 2008, you were faced with a choice.
9 Either move this loan or to accept the terms that
10 Community First was putting on the table?

11 A. That is correct.

12 Q. But you don't recall what terms they were putting on
13 the table?

14 A. You mean the alternative terms for --

15 Q. For Community First.

16 A. -- Community First? I had no -- I can't remember,
17 don't recall. I don't have it in writing anymore.

18 Q. Well, let me ask you this. They didn't offer to renew
19 it, at interest only; is that correct?

20 A. Yeah, that was a fact, they did not. They would not
21 do it.

22 Q. Community First would not renew it, at interest only?

23 A. They weren't going to renew any of them.

24 Q. Do you recall getting a term sheet from anybody other
25 than First Savers, in May of 2008?

- 1 A. No. I'm sure I may have talked to somebody, but --
- 2 Q. But you can't recall who?
- 3 A. -- I can't recall who. And Mr. Smith went -- about
- 4 this same time, he went to work for First Savers and
- 5 opened up that bank.
- 6 Q. This is probably a good time for me to say this. I
- 7 know you all bought two lots. One was in your name
- 8 and one was in your wife's name. Is it safe to say
- 9 you were the person most familiar with the details?
- 10 A. Oh, sure.
- 11 Q. So you would understand the financing, who did what,
- 12 that type thing?
- 13 A. Yeah, much more so than my wife. I mean, she was at
- 14 all the auctions with me. She knew what -- how we got
- 15 the lots, and she knew we had built houses. And she
- 16 knew what our income was.
- 17 Q. But if I were to ask her the same questions I'm asking
- 18 you, sir -- banks, finance, and interest rates
- 19 -- would she know that information, or just you?
- 20 A. Not to the detail that I do, no.
- 21 Q. I just want to make sure, because I know you keep
- 22 referring to both lots.
- 23 A. Because it was a -- it's almost like a -- when you
- 24 went to auction, when you left there, you had two lots
- 25 you had bought.

- 1 Q. But you could only buy one in your name; is that
2 right?
- 3 A. That's correct, that's the rule of engagement.
- 4 Q. As we go through this now, I may start referring to
5 both lots.
- 6 A. Yeah.
- 7 Q. If you're not comfortable answering questions on both
8 lots, --
- 9 A. No, I --
- 10 Q. -- I want you to speak up.
- 11 A. -- don't know of a time where we split the lots, and
12 one was with one bank and one was with another bank,
13 or the time frames are different. They always went as
14 a package deal.
- 15 Q. Then I'm going to back up and ask you some questions
16 about Ms. Gray's lot. When you bought that Lot 29
17 over at Waterford, was it the same terms in financing
18 on that one?
- 19 A. Yes.
- 20 Q. Community First?
- 21 A. Correct.
- 22 Q. Do you think you had the same kind of terms, as far as
23 that loan, as the same as the loan on 27?
- 24 A. I never checked it. I'd almost bet it is. If you've
25 got the paperwork --

1 Q. I've got the paperwork, but I'm going to go through
2 that with Ms. Gray. I'm just asking some general
3 questions right now, because she's the one that signed
4 it. So when these loans came up for renewal, May of
5 2008, do you recall how you came to take that loan to
6 First Savers, when you went to refinance the Community
7 First?

8 A. Well, I knew Mr. Smith.

9 Q. You knew Shane Smith?

10 A. I knew him when he worked with BB&T. He worked with
11 BB&T first, and then he went to Community First. And
12 the reason I knew him at BB&T, because I banked with
13 BB&T at the time. And I walked in the office one day
14 when I first moved to Seneca, Westminster. And Mr.
15 Smith, I got to talking to him, and come to find out
16 he was the grandson of a man by the name of Ray Smith,
17 that I used to work with in the FAA in Charlotte for
18 16 years. I worked with his grandfather. So we -- I
19 never did any financing with him there, at BB&T, but
20 we just -- we knew each other, and I knew his
21 grandfather. And we always had a conversation about
22 airplanes and things his grandfather did. His
23 grandfather also worked for Clemson University in the
24 agriculture department for years and years, before he
25 went to work for the FAA. So we had a -- so we just

1 -- not that we were, you know, deep friends, but we
2 just knew each other. We'd have a conversation to
3 transact business. He'd say hello and I'd say hello,
4 and have you heard anything from your granddad, stuff
5 like that. But that's about the extent of it. And
6 from there he went to First -- Community First as a
7 V.P. And I -- and he was at the auction representing
8 Community First. So he went -- he helped me walk over
9 the lot, like I indicated before, and we agreed to
10 -- with all the other banks, I agreed to go to
11 Community First on those two lots, 27 and 29, with
12 him, since I sort of knew him and interest only. And
13 all the banks standing there was interest only, so
14 might as well go with him.

15 Q. Did he influence your decision to buy that lot? You
16 keep saying he walked it with you.

17 A. No, because I could -- there may have been some other
18 bankers or other people that walked it with me.

19 Q. I understand. This is seven years ago. I understand.
20 I just want to make sure I get your details.

21 A. Well, I know it's seven years ago. I got a fairly
22 good memory. But I didn't go to these auctions and
23 buy lots unless I was pretty sure I could build on
24 them or flip them, or do something with him. I wasn't
25 just up there spending money. I was there -- I had a

1 reason for being there, and so sometimes I'd get real
2 estate people to help me with it. Sometimes I'd get
3 some of the bankers to help me with it, if they
4 thought it was a pretty good deal or not, you know.
5 But I didn't just depend on my knowledge, because I'm
6 in the aviation business so I was new to the real
7 estate business. I set up a mobile home park, you
8 know, 17 homes. And so I went from mobile homes to
9 small houses, from small houses to medium size houses
10 to big houses.

11 Q. When you say you relied on bankers to help you, what
12 do you mean by that?

13 A. Well, he was -- any banker ever -- whoever was
14 representing the banks, but the banks themselves
15 always had people at those auctions. And it's always
16 ready to finance the purchasers, help purchasers --

17 Q. With financing?

18 A. -- with financing. That was their reason for being
19 there. And they wanted to make sure that when they
20 did do a loan they was pretty well familiar with what
21 they just helped you finance.

22 Q. Yes, sir.

23 A. They weren't sitting in their office. They were
24 sitting there and they'd get their boots on, and
25 they'd go out there and walk over the stuff with us to

1 get the -- to see the views, the valleys, the goods
2 and the bads and the uglies of each lot. So I'm sure
3 that Shane went with me, probably a couple of times,
4 because -- these, 27 and 29, was back to back to each
5 other, not on one street.

6 Q. Back to back on one street? You mean like --

7 A. No, I mean, you went down the hill and there was No.,
8 I'm thinking, 27. There was a left-hand turn before
9 you got to 27. You went down this other little loop,
10 and it would be 29. And it just so happened the back
11 of one almost joined the back of the other.

12 Q. I got you, basically sandwiched between two roads and
13 the back property lines meet.

14 A. And the reason, I guess, that they made a big
15 difference in the price is because it was a little bit
16 difference in the view. One had a little more view of
17 the lake, especially in the wintertime when the leaves
18 was off the trees. It wasn't waterfront, but it was
19 sitting high up on a hill. It had a pretty nice view
20 of the mountains and the lake and so, in the
21 wintertime. And the other lot didn't have quite that
22 view, because it faced a different direction. So I
23 can't tell you the difference in the price of the two
24 lots, but I'm sure there was probably \$5,000
25 difference in them or something.

- 1 Q. And your opinion is because of the views?
- 2 A. Well, the views and -- but, anyway, Shane, I'm sure he
- 3 was on that lot with me.
- 4 Q. Did Shane ever say, Mr. Gray, I think you can resell
- 5 this lot for X?
- 6 A. No.
- 7 Q. Did he ever say I think you're going to make a bunch
- 8 of money on this transaction?
- 9 A. No.
- 10 Q. Is it safe to say he was there to make sure you had
- 11 some financing options? That's what his purpose for
- 12 being there was, to discuss financing?
- 13 A. Well, he was one of the options. There was other
- 14 people that I could have used other than him.
- 15 Q. So you could have selected somebody other than
- 16 Community --
- 17 A. Sure.
- 18 Q. -- First?
- 19 A. There was probably three or four banks I could have
- 20 done business with, with my track record and my credit
- 21 rating. I just had --
- 22 Q. Let's go back to when that loan matured with Community
- 23 First. For the purposes of this deposition, we're
- 24 just going to talk about 26 and 29, kind of in a
- 25 general --

- 1 Q. Do you recall the terms of repayment on this note?
- 2 A. The terms of what?
- 3 Q. Repayment. Was it principal and interest, interest
- 4 only?
- 5 A. It was interest only.
- 6 Q. Interest only?
- 7 A. Uh-huh (affirmative).
- 8 Q. This action was instituted in March of 2010. So it
- 9 was instituted prior to the maturity date on this
- 10 note. Have you made all the payment that was due
- 11 under this note?
- 12 A. No, I quit paying on that note. I think I made the
- 13 last payment December 8, 2009.
- 14 Q. Can you explain why you stopped making payments?
- 15 A. When the note was signed in 2008 -- when I paid the
- 16 \$6,218.75 on Lot 27 in July of 2009 -- and that was
- 17 requested by First Savers Bank to pay some principal.
- 18 As well as I remember, they used the word,
- 19 "principal." And why such an odd number, I don't
- 20 know, other than to get it down to an even number. I
- 21 suppose. I don't know what the deal was. And they
- 22 informed me at that time they would not do an interest
- 23 only unless I paid them that money and paid some
- 24 principal down. And they took my note to six percent.
- 25 And I have a letter that I signed -- made a note to

1 myself, for the file, that after this happened I was
2 also informed that the next time this thing matured,
3 that they would not go interest only. And I would
4 have to go to a 15-year fixed mortgage at eight and a
5 half to nine percent. And I informed Mr. Smith at the
6 time, on such-and-such a date -- on March 4th of 2009,
7 at 2:00 p.m. in the afternoon. I went to Mr. Smith's
8 office and I referenced -- had a discussion about
9 these two notes, Lot 27 and Lot 29. I explained the
10 packages that I had done with John Hamrick. I had
11 taken these two lots and two lots I had with First
12 Savers. And the lot I still had was Lot No. 24, my
13 own personal lot. I put all five of them in a package
14 deal. And I listed them on the market to sell as a
15 package to Mr. Smith, and he knew it. And Mr. Shane
16 said he could not -- and I asked -- Mr. Shane
17 -- Shane. I just said Shane stated he could not give
18 me an amount or a percentage that the bank would
19 reduce the principal down to. But he was -- he
20 assured us the bank would work with us, if we brought
21 him an offer that someone would provide to us. It was
22 told we were just about out of all savings, stocks,
23 and any -- and my work at the time as a consultant to
24 the FAA, he was told we were just about out of all of
25 our savings, stocks, and my work was very, very slow.

1 He told -- we told him we were using equity in our
2 house, in our home, to make these payments. The
3 meeting was very cordial. And I stopped there. So he
4 knew that I was using my house on Lake Hartwell before
5 the crash occurred. It was fully paid for and it was
6 worth 769,000 on the market, \$769,000 in 2007. And
7 all my financial statements to the bank. That's what
8 was in there, in that neighborhood. So I had borrowed
9 \$200,000 from BB&T and \$200,000 from Bank of America,
10 for a total of \$400,000 to start the company and to
11 keep the company going and do this, transactions. So
12 when the market went bad, my home on Lake Hartwell
13 went bad. It went -- I sold it six months ago,
14 whenever it was. I finally sold it for \$340,000 from
15 769. So I lost all my equity in that house, all my
16 savings, all my stocks, and I'm completely broke. So
17 I had to quit making payments. I had no more money.
18 I have no money.

19 Q. And, I'm sorry, you're saying March of 2009 is when
20 you had this meeting with Mr. Smith?

21 A. March 4, 2009 at 2:00 p.m. in the afternoon.

22 Q. But that was prior to the first note maturing. So at
23 the time you were making interest only --

24 A. No, see, I'd signed the note -- when did I sign the
25 note, the last note?

- 1 Q. The last note you signed July 9, 2009.
- 2 A. Okay, so this meeting took place before that.
- 3 Q. Right, before the note matured.
- 4 A. So when it came -- when it did mature, then he came up
- 5 with this 'pay the principal.' Apparently he'd talked
- 6 to his supervisors or somebody, I don't know who he
- 7 talked to, but I had to pay those two things down,
- 8 because he said we've got to have -- he didn't want to
- 9 do an interest only. But he got concession from
- 10 somebody in the bank, if I would pay some principal
- 11 down they would raise the rate to six percent. But
- 12 they would go one more year with it, whatever they
- 13 were thinking. I don't know what they were thinking.
- 14 So this was in March. And in July, when it matured,
- 15 he did do it with that -- I'm going to call it a
- 16 penalty. It's just I had to pay principal.
- 17 Q. You made a principal payment towards --
- 18 A. And this is when I was told at that meeting -- when I
- 19 did that closing, I was told that they would not do it
- 20 again unless I went to a fixed mortgage, period, a
- 21 15-year mortgage. And the rate would be somewhere
- 22 between eight and a half and nine percent. So I went
- 23 in and -- I went ahead and did it, because I had no
- 24 other choice. I had to do it. And I did it, but I
- 25 just -- when I run out of money, I couldn't do it.

1 Q. You have countersued First Savers Bank. Do you want
2 to tell me a little bit about why you've elected to do
3 that?

4 A. I don't think the way -- I don't think it was a fair
5 way of going about the lending business, and I wanted
6 to take it before 12 of my peers.

7 Q. What would you have liked for them to have done?

8 A. Well, I haven't had a chance to talk to them, period,
9 as far as I know.

10 Q. I'm talking way back when. In '08, when they gave you
11 the loan, you took the loan. What would have you
12 preferred they done?

13 A. I think if they'd have kept the interest only, that I
14 could have maybe, maybe have been able to earn enough
15 money to make the payments on the interest only at a
16 decent interest rate, whatever the interest rate was
17 at the time. I think I could have done it longer than
18 I did do it. But when they went from one percentage
19 point to the sixth, that set loan went from -- the
20 payments went from 500-and-some dollars a month to
21 900-and-some dollars a month. So that was a total of
22 1,800. So it went from 1,000 to 1,800, and my income
23 was going down. But looking at the clock, I would
24 have liked for them -- if they could have done
25 interest on it. I may have been able to borrow some

1 money from a family member or do something, somewhere,
2 to keep this thing going until maybe the lot come back
3 or maybe this package deal could have been worked out.
4 Because you can't see in the future, all you can do is
5 bet on the future. And everybody was saying, well,
6 it's going to come back, it's going to come back, it
7 may is going to take longer. And I was doing
8 everything in my power to try to do what I could,
9 including keeping my payments to First Savers as low
10 as possible. And they -- they're the ones that made
11 me pay the principal that one year of \$12,000, six on
12 each lot, and then said, this is the last time that's
13 going to happen, because the next time we know what's
14 going to happen, you ain't going to get interest only.
15 So I was fighting and working as hard as I could. And
16 the whole time I was doing all this, my income was
17 going down.

18 Q. Yes, sir.

19 A. So I don't -- to tell you what I think would have
20 happened, I don't know what would happen. I was
21 trying to get at least interest only and kept it
22 going.

23 Q. But, sir, you were at interest only when you stopped
24 making payments.

25 A. Because I was out of money, because they'd gone from

1 1,000 to 1,800 a month in July that year. And it just
2 -- it depleted the funds. It's just -- it was just a
3 --

4 Q. But when you started out, it was at prime plus a half.
5 The first time it was prime plus a half, starting out
6 at five and a half. Correct?

7 A. I don't remember. You've got the numbers, you know,
8 whatever it is.

9 Q. Well, it went from five and a half to six. That half
10 a percentage point was the difference in you being
11 able to make the payments or not? I'm just asking.

12 A. I don't know how you figure -- all I know, is the
13 checks that we wrote to First Savers, at some point,
14 was \$562.50, and then it went to \$908.33.

15 Q. Can we agree, at least that when you stopped making
16 payments, it was still at interest only, though?

17 A. Yeah, you can say that, but there's an asterisk to
18 that. But to answer your question, when I stopped
19 paying, that loan was interest only. Now what's
20 unfair about it is how they made it happen. To make
21 it happen, I had to pay a lot of money, \$12,000, to
22 make it happen. And that would have made a lot
23 -- another year's payments. And it -- and then
24 everybody telling me at that point it wasn't going to
25 happen again, we weren't going to do it again. Then

- 1 that really was -- and I never expected that from
2 First Savers. I was never told by First Savers, Shane
3 Smith, at one time, that that loan would ever go to a
4 permanent loan until they -- till the banks got in
5 trouble.
- 6 Q. So let me ask you this. The first note you signed was
7 for 12 months, interest only, with a balloon balance
8 at the end of 12 months.
- 9 A. Uh-huh (affirmative).
- 10 Q. Do we agree that First Savers could have called that
11 loan and not refinanced it?
- 12 A. Yeah, you could have, I guess. Based on what I know
13 now, you could have called it any time other than the
14 one-year time. But the other bank, we've been doing
15 that for three or four, five years. So there was a
16 pattern.
- 17 Q. But this was the first time you had done business with
18 First Savers.
- 19 A. But you make decisions based on your experience level.
20 My experience was I'd been getting interest only on
21 lots for four or five years from different banks,
22 including First Savers Bank.
- 23 Q. But when they renewed it, they still gave you interest
24 only --
- 25 A. Yeah, they did.

- 1 Q. -- at six percent.
- 2 A. But I just said, the first time they did it with no
- 3 questions asked. It was prime plus one, like I had
- 4 been doing for five or six years with other banks.
- 5 When Community First stopped doing it and I went up
- 6 the street with Shane Smith, because he was my banker
- 7 at First -- Community First, I went up the street with
- 8 him, with First Savers. And it's interest only and it
- 9 was never mentioned to me at that time that it would
- 10 ever go permanent, because apparently he didn't know
- 11 it was going to go permanent.
- 12 Q. Back to those other foreclosures, did you have to
- 13 confess judgment in addition to that? In other words,
- 14 did you have to agree to pay them a certain amount of
- 15 money --
- 16 A. No.
- 17 Q. -- or get a judgment --
- 18 A. No.
- 19 Q. At the present time, do you owe anybody else?
- 20 A. No.
- 21 Q. Any outstanding tax liabilities?
- 22 A. No.
- 23 Q. Any tax liens, --
- 24 A. No.
- 25 Q. -- pending judgments, anything of that nature?

- 1 A. No.
- 2 Q. Your Counterclaim indicated that you felt like my
- 3 client had committed fraud. Can I ask you in what
- 4 ways?
- 5 A. I think I just explained it to you. And I guess my
- 6 attorney advised me -- I guess used that term. I
- 7 don't know. I don't know what term to use. I'm not
- 8 an attorney.
- 9 Q. I understand. Well, let me ask you this.
- 10 A. I don't think what he did was fair.
- 11 Q. Did you anticipate they would renew this loan,
- 12 interest only, forever?
- 13 A. I had no reason not to believe that.
- 14 Q. Did anyone ever tell you that?
- 15 A. Probably not and I never did ask. I had five years of
- 16 experience with interest only. So I didn't know --
- 17 Q. No one at First Savers ever told you, we'll renew this
- 18 thing forever, if you need us to?
- 19 A. I never asked them. I just -- up until that point, I
- 20 guess the banks were satisfied with the interest only.
- 21 Q. If you and I sitting right here -- me, you, and Mr.
- 22 Griffin -- could resolve this matter, how would you
- 23 propose to resolve it? What would you like to see be
- 24 the outcome?
- 25 MS. GRAY:

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS

Plantation Federal
Bank, as successor in
interest to First
Savers Bank,

Plaintiff,

-vs-

J. Charles Gray and
Waterford Ridge Owners
Association,

Defendants.)

COPY

C.A. No. 2010-CP-37-417

DEPOSITION OF PEGGY B. GRAY

PURSUANT to Notice and/or agreement between the parties, the deposition of PEGGY B. GRAY was taken at the law offices of Bradley K. Richardson, Esquire, 133 Straight Drive, Anderson, South Carolina, on Monday, March 25, 2013, commencing at the hour of approximately 1:13 p.m.

KAREN A. BELANGER, CVR-M

CAMPBELL/HADAWAY & ASSOCIATES
Deposition and Court Reporters
Post Office Box 4034
Greenville, South Carolina 29608-4034
(864) 801-4007

1 A. He was our attorney.

2 (Plaintiff's Exhibit No. 6 - 8 marked for
3 identification.)

4 EXAMINATION RESUMED BY MR. RICHARDSON:

5 Q. The court reporter is going to hand you a copy of a
6 check that's made out to James S. Belk in the amount
7 of \$75,063.31.

8 A. Uh-huh (affirmative).

9 Q. And is that the amount you brought to closing that
10 day, you think?

11 A. Yes.

12 Q. When the loan comes up for renewal and it matured, did
13 you sign a renewal note with First Savers? In other
14 words, when it matured in 2009?

15 A. Yes.

16 Q. And what was your understanding of the terms of that
17 loan?

18 A. The same thing that Mr. Gray had told you, that it was
19 -- we had to put up more collateral.

20 Q. What I'm asking about is the loan terms. Was it an
21 interest only repayment?

22 A. It was interest only.

23 Q. Was it a fixed rate?

24 A. I guess it was. I don't know. It was a fixed rate
25 for six -- for one -- for 12 months. Six percent for

- 1 A. At First Savers.
- 2 Q. Did he say that?
- 3 A. Well, as long as everything was going good at Keowee
- 4 and all, there was no problem, he said. Now, forever?
- 5 I don't know about forever.
- 6 Q. Well, let's back up then. Let's talk about the first
- 7 time it was renewed. And I'm talking about First
- 8 Savers.
- 9 A. Uh-huh (affirmative).
- 10 Q. He extended your terms to renew it, at interest only,
- 11 at six percent?
- 12 A. Uh-huh (affirmative).
- 13 Q. What was your understanding of what would happened at
- 14 the end of that term, when it matured in 2010?
- 15 A. Well, what he told Mr. Gray, that it would go to a
- 16 fixed -- that it would go to a regular mortgage, 15
- 17 years or whatever, that we'd have to pay principal and
- 18 interest.
- 19 Q. When you took the first loan out -- the first one I'm
- 20 going to say is the July 2008.
- 21 A. That was interest only.
- 22 Q. Interest only?
- 23 A. Uh-huh (affirmative).
- 24 Q. What did you think would happen when it was time to
- 25 renew that one, when you signed it in 2008?

1 Q. And I'm not asking you to enter into settlement
2 negotiations with me.

3 A. Yeah.

4 Q. But how would you like to see this litigation
5 resolved, this current action? I know you've got some
6 counterclaims and my client has a foreclosure action.

7 A. Uh-huh (affirmative).

8 Q. In a perfect world.

9 A. I would like to see it go away, you know. I'd just
10 snap my fingers. But anyway, it's been very, very
11 hard on us, health-wise and all. I don't want to get
12 emotional.

13 Q. Take your time, Ms. Gray.

14 A. And I just -- I think if we go to Court, we'll have a
15 good chance at it. We're in our 70s, you know. I
16 think we just might have a good chance, because
17 apparently First Citizens -- First Savers doesn't want
18 to do anything to work with us. And we can't pay them
19 any more money. As far as, you know, making any more
20 payments, we're not going to try to.

21 Q. What are you going to ask the jury to award you?

22 A. Just for you all to have the -- all I want out of this
23 is just my name off of everything, my husband's name
24 off of everything, no 1099, no foreclosure, nothing,
25 completely be finished with it. Now that's what I

1 would ask for.

2 Q. Do you feel like you've incurred any money damages,
3 monetary damages, as a result of him filing a
4 foreclosure?

5 A. I think we have paid them quite a bit of money through
6 the years. We've paid them down till we don't have
7 anything else to pay. So I don't think that I have to
8 pay them anything else.

9 Q. But do you think you've been damaged in any way?

10 A. Oh, yes. I think I've been damaged, yes.

11 Q. Can you articulate that to me? Can you explain it?

12 A. It's by being damaged by my health and my nerves.

13 Q. Can you explain just a little more for me? I'm not
14 trying to make you emotional.

15 A. Well, it's just something you live with every day.
16 And we were taught to pay our bills. We were brought
17 up that way. And this is -- this is all against
18 anything we ever stood for. And other than these four
19 lots, we've never missed a payment on anything in our
20 life.

21 MR. RICHARDSON:

22 Let's take about a five-minute break.

23 (SHORT RECESS)

24 EXAMINATION RESUMED BY MR. RICHARDSON:

25 Q. Do you understand what the term "balloon note" means?

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Index

Witnesses

Page

No Witnesses were called.

Exhibits

No Exhibits were introduced.

1 (Whereupon, the foregoing Summary Judgment Hearing
2 commenced, with all parties being present, on the
3 3rd day of September, 2013, at approximately 4:00
4 p.m., in the Court of Common Pleas for Oconee
5 County, before the Honorable Alexander S. Macaulay,
6 Circuit Court Judge.)

7 **THE COURT:** All right. The next action is
8 Plantation Federal Bank as successor in interest to
9 First Savers Bank v. Peggy Lee Gray and J. Charles Gray
10 and Waterford Ridge Homeowners Association, Inc.,
11 2010-CP-37-416.

12 And we have --

13 Mr. Richardson?

14 **MR. RICHARDSON:** Yes, Your Honor.

15 **THE COURT:** -- on behalf of the Plaintiff.

16 And, Mr. Griffin, who do you represent?

17 **MR. GRIFFIN:** Charles and Peggy Gray.

18 **THE COURT:** All right. Very good. And are there
19 representatives of the Waterford Ridge Homeowners
20 Association?

21 **MR. GRIFFIN:** I don't believe they are actively
22 involved in this matter.

23 **THE COURT:** All right, sir. Very good.

24 All right. This is your Motion, Mr. Richardson?

25 **MR. RICHARDSON:** Yes, sir, Your Honor.

1 THE COURT: All right.

2 MR. RICHARDSON: Your Honor, Bradley K. Richardson,
3 may it please the Court, on behalf the Plaintiff,
4 Plantation Federal Bank. This action began as a
5 foreclosure. Two separate forecloses have since been
6 consolidated by Order of the Court.

7 The Defendants, J. Charles Gray and Peggy Gray,
8 have Answered and Counterclaimed in this matter, five
9 separate counterclaims: Fraud accompanied by fraudulent
10 act, common law fraud, tortious interference with
11 contract, unfair trade practices, and breach of
12 fiduciary duty.

13 Plaintiff bases this Motion for Summary Judgment
14 based on the deposition of the Defendant and the
15 pleadings as well as the Memorandum filed in support of
16 the Motion for Summary Judgment.

17 In essence, Your Honor, when you take a look at two
18 of these causes of action, which both are based on
19 fraud, as the Court is aware, several elements are
20 needed to prove fraud. I would ask the Court to refer
21 to my Memorandum as they review these issues and various
22 excerpts to the depositions, to where the Plaintiff
23 would allege that there are no material issues of fact
24 and are entitled to a summary judgment as a matter of
25 law because the elements cannot be established.

1 In particular, the elements of a false statement
2 have been made. You can see throughout the deposition
3 Mrs. Gray was asked at one point in what way did she
4 feel like a false statement had been made on behalf of
5 the things represented and she said she didn't feel like
6 one had been made.

7 Additionally, all throughout the deposition all
8 documents entered into the record as exhibits were
9 admitted to be executed by the Defendants, Mr. and
10 Mrs. Gray. This was a real estate closing that was
11 conducted by their attorney of choice, Mr. James Belk,
12 so they did have legal representation. This was
13 initially a 12-month interest-only payment note.

14 That note matured. When the terms of maturity were
15 reached, the bank extended new terms to the Defendants,
16 which they accepted.

17 Now, their Deposition will reflect they were not
18 happy with those terms. Yet they did not shop to
19 another bank and felt like they had no other option, but
20 did nonetheless take those renewal terms. Again, those
21 renewal notes were executed in the office of Mr. James
22 Belk, their chosen counsel, so they did have counsel for
23 that.

24 The documents speak for themselves. Despite any
25 assertions to the contrary, the bank had some obligation

1 to renew those notes in perpetuity in interest only
2 until such time these loans, these properties could be
3 sold.

4 The depositions will also show you these persons
5 are sophisticated buyers, they were involved in many
6 real estate deals over the years, they were involved in
7 buying and selling, flipping lots for investment. They
8 had subdivisions, they had mobile home subdivisions,
9 speculative construction. So, for all intents and
10 purposes, they knew what they were getting into.

11 Only after the market crashed, we can all admit
12 through no fault of anyone who was involved in this
13 action, they were simply unable to sell the loan, sell
14 the properties, so therefore, you know, payment was not
15 made and this foreclosure action was commenced.

16 Any assertion about breach of fiduciary duty.
17 These properties were purchased at auction through a
18 bidding process. Concerning the purchase of these
19 properties, the original purchase of the property was
20 financed through a third-party institution. My client
21 simply refinanced these loans, so they were not involved
22 in the decision to purchase of these properties. The
23 original purchase of the properties was financed by a
24 third-party institution. My client simply refinanced
25 these loans, so they were not involved in the decision

1 to purchase.

2 And if the Court finds there's no issue of material
3 fact of the fraud or the breach of the fiduciary duty
4 cause of action, there will also be no violation of the
5 Consumer Protection Code. This is a very fact-specific
6 case. I think that it would not be one that bears
7 repetition over and over.

8 Finally, in regards to the tortious interference
9 with present and prospective economic opportunities,
10 Mr. Gray and Mrs. Gray both testified in their
11 deposition they've suffered numerous economic hardships,
12 diminution of income, inability to sell real estate.
13 Again, not the fault of my client. Also, they admit the
14 Plaintiff had the right to foreclose when payments were
15 not made under the note and the mortgage.

16 Your Honor, lastly, if the five causes of action
17 and summary judgment was granted, the record of the
18 Deposition would show that Plaintiff was also entitled
19 to foreclosure of its mortgages. If the Court would
20 like, I can go through and cite certain items in the
21 Deposition. My Memorandum tried to be as specific as
22 possible as to the points we've tried to make.

23 **THE COURT:** All right, Mr. Griffin.

24 **MR. GRIFFIN:** I prepared a return, deposition
25 excerpts, things of that nature.

1 Your Honor, basically these two foreclosure actions
2 arose out of auctions, like the Plaintiff,
3 Mr. Richardson said, auctions on lake lots out here on
4 Lake Keowee. Basically the bankers would be there, they
5 had a tent with bankers there, the bankers had their
6 appraisers, one of which was Shane Smith who was with
7 Community First at that time.

8 And basically what they would do is the bankers
9 would finance the purchases of these lots and they would
10 do interest-only loans.

11 And Mr. Shane Smith, who was with a different bank
12 at that time, actually went out and walked the lots with
13 my client and they would, also the bankers that were
14 there, including Shane Smith, they would advise, they
15 would say, yeah, that's a good price for that lot. So
16 there was advice given by the various and sundry banks
17 who had their own appraisers there at these auctions who
18 financed these sales of these lake lots.

19 And subsequently Community First refused to renew
20 the loan on the interest only.

21 **THE COURT:** Well, now, the statements that you are
22 relying on were made by Mr. Smith?

23 **MR. GRIFFIN:** Yes, sir.

24 **THE COURT:** Now, who is he associated with?

25 **MR. GRIFFIN:** He was associated with Community

1 First at that time.

2 THE COURT: When he made the statements?

3 MR. GRIFFIN: Yes, sir. And then he went to First
4 Savers, I believe First Savers, who was successor to --
5 I mean Plantation, the Plaintiff, the successor to First
6 Savers. Shane Smith subsequently went to First Savers,
7 and then when my client found out that Community First
8 wasn't gonna do any more interest-only loans, I believe
9 Mr. Smith told them to come on over to First Savers,
10 we'll do it. So he did it that first year. And then
11 the next year they made them pay about a 6,000 down
12 payment on each loan, and then told them they weren't
13 gonna do any more interest-only loans, they were gonna
14 make them go to a 15-year amortization.

15 Well, at that point they were kind of out of money,
16 they couldn't do it anymore on payments. The only way
17 they could have survived was on interest only.

18 So basically that put them into this -- First
19 Savers basically put them into this foreclosure action
20 by refusing to honor what their agent had initially
21 represented to them going into all this that he would do
22 interest only.

23 We have alleged -- I mean, that significantly
24 changed the landscape of this, of the reason they
25 purchased it to begin with. All the bankers and

1 appraisers, they all knew these were investment
2 properties to flip and things like that going into the
3 whole thing and Mr. Smith was an integral part of all
4 this. And then he moved my clients over to the bank
5 that he went with, he took them with him. And he was at
6 the auction ---

7 THE COURT: Had they ever been with Community
8 First?

9 MR. GRIFFIN: Sir?

10 THE COURT: Had they ever been with Community
11 First?

12 MR. GRIFFIN: Yes, sir. He was with Community
13 First ---

14 THE COURT: I said had Mr. and Mrs. Gray ever been.

15 MR. GRIFFIN: Yeah. They were there as a result of
16 Mr. Smith working there, they went with Community First
17 initially when they purchased these lots, and then when
18 he left Community First, they went with him to First
19 Savers.

20 THE COURT: So Mr. Smith was with Community First?

21 MR. GRIFFIN: Yes, sir, at that time, and then took
22 the Plaintiff -- took the Defendant.

23 THE COURT: But he was not with First Savers until
24 after the statements were made ---

25 MR. GRIFFIN: Yes.

1 THE COURT: --- and this matter was taken up
2 with --

3 MR. GRIFFIN: Yes, sir. He went with Community
4 First. And then when he left, he took them and told
5 them he would do interest only at First Savers where he
6 was going, basically going to continue what happened
7 before.

8 And then that turned out not to be the case. Later
9 on, as these one-year and two-year notes matured, they
10 were basically forced into deeper and deeper financial
11 obligations with First Savers, which they could not do.
12 I believe it basically put them into foreclosure at this
13 point.

14 We have alleged breach of contract accompanied by
15 fraudulent act and/or intent. And I believe the
16 Plaintiff claims that -- I assume the Plaintiff has got
17 this cause of action mixed up with fraud. There are two
18 distinct causes of action.

19 We've alleged breach of fiduciary duty. Basically
20 in South Carolina the law is that a bank must do
21 something in order to be involved. We've basically said
22 Mr. Smith basically advised in the initial purchase,
23 advised them of the price, and then carried them over to
24 First Savers and then continued what he was doing
25 before. And that would get us into the fiduciary duty.

1 We've alleged fraud. Basically they relied on
2 Mr. Smith's statements that he would do interest only if
3 they went with him to First Savers Bank. That turned
4 out not to be the case.

5 We've alleged constructive fraud. Constructive
6 fraud, all the elements of actual fraud must be there
7 except the element of intent. So under constructive
8 fraud, even if Mr. Smith didn't intend to defraud them
9 when he took them with him to First Savers, it turned
10 out that happened, even though he might not have
11 intended it. That would be a jury issue on that
12 question.

13 Violation of Unfair Trade Practices, that's not
14 under the Consumer Protection Code, that's under a
15 separate Title. Consumer Protection Code is under Title
16 37, I believe Unfair Trade Practices is under Title 39.
17 Unfair Trade Practices basically is a very broad area,
18 basically an unfair or deceptive act, even if you don't
19 intend it, just like constructive fraud. Here, there
20 were some representations made that got them to First
21 Savers that turned out not to be the case.

22 The kicker on Unfair Trade Practices is it must
23 have potential for repetition. Here we have two people
24 who have been victimized. One of the elements of
25 potential for repetition is if it happened in the past

1 or some policy like that or some bank policy, we've got
2 two people here, it's just not an isolated incident,
3 these are two people that have been subjected to this.

4 So I think we would be able to survive the
5 potential for repetition. That would also get to be a
6 question of fact.

7 Tortious interference with prospective and present
8 economic opportunities. I believe that as a result of
9 the bank's action, they were not able to sell these
10 lots; therefore, that would be an issue of fact as to
11 whether the bank hampered their ability to progress with
12 the sale of the lot that was the original intention of
13 the purchase. Thank you.

14 **THE COURT:** All right. Mr. Richardson?

15 **MR. RICHARDSON:** Yes, Your Honor. I do think it's
16 important to note we are talking about two different
17 types of transactions here. The Defendants are trying
18 to allege that my client should somehow be held
19 accountable for actions of bank employee when he was
20 employed with another financial institution.

21 And I would point you also to page 45 of Mr. Gray's
22 deposition where he testified that there were numerous
23 banks there at the auction that day. Mr. Smith didn't
24 tell him what he felt like that property could be sold
25 for, if there was money to be made. He had other

1 options. Only now that this has all gone south is this
2 a problem.

3 THE COURT: Well, isn't that usually the case?

4 MR. RICHARDSON: Yes, sir.

5 THE COURT: I've never seen an action brought on a
6 success.

7 MR. RICHARDSON: Nowhere in the depositions do we
8 find anywhere where an allegation was made directly by
9 Mr. Smith or anyone employed by my client promised the
10 interest only would continue to be renewed and renewed
11 and renewed. My client already honored what was
12 contractually agreed to in the documents. The documents
13 speak for themselves. The Defendants do not dispute
14 that they actually executed those documents.

15 It seems to me, Your Honor, that the point for
16 protest would have been before the renewal. The loan
17 was renewed, and then a few payments were made and then
18 the default occurred. Mr. Gray testified that, you
19 know, he was simply out of money. That's really the
20 cause of their, the issues here.

21 THE COURT: Mr. Griffin, your counterclaims are all
22 directed at Mr. Shane Smith, is that right, from what he
23 represented?

24 MR. GRIFFIN: Yes, sir, basically what he
25 represented prior to and after both to get them to come

1 to First Savers and also what occurred at purchase and
2 got them to come to the Plaintiff, First Savers Bank, as
3 well as Plantation Bank.

4 THE COURT: At the time that the representations
5 were made, was he associated with either First Savers or
6 Plantation as its successor?

7 MR. GRIFFIN: Well, I believe he was -- they made
8 the loan, the first loan while he was working with First
9 Savers, so there obviously was a representation there --

10 THE COURT: Is that correct?

11 MR. RICHARDSON: No, sir. The first loan was made
12 while he was employed with Community First Bank.

13 THE COURT: All right. So the initial, the whole
14 transaction, the initial transaction and any renewal was
15 undertaken while he was with Community First?

16 MR. RICHARDSON: Yes, sir. There were two loans if
17 I recall from deposition that were taken out through
18 Community First and they were renewed. Only when they
19 matured at Community First were they brought over to
20 First Savers. I think it's a broad, you know, brush
21 he's painting saying he brought them on over. I believe
22 Mr. Gray's deposition testimony was he knew he had to do
23 something because Community First refused to renew them.
24 It just so happened he had a relationship with
25 Mr. Smith. When Mr. Smith had gone to work at First

1 Savers Bank, that's where he went to.

2 You'll also see in testimony he never shopped any
3 of these loans around. He never went and got a second
4 opinion, he never went to BB&T or Bank of America and
5 said, Are you willing to give us these terms? He always
6 kept these loans with these banks.

7 **MR. GRIFFIN:** Your Honor, it's obvious from the
8 depositions that my clients relied on Mr. Shane
9 Smith's...

10 **THE COURT:** Well, I was gonna say that that somehow
11 implies a certain special relationship in the sense that
12 confidence -- and I say implies, not that it
13 establishes -- but there's an implication there.

14 **MR. RICHARDSON:** But if I may, Your Honor?

15 **THE COURT:** Please do.

16 **MR. RICHARDSON:** These folks, they testified dozens
17 of real estate transactions over the years, they worked
18 with multiple banks. It's not as though every
19 investment they ever made they went through Mr. Smith.
20 They had relationships with other institutions.

21 **THE COURT:** Well, also, having dealt with so many
22 transactions, they probably came across a lot of
23 different individuals, some they could rely on, and some
24 of them they couldn't; they probably didn't go back to
25 the ones they couldn't rely on the second time. If you

1 find somebody that you can rely on, you have their
2 confidence and you are confident in them and you usually
3 go back to them.

4 In essence, though, the original transaction, which
5 is pretty good, and I guess it was back in the good old
6 days before the recession or something, and the economy
7 was pretty active or vigorous. And an interest-only
8 loan was not uncommon, or not something that would be
9 considered a good investment. Would that be correct?
10 Or you're not an accountant.

11 MR. RICHARDSON: I'm sorry, sir.

12 THE COURT: I understand.

13 MR. RICHARDSON: Yes, sir. I do realize what you
14 were trying to say. It was purchased back in boon times
15 and then, of course, there was a shift in the economy.
16 I disagree that my client should be held liable for the
17 actions that may have occurred when the purchase first
18 occurred. They simply said, Yes, we will refinance this
19 loan.

20 MR. GRIFFIN: Your Honor, I think that would go to
21 the issue of proximate cause and that would be an issue
22 for the jury. Proximate cause normally is for the jury
23 to decide.

24 MR. RICHARDSON: I would say that they have ---

25 THE COURT: Well, again, I'm a little bit

1 concerned. These were two corporations or something
2 like that, and one was -- not the parties, but we have
3 Mr. Smith who is a corporation and, of course, First
4 Savers and its successor, Plantation, who was a
5 corporation, and First Savers had bought out Mr. Smith's
6 corporation and it was a stock sale, there would be no
7 assumption of any liability. Now, if it was an asset
8 sale, then there would be assumption of liability.

9 Do you see what I'm saying, Mr. Richardson? I'm
10 just curious. If you hire somebody, do you take all of
11 their liabilities?

12 MR. RICHARDSON: I would say no, Your Honor. This
13 was a stand-alone refinance transaction. It was a
14 simple, We owe X on this mortgage. Will this bank by
15 their underwriting guidelines extend that same amount of
16 credit and buy off the note and mortgage?

17 THE COURT: All right. Did Plantation have any
18 sort of policy to say that they would not do interest
19 only prior to the transaction with the Grays?

20 MR. RICHARDSON: I'm not sure of that, Your Honor.

21 THE COURT: I mean, that's not ---

22 MR. RICHARDSON: I mean, all I can tell you is that
23 each transaction stood on their own merit.

24 THE COURT: Well, when we allege fraud and unfair
25 trade practices and all that, the Court, of course, is

1 interested whether there is a pattern or something of
2 that nature that would suggest that a bait and switch
3 type of situation, where you come with me, you get no
4 income, you only pay interest. But once you sign up,
5 then you find out that isn't the case. So I'm just
6 curious. Has there been any development of something
7 like that?

8 MR. RICHARDSON: Not that I know of, Your Honor.

9 THE COURT: I know you wouldn't do it. But how
10 about Mr. Griffin? Has he developed anything in his
11 depositions --

12 Have you deposed the bank or their representatives?

13 MR. GRIFFIN: No, sir, not at this point.

14 Basically it's our contention that it happened to two
15 people. They both were brought over there by Shane
16 Smith and it turned out what Your Honor elected to say
17 was a bait and switch, and the loan terms were getting
18 progressively worse, and they were advised that they
19 were gonna get worse than what they got the second time
20 around, so...

21 MR. RICHARDSON: Well, Your Honor, I would argue,
22 too, that if the bank intended for five years' worth of
23 interest only payments, they would have extended a
24 five-year loan, not a 12-month loan. You know, the
25 economy is rapidly changing, underwriting rules rapidly

1 change. If it was implied for infinity they would let
2 them pay interest, that's what the documents would
3 reflect.

4 **THE COURT:** So, anyway, Mr. Griffin, your theory is
5 that Mr. Smith carried with him his liabilities, in
6 other words, where he had made a promise representing
7 one bank and the Defendants accepted that promise and
8 relied on it, then he moved to another bank and the
9 first bank did carry forward with what he said, and his
10 liability went to his second bank even though the first
11 bank didn't honor it?

12 **MR. GRIFFIN:** The second bank did honor what was
13 told to them by Shane Smith at the first bank, but
14 then --

15 **THE COURT:** After the first year.

16 **MR. GRIFFIN:** After the first year, yes, sir.

17 **THE COURT:** And it was only a 12-month ---

18 **MR. GRIFFIN:** Yes, sir.

19 **THE COURT:** Even Mr. Smith and no one else could
20 bind anybody to something more than a year. I mean in
21 this circumstance. In other words -- or could he? I
22 mean, did he have some sort of authority to devoid
23 the --

24 **MR. GRIFFIN:** Your Honor can see in the deposition
25 that he did have some authority as to the structure of

1 the loan.

2 THE COURT: In the future?

3 MR. GRIFFIN: Yes, sir.

4 MR. RICHARDSON: No, sir. I disagree with that.

5 THE COURT: I'm not sure a bank can make --

6 MR. RICHARDSON: No, sir, I disagree with that. I
7 think Mr. Gray's own deposition would tell you that
8 Shane went and that's what he came back with. Mr. Smith
9 came back with the terms of the last note, and that was
10 what First Savers bank was willing to do on that
11 particular time.

12 THE COURT: Well, again, I'm thinking about the law
13 of fraud and misrepresentation, whatever we would have.
14 You have to have a certain right to be able to rely on
15 something. And the best I can tell, unless there is
16 some contractual basis, you can't really rely on anybody
17 to predict the future.

18 MR. GRIFFIN: Well, they weren't predicting. They
19 were just telling him what ---

20 THE COURT: They signed obligations for a year. I
21 mean, they were gonna get the same thing beyond a year?

22 MR. GRIFFIN: Well they got basically the ---

23 THE COURT: Well, two separate banks and two
24 separate obligations.

25 MR. GRIFFIN: Well, the implication is that the

1 bankers knew they were going to flip ---

2 THE COURT: That's another point. As I say, if
3 Mr. Smith is the one, the vehicle for this, quote
4 transaction, carrying them from one bank to another bank
5 and then to the successor, puffing in itself is not a
6 fraud, it's not a misrepresentation. In other words, if
7 you come with me, you're gonna get, you know, younger
8 and good health and all of that other.

9 MR. GRIFFIN: Well, basically they said you'll get
10 the year. They stopped it at Community First, but if
11 you come with me when I go here, we'll give it to you
12 again, we'll start it again.

13 THE COURT: Didn't you tell me they did it for a
14 year?

15 MR. RICHARDSON: Yes, sir.

16 MR. GRIFFIN: They did the change. Then the next
17 year they had to put ---

18 THE COURT: Well, how was -- did Mr. Smith own the
19 bank?

20 MR. GRIFFIN: No, sir.

21 MR. RICHARDSON: No, sir. He was simply an
22 employee.

23 THE COURT: Well, I'm just curious. How could he
24 control the policy?

25 MR. RICHARDSON: I point out to you page 86 of

1 Mr. Gray's Deposition. When I asked him (reading):

2 Did you anticipate they would renew this loan
3 interest only forever?

4 He said: I had no reason not to believe that.

5 Then I said: Well, did anyone ever tell you that?

6 Probably not and I never did ask. (End of
7 reading.)

8 How can that be a false statement if you never
9 asked a question?

10 THE COURT: All right. I'll tell you what. I'll
11 give you a shot at it. I want both of you to prepare
12 and present proposed Orders. Of course, if the proposed
13 Order of Mr. Griffin is that summary judgment is denied,
14 all he has to write is "denied."

15 If the proposed Order is that I grant the summary
16 judgment as to Plantation Federal Bank, then you're
17 gonna have to have findings of facts and conclusions.

18 MR. RICHARDSON: Yes, Your Honor.

19 MR. GRIFFIN: Yes, Your Honor.

20 THE COURT: And it has to be something that is
21 compelling as far as the Court is concerned. Because
22 obviously if there is a genuine issue of material fact,
23 and we have spent some time discussing different
24 implications and other things that would suggest there
25 might be a question for the jury, if there is a question

1 for the jury, then, of course, Mr. Griffin's will be
2 granted.

3 How much time do you need? We're getting into
4 football season and everything else. Do you want to say
5 30 days?

6 MR. RICHARDSON: Yes, sir.

7 MR. GRIFFIN: Yes, sir.

8 THE COURT: All right. 30 days for both -- well,
9 you're not gonna have to do too much.

10 But 30 days, and then five days to respond to the
11 other's.

12 MR. RICHARDSON: Sure.

13 THE COURT: And when you do the response, very
14 simple. Something that I can follow up and tell you
15 either draw it or I'll do my little thing. Which
16 reminds me --

17 What do we use: Word?

18 THE LAW CLERK: Word.

19 THE COURT: Submit it on Word, too.

20 MR. RICHARDSON: I believe my last conversation
21 with Ms. Whitfield -- this is a 2010 case. We're on the
22 next roster. I don't know if 30 ---

23 THE COURT: When is the next jury term? It is
24 jury, is it not?

25 MR. GRIFFIN: Yes.

1 **THE CLERK:** I believe it's later this month, Your
2 Honor.

3 **THE COURT:** Well, it will carry you over to the
4 next one, I'll give you that. Unless you want to try
5 it.

6 **MR. RICHARDSON:** I believe we've got a little work
7 left to do on this case. It can carry over.

8 **THE COURT:** Very good. That's what we'll do.

9 **MR. GRIFFIN:** Thank you.

10 **THE COURT:** All right. Thank you, sir.

11 (Whereupon, the above Summary Judgment Hearing was
12 concluded at approximately 4:30 p.m.)

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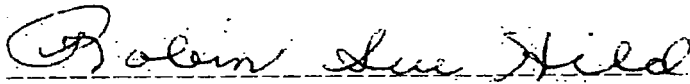
Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, Federal Certified Realtime Reporter and Registered Professional Reporter, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the summary judgment hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Oconee County, South Carolina, on the 3rd day of September, 2013.

There may be quoted material which was read into the record by counsel or other persons. Such quoted material is transcribed as read by the reader.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 17, 2014



Robin Sue Hild, FCRR, RPR
10th Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS

Plantation Federal
Bank, as successor in
interest to First
Savers Bank,

Plaintiff,

-vs-

J. Charles Gray and
Waterford Ridge Owners
Association,

Defendants.)

COPY

C.A. No. 2010-CP-37-417

DEPOSITION OF JOSEPH CHARLES GRAY

PURSUANT to Notice and/or agreement between the parties, the deposition of **JOSEPH CHARLES GRAY** was taken at the law offices of Bradley K. Richardson, Esquire, 133 Straight Drive, Anderson, South Carolina, on Monday, March 25, 2013, commencing at the hour of approximately 11:10 a.m.

KAREN A. BELANGER, CVR-M

CAMPBELL/HADAWAY & ASSOCIATES
Deposition and Court Reporters
Post Office Box 4034
Greenville, South Carolina 29608-4034
(864) 801-4007

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APPEARANCES:

BRADLEY K. RICHARDSON, ESQUIRE
BRADLEY K. RICHARDSON, P.C.
133 Straight Drive
Anderson, South Carolina 29625

..... on behalf of the Plaintiff

CHARLES P. GRIFFIN, JR, ESQUIRE
THE GRIFFIN FIRM, LLC
210 North McDuffie Street, Suite 103
Anderson, South Carolina 29621

..... on behalf of the Defendants

ALSO PRESENT:

Peggy B. Gray

STIPULATIONS:

1. The deposition is taken pursuant to the South Carolina Circuit Court Rules of Civil Procedure.
2. The reading and signing of the deposition transcript by the deponent are expressly reserved.

EXHIBITS:

See Index, page 2.

1 JOSEPH CHARLES GRAY

2 being first duly sworn was examined and testified as
3 follows:

4 EXAMINATION BY MR. RICHARDSON:

5 Q. Good morning, Mr. Gray. We've met before. I'm
6 Bradley Richardson. I represent the bank in this
7 matter, the plaintiff, Plantation Federal Bank,
8 successor in interest to First Savers Bank. As I go
9 through my questions this morning, I do encourage you,
10 if you don't understand what I'm asking you, please
11 stop and interrupt me, ask for some clarification.
12 I'd ask if you have any questions about what I'm
13 asking you, you direct those questions to me, not to
14 Mr. Griffin. Are you ready to proceed, sir?

15 A. Yes, sir.

16 Q. Sir, what is your full name?

17 A. Joseph Charles Gray.

18 Q. And what is your current residence address?

19 A. 30 Round Spinney Drive.

20 Q. And what town is that?

21 A. Seneca.

22 Q. That's in Seneca, State of South Carolina?

23 A. Correct.

24 Q. And that is your primary residence?

25 A. Correct.

- 1 Q. Do you own that home?
- 2 A. Yes.
- 3 Q. Is it currently mortgaged?
- 4 A. Yes.
- 5 Q. Who is it mortgaged to?
- 6 A. Oconee Federal.
- 7 Q. How long have you had that loan with Oconee Federal?
- 8 A. I'm thinking two or three years.
- 9 Q. Is that a fully amortizing loan, or is it a five-year
- 10 loan, 30-year loan?
- 11 A. It's a 15 or 30. It may be a 30, I'm not sure.
- 12 Q. And that is secured by a lien on your principal
- 13 residence?
- 14 A. That is correct.
- 15 Q. What's the principal balance on that? What was the
- 16 loan amount?
- 17 A. Loan amount, I think, 171,000. I paid down on it, and
- 18 I think the balance right now is 135,000, something
- 19 like that.
- 20 Q. Do you recall what the interest rate on that loan is?
- 21 A. Four and a quarter, something like that, four and a
- 22 half.
- 23 Q. Do you think that's a good rate? Do you think that's
- 24 a good interest rate?
- 25 A. Well, at the time it was, but it got better later.

- 1 Q. Yes, sir. And what year did you say you took that
2 loan out?
- 3 A. I'm thinking 2008 or '10.
- 4 Q. And do you own that property just in your name, or do
5 you own that with someone else?
- 6 A. With my wife. My wife and I have it together.
- 7 Q. And what is her name?
- 8 A. Peggy B. Gray.
- 9 Q. How long ago did you purchase that property?
- 10 A. Pardon?
- 11 Q. How long ago did you purchase that property?
- 12 A. How long did I purchase --
- 13 Q. Yes. When did you buy it? What year, approximately?
- 14 A. Well, I just said I think it was 2009, 2010.
- 15 Q. That's when you bought it?
- 16 A. Yeah.
- 17 Q. Oh, okay. I misunderstood. I thought you meant you
18 refinanced it in 2008, '10.
- 19 A. No. No, I bought the house outright. I moved,
20 downsized.
- 21 Q. What other parcels of real estate do you own?
- 22 A. That's it.
- 23 Q. Do you own the lot that's the subject of this action?
- 24 A. Sure. No. Well, the subject of this action, yes.
25 The two lots, yes.

1 Q. Do you own any other properties right now?

2 A. No.

3 Q. Lot 27, Waterford Ridge, when did you purchase it? An
4 approximate is fine.

5 A. I'm thinking 2006, May 2006.

6 Q. I'm going to show you a document, a copy of a
7 contract. And it's for a Lot 27, has the purchaser as
8 Charles Gray. It has the seller as Waterford Ridge.
9 Does that look like the contract when you first
10 purchased that property?

11 A. (Reviewing document). Well, I don't have a copy of
12 this; I have a copy of something else. But it is
13 -- this is showing Lot 27. The thing I have here came
14 from Crescent Communities.

15 Q. Yes, sir.

16 A. And this came from? Who did this come from?

17 Q. This was sent to me by Mr. James Belk. I believe he
18 was your closing attorney when you purchased this
19 property.

20 A. Probably so. I used him a lot, yes.

21 Q. And it's a contract; it's not the deed. I see what
22 you're looking at there.

23 A. Okay, yeah.

24 MR. RICHARDSON:

25 This is the contract. Sir, if I may, I'm going to ask

1 the court reporter to enter this as an exhibit. That
2 will be Exhibit 1.

3 (Plaintiff's Exhibit No. 1 marked for identification.)

4 EXAMINATION RESUMED BY MR. RICHARDSON:

5 Q. Mr. Gray, I'm going to ask you to flip to the last
6 page.

7 A. Okay.

8 Q. Is that your signature under "Purchaser"?

9 A. That is correct.

10 Q. It also states selling broker, John Hamrick Real
11 Estate. It looks like a Cammy Greer may have signed
12 that.

13 A. Cammy Greer worked for John Hamrick at one point in
14 time, yes.

15 Q. Was John Hamrick Real Estate your agent for that
16 transaction?

17 A. I'm not sure he was my agent, no. He was -- John
18 Hamrick represented Crescent Communities.

19 Q. I'm looking at this contract, and it states that the
20 listing broker was Keowee Real Estate. And it says,
21 "Seller Broker: John Hamrick Real Estate."

22 A. To me, I think it's one and the same. I don't know
23 that. I didn't pay any -- I don't know. John Hamrick
24 was the representative for Crescent Communities when
25 they auctioned all of these lots off for years, years,

1 and years. And he was the only real estate person
2 that was ever hired by Crescent to do that for
3 property for all the subdivisions, as far as I know.
4 I'd bought a lot of lots from Crescent over the years.
5 All the lots I ever bought was developed by Crescent,
6 which is a division or subsidiary of Duke Energy.

7 Q. Yes, sir.

8 A. And so John Hamrick was given some type of a contract
9 by Crescent; I suppose, in years past, to handle all
10 of their real estate transactions. So why -- what
11 this means on this piece of paper, I have no idea.

12 Q. If you'll stay on that page, it says, "Party
13 represented by selling broker." It does say seller,
14 not purchaser. Is your testimony that neither one of
15 these Realtors represented you in this transaction?

16 A. I don't know how to answer that question. I don't
17 know how the -- I don't know where you're going with
18 that question, because I purchased it from Crescent
19 Communities, LLC. And there was some fellow there
20 that signed this, vice president of Crescent. So he
21 was the seller.

22 Q. I'll simplify it. I'm just asking you, are either of
23 these realtors your realtor for the transaction?

24 A. Well, no, not that I went in and signed the contract
25 with him. I didn't have a -- it's just he was under

1 the tent, and he handles it all. And when you buy
2 something, when you won the bid for the lot, then
3 Crescent had different people in their employ that
4 developed different segments of their properties. And
5 I don't know who this fellow was.

6 Q. All right, well, let me ask you this.

7 A. But John Hamrick --

8 Q. How did you come to be at Waterford Ridge that day, to
9 make a purchase?

10 A. Well, Crescent, I guess, contracted with John Hamrick.
11 And he advertised that there's going to be an auction
12 on such-and-such a date.

13 Q. So there was an auction?

14 A. It was an auction, yeah.

15 Q. It wasn't a scenario where they said, "Mr. Gray, we'll
16 sell this to you --

17 A. No.

18 Q. -- for \$199,000?"

19 A. No.

20 Q. So it was an auction?

21 A. It was an auction.

22 Q. How many people were at that auction, would you
23 estimate?

24 A. Probably three or four hundred.

25 Q. And you had previously mentioned you'd bought some

1 properties from Crescent before.

2 A. Yes.

3 Q. How many properties, would you say?

4 A. I bought one or two -- can I ask my wife the name of
5 the -- where we bought the --

6 MS. GRAY:

7 Westwood Bay.

8 WITNESS CONTINUES:

9 A. Westwood Bay was the first one.

10 Q. And when did you buy Westwood Bay?

11 A. Well, I don't know. It was 2004, 2005.

12 Q. Okay, approximate is fine.

13 A. I'm guessing, because I don't know the dates. I don't
14 have the paperwork here.

15 Q. And you bought it. Was that an auction as well?

16 A. Same thing. Same thing, it happened all -- those
17 auctions would be conducted maybe every six to eight
18 months, maybe a year. And as they would develop the
19 property, they'd go out -- I guess Crescent would go
20 out and select which point they wanted to sell, or
21 which lots, coves, whatever they wanted to do. And
22 they would call them Waterside Crossing, Waterford
23 Pointe, Waterford Ridge. It's just that whole side of
24 the lake, over an eight- or ten-year period, whatever.
25 Q. But you bought a lot at Westwood Bay, you say, '04 or

1 '05?

2 A. Yeah, and I bought one in Pointe Harbor Number II. I
3 bought two lots in there, Pointe Harbor II. Roman
4 Numeral II.

5 Q. Roman Numeral II.

6 A. And we bought some lots. Well, Waterford Ridge is
7 one. The 27 and 29 lots were there. But my son was
8 with me, you know, most of the times. Do you want to
9 know how the auctions take place? I mean, I don't
10 know what all you want now.

11 Q. We'll get to that.

12 A. Okay.

13 Q. Let me go back to Westwood Bay. Was that a lot or was
14 that a home?

15 A. No, it was a lot. It's always a lot.

16 Q. And what happened to that lot?

17 A. Well, I kept it for a long time. I was going to build
18 my personal home on it, and the economy went bad, and
19 I couldn't afford it so I sold it for about what I
20 paid for it.

21 Q. And when did you sell it?

22 A. In fact, I sold it to John Hamrick Company. I think
23 one of his children maybe had bought it. I'm going to
24 say 2000 -- maybe '10, '09 or '10.

25 Q. Is that only one lot in Westwood Bay that you owned?

- 1 A. No, I bought -- oh, I don't remember the lot numbers.
2 I bought Lot No. 15. The one I bought was Lot No. 24.
- 3 Q. Lot No. 24 was the one that you bought, that you would
4 have liked to have built on?
- 5 A. Yes. And Lot No. 15 I bought, and I did build a house
6 on it and sold the house. And I don't know what year
7 it was. It was 2008, 2007, 2009 time frame, you know.
- 8 Q. And you bought that lot on No. 15?
- 9 A. Uh-huh (affirmative).
- 10 Q. Was that an auction as well?
- 11 A. Uh-huh (affirmative). All, they all was bought at the
12 same time, the same auction.
- 13 Q. And when you bought it, did you buy it for resale or
14 did you buy it for your own purposes?
- 15 A. No, I -- the only lot I ever bought, out of all these
16 lots, is Lot No. 24 in Westwood Bay, for my personal
17 use.
- 18 Q. So Lot 15, you bought it with the intention of
19 reselling it?
- 20 A. Well, not reselling the lot. I bought them all to
21 build houses on. I was in the construction business
22 at the time.
- 23 Q. So you built a home on 15 and resold it?
- 24 A. That's correct.
- 25 Q. But when you went to the auction that day, it was for

- 1 the purpose of getting you a lot to build on?
- 2 A. That's correct. I bought all these lots for the same
- 3 purpose.
- 4 Q. Lot 24, let me go back to that. Did you buy it in
- 5 your name, you and your wife's name --
- 6 A. Yeah, me and my wife's name.
- 7 Q. How about Lot 15?
- 8 A. I don't remember how we bought it, whether we -- I
- 9 guess we probably did. It was probably my name and
- 10 Peggy's name. I'd have to go back and look at the
- 11 paperwork. I didn't know we was going to talk about
- 12 all that today.
- 13 Q. No problem. Just the best you can recall, Mr. Gray.
- 14 Lot 24, did you finance that lot or did you pay cash?
- 15 A. I financed it.
- 16 Q. Who did you finance it with?
- 17 A. Carolina First.
- 18 Q. And what kind of loan terms did they offer you, if you
- 19 recall?
- 20 A. Don't remember whether it was interest only or not.
- 21 Q. Was it a short-term loan or a long-term loan?
- 22 A. No, it was interest only. You just signed this
- 23 contract for interest only, and you pay interest on
- 24 the loan.
- 25 Q. Would it be a 12-month loan, a 24-month loan?

1 A. Most of them are 12 months, I guess, or some of them
2 are 24 months. I don't remember the -- how the
3 auction -- we're talking about how many lots, you
4 know, over the years we bought. We built houses in
5 Chickasaw Pointe. We built houses in -- I mean
6 Chickasaw, and we built houses in the Bountyland area.
7 You know, it was a company where we buy lots and build
8 houses, or either sell a lot to somebody else. A lot
9 of times in those auctions at Crescent, the Hamrick
10 staff would be the -- Hamrick was always the conductor
11 of all those auctions.

12 Q. He's kind of the auctioneer?

13 A. He was. Well, he -- the auctions were silent
14 auctions. And Crescent would publish the list price
15 of what they wanted for a lot. You could not -- that
16 was the start of the bid. You could not go -- you
17 could not bid below that.

18 Q. So it's a sealed bid auction?

19 A. Was not -- well, it wasn't sealed. It was when he
20 opened up the auction, you would -- he would ask you
21 -- ask everybody to bid that was interested in it, any
22 particular lot. Let's say he was -- let's say there
23 was 40 lots, and then you would bid on the lots that
24 you wanted to bid on. Once you did that, he would
25 take all those cards that came out. You write it on

1 a card, give it to him. And they would determine how
2 many people wanted Lot No. 21 or Lot No. 20, ever how
3 it went. And then he would know which ones to start
4 bidding on first. The one that had the most people,
5 I think, is the way he used it. And then so the
6 second -- and so everybody on the initial bid, bid the
7 asking price. He'd bid the same price. The purpose
8 of that was to give him knowledge of how many people
9 was going to bid on each one of the 40 lots --

10 Q. Yes, sir.

11 A. -- so he'd know which sequence to list selling it.
12 The second bid you sent in was what I would call the
13 poker bid. That's when you started playing poker.
14 That was a true bid. And the person that had the
15 highest bid on that second go-around is the one that
16 got the lot.

17 Q. So there would be two rounds of bidding?

18 A. Uh-huh (affirmative).

19 Q. One of who is in?

20 A. Uh-huh (affirmative).

21 Q. Or to use your term, I guess, that was your ante?

22 A. Sort of, yes.

23 Q. You were willing to buy it, for at least the list, and
24 then you would --

25 A. Yeah, and he --

- 1 Q. -- do what you referred to as poker?
- 2 A. And each -- and you could only buy one lot. If
- 3 there's 40 for sale, you could only buy one, one
- 4 person's name. So I'd buy one in my name and my wife
- 5 would buy one in her name. We'd get two lots.
- 6 Q. How many of these auctions with Crescent would you say
- 7 you've attended in your life?
- 8 A. Three or four.
- 9 Q. And did you buy one at each one of those?
- 10 A. No.
- 11 Q. How many lots do you think you purchased at auction,
- 12 you and your wife?
- 13 A. Oh, I'm going to say six, seven. In the neighborhood
- 14 of six probably, total.
- 15 Q. When you went to those auctions that Crescent held,
- 16 Mr. Hamrick ran those, --
- 17 A. Uh-huh (affirmative).
- 18 Q. -- did you have an agent of your own?
- 19 A. No.
- 20 Q. Did you have anybody with you giving you advice?
- 21 A. No.
- 22 Q. Anybody give you any kind of advice, as to whether it
- 23 was a good price or not?
- 24 A. Well, at each auction all the banks were there,
- 25 including First Saver, including BB&T, including

1 Carolina First, including Bank of America. They was
2 all there. And John would specify, before the auction
3 would start, which was sort of the -- let's use the
4 term "leading bank". He would let -- so the leading
5 bank would get to set up the Coca-Colas and the soft
6 drinks and donuts, and all this other good stuff.

7 Q. And take loan applications and things like that, talk
8 to people about financing? Is that what they did?

9 A. Oh, yeah, they'd be in as much competition with each
10 other as we were bidding, the banks were. They
11 couldn't -- they were buying all them lots, financed
12 them all.

13 Q. You said the banks would buy those lots?

14 A. No, they would be ready to finance the lot, the minute
15 we won the bid.

16 Q. I understand.

17 A. And they'd have their own appraisers there.

18 Q. Who would have their own appraisers there?

19 A. The banks. Or either they'd have their own people
20 there. They'd have their V.P., or whomever would be
21 there representing them.

22 Q. But did any of them ever tell you if a lot was a good
23 price or not?

24 A. They always did. I never bought one that someone
25 didn't say it was a good price.

1 Q. What do you mean by that? What specifically did they
2 say?

3 A. Well, I don't remember their exact words, Brad, but
4 --

5 Q. What gave you the impression that they would tell you
6 it was a good price?

7 A. Because they was willing to finance it.

8 Q. Because they were willing to take an application to
9 finance a lot?

10 A. Yes, sir, every single time.

11 Q. Did anyone ever specifically say, Mr. Gray, this is a
12 great purchase and you ought to buy it?

13 A. They would walk over -- most of the time, if you was
14 interested in it and they thought you was interested
15 in a lot, and you were sort of -- like in this case,
16 with this lawsuit here, First Savers. Shane Smith was
17 the vice president of First Savers. And he had just
18 come there from Community First. He was a V.P. at
19 Community First. So when that took place that day, he
20 was an employee of Community First, on this lot here.

21 Q. You're skipping around. Let's make sure it looks
22 right. You're talking about Lot 27?

23 A. Lot 27.

24 Q. All right. And Mr. Smith was employed by?

25 A. Community First, and he was on that site that day. He

1 was under that tent that day. And he walked over that
2 lot with me that day. And he knew that it was an
3 interior lot, and he knew that I had to pay 10 percent
4 down. And the waterfront lot was five percent down.
5 You had to pay five percent of the bid price to
6 Crescent to close on it, to close it up.

7 Q. While we're talking about Lot 27 -- and I don't want
8 to skip around too much, because I know you've bought
9 a lot of properties over the years.

10 A. Well, yeah, but this lawsuit -- I would prefer to
11 stick to what we're talking about here, 27 and 29.
12 And they're identical, because they were bought the
13 same day. I bought one and my wife bought one.

14 Q. Let's follow up on 27, but I am going to come back to
15 your other properties. Lot 27. You were previously
16 describing the bid process at the Crescent auctions.
17 This was a Crescent auction, correct?

18 A. Uh-huh (affirmative).

19 Q. And you said you would start off by writing on a card?

20 A. As well as I remember. It's been five or six years
21 ago, whenever it was I last -- when I bought these
22 lots the last time, because Crescent went bankrupt
23 later.

24 Q. To the best of your recollection, how did that bidding
25 process go on Lot 27?

1 A. You put down what -- Crescent would tell you. They
2 give you a piece of paper and they show it. If it was
3 40 lots, all 40 lots on that piece of paper had a
4 price that they was asking for that lot.

5 Q. Yes, sir. Do you recall what that price, the opening
6 price was, for that lot?

7 A. No, I have no idea.

8 Q. I understand.

9 A. I don't know whether we're giving a deposition or
10 whether we're educating you about it, but that's how
11 Crescent worked. And you would take the piece of --
12 you'd sign the card. And I'm sure that -- and you'd
13 put on that card what lot you wanted.

14 Q. Yes, sir. And so I'm going to assume you did the
15 first card, and you were one of the handful of people
16 who were the high bidder, or at least the interested
17 bidders.

18 A. Yeah, I don't remember how many people bid on Lot 27.

19 Q. But definitely you and somebody else?

20 A. Me and somebody else.

21 Q. It might have been one or more persons, could have
22 been ten more people?

23 A. That's right. It may have been -- all 40 of them may
24 have bid.

25 Q. So the second time, that's when you wrote down your

1 bid that ended up on the contract; is that correct?
2 Or was it a true auction, where you call out the
3 numbers?

4 A. No, you never call out the numbers. You'd write down
5 and give them the card the next time. So if you had
6 -- let's say there was six people that bid on Lot No.
7 27. There's a possibility that two of them could have
8 been the same number. But you still didn't get in the
9 typical auction, where you have an auctioneer. He
10 would tell you if two people had the same bid. And
11 then you'd send in -- you've got the third piece of
12 paper. At some point somebody eventually would be the
13 highest bidder. And the highest bidder --

14 Q. So you may have gone around more than twice?

15 A. Sure.

16 Q. Well, I'm going to ask you to pick that contract back
17 up and flip to the very first page. On No. 2, it says
18 purchase price is 199,251. Do you see where I'm
19 talking about?

20 A. (Reviewing document). 199,251, yeah, I see it now.

21 Q. And it states the purchase price?

22 A. Uh-huh (affirmative).

23 Q. Is it fair to say that when the dust settled, and it
24 went around, whether it was two times or four times,
25 that was the high bid?

1 A. Yeah, because the other guy may bid 250 -- 199, 250,
2 and I went \$1.00 higher.

3 Q. So you always went that \$1.00 higher, to make sure you
4 beat somebody out if it was an even number?

5 A. You'd always bid those odd numbers.

6 Q. Did Mr. Smith tell you to write that number down on
7 that card?

8 A. No. I don't remember how -- whether he was sitting
9 beside me, behind me or in front of me, or if he was
10 standing over there serving coffee to somebody. I
11 don't remember where he was. Anyways, that's how it
12 works.

13 Q. So you said you and your wife, over a period of a
14 couple of years y'all may have bought six or seven of
15 these lots at these Crescent auctions?

16 A. Uh-huh (affirmative).

17 Q. Who were some of these other banks at these auctions?

18 A. I can't recall, Brad. Community First, BB&T, Carolina
19 First. I think Bank of America was there. And a lot
20 of times -- and I'll add this, to clarify this point,
21 because I think it's important. Hamrick -- John
22 Hamrick's girls, his agents or whatever he wants to
23 call them, was usually on cellphones at these auctions
24 and people were bidding from California or Colorado,
25 or New Mexico, or New York, all over the United

1 States.. Maybe even some foreign countries. I'm not
2 sure where all they came from, investors. And so I
3 don't know how the girls wrote those bids down to put
4 in the stack, because I never was privileged to that
5 information. But I know -- I do know the girls -- and
6 there was other real estate agents there. It wasn't
7 just Hamrick's shop; there was other agents there,
8 from other real estate people all over town. And they
9 would be on the cellphones to some of their clients to
10 bid, and they would bid for them.

11 Q. Sure, some phone-in bidders.

12 A. So there was probably -- there may have been 50
13 people under the tent that was serious bidders. The
14 rest of them sitting there was either spouses or just
15 interested parties. I don't know who it was. But
16 then there was nothing unusual to see four or five
17 different real estate companies around there with
18 cellphones stuck in their ears. And that's what they
19 were doing, because they had clients buying property
20 on Lake Keowee, because it was as hot as a firecracker
21 in 2006, 2007.

22 Q. Yes, sir. You had mentioned about the financing.

23 A. Uh-huh (affirmative).

24 Q. They told you it would be so much for interior, so
25 much for lakefront?

1 A. So much down-payment, yeah, right.

2 Q. Sure. Lot 27, is that an interior lot?

3 A. Yes, it is.

4 Q. Do you recall how much down payment you had on it?

5 A. Ten percent of that 199.

6 Q. Ten percent of the 199?

7 A. I don't have it. I could probably go find the check,
8 but I don't --

9 MR. RICHARDSON:

10 I'll ask you to mark that one No. 2, and hand it to
11 Mr. Gray.

12 (Plaintiff's Exhibit No. 2 marked for identification.)

13 EXAMINATION RESUMED BY MR. RICHARDSON:

14 Q. Mr. Gray, I'm handing you a copy of a closing
15 statement, May 25, 2006, prepared by James Belk. You
16 had mentioned that he was your attorney on a lot of
17 things. I'm looking over here in the buyer's column.
18 It shows that you paid 199,251, and that you brought
19 to closing 4,747.51. I apologize. Mr. Belk faxed
20 this to me. It's a little hard to read this morning.

21 A. Settlement. Is that Item No. 3, Settlement Charges,
22 you're reading here?

23 Q. That's closing costs. I'm looking down at the very
24 bottom where it says cash from and to. It looks like
25 you got some cash back..

- 1 A. Four thousand-and-something down there, yes, cash.
- 2 Q. Because you had already put your 10 percent down?
- 3 A. Apparently I had. I don't know.
- 4 Q. I'm looking up there, right in the middle of the page.
- 5 It says deposit or earnest money, 19,925.10.
- 6 A. Yes.
- 7 Q. Is that what you put down on this property?
- 8 A. It sounds like that would be what it was. That's the
- 9 deposit, earnest money.
- 10 Q. Would you have given that check to Mr. Belk, or is
- 11 that something you would have given to the auction
- 12 company or the sales company on the day of the sale?
- 13 A. I don't remember, but I would assume it went to
- 14 Crescent. When I got this other thing from Crescent
- 15 -- where did I have that? Let me show you.
- 16 Q. In my experience, before you leave the auction they
- 17 want a check.
- 18 A. Yeah, right.
- 19 Q. I want to make sure that's your understanding.
- 20 A. It was either before I left the auction, or we had to
- 21 -- we went to the office the next day and give them
- 22 the money. I don't remember the sequence, but --
- 23 Q. But certainly prior to closing, you'd give them the
- 24 money?
- 25 A. Yeah, somebody. You had to give 10 percent. And we

1 did buy some waterfront lots, and they were five
2 percent. But it was just -- it's the same scenario
3 with either one. If they developed a total of six or
4 seven different pieces of property over a three- or
5 four-year period on Lake Keowee, it was always 10
6 percent interior down-payment and five percent. This
7 was to Crescent.

8 Q. And that was always to Crescent?

9 A. Always to Crescent.

10 Q. And you say you went to about three or four of their
11 auctions?

12 A. At least that many.

13 Q. At least that many?

14 A. Yes.

15 Q. Did you ever go to some auctions and you didn't buy
16 anything?

17 A. Yes.

18 Q. So you bought six or seven lots, but went to at least
19 three or four auctions, could have been more? I
20 recall those days. They had one about every weekend
21 in the spring.

22 A. Well, it wasn't every weekend. It was depending on
23 how fast they were developing them. And it depended
24 on who they had; sometimes the superintendent, job
25 superintendent, or whatever you wanted to call the

1 person, wasn't quite as good about getting his curbs
2 and sidewalks in as another one of their employees.
3 So they'd have a different person developing on their
4 behalf, developing each piece of property --

5 Q. Yes, sir.

6 A. -- whether it was Pointe Harbor, or whether it was
7 Waterside Crossing, or whether it was Waterford Ridge
8 or Waterford Pointe or -- now, Waterford Pointe, some
9 of those developments have been there for years and
10 years and years. Westwood Bay was a new one that they
11 opened up. And they'd already built Pointe Harbor I
12 on one side of the cove, and then they went to Pointe
13 Harbor II and added another 40 lots. Point Harbor I
14 was there, in existence, maybe five or six years
15 before Pointe Harbor II was opened up. So there's all
16 types of sequences, ever how they -- I don't know who
17 made those decisions.

18 Q. You appear to be very well informed. You know more
19 about it than I do, so I'm going to say you're pretty
20 well informed about Crescent and their process. Back
21 to this closing statement, this HUD, it states here
22 Community First Bank was the lender.

23 A. Uh-huh (affirmative).

24 Q. And that's correct?

25 A. That's correct.

1 Q. It looks like they loaned you \$188,325, according to
2 Mr. Belk's paperwork.

3 A. Okay.

4 Q. Do you recall the terms of that loan?

5 A. It was an interest only. All the lots I bought was
6 interest only.

7 Q. Let me stop you there. All the lots you bought, and
8 that would be from any of the banks?

9 A. Uh-huh (affirmative).

10 Q. Not just Community First or First Saver?

11 A. All the banks had interest only.

12 Q. And it was 12-month terms, three-year terms --

13 A. I don't know. Like I said a while ago, it was either
14 12 or 24. I don't remember. It may have been
15 depending on which bank it was.

16 Q. But most of them were either a 12 or a 24?

17 A. Yeah, in that neighborhood.

18 Q. And as the borrower/buyer, you were aware at the end
19 of 12 or 24 months, whatever the case may be, you had
20 to do something with that loan; is that correct?

21 A. You did, and then most of the time they'd just renew
22 it.

23 Q. Do you recall if this one was 12 or 24, the Community
24 First?

25 A. I think it was 12.

1 Q. Do you recall what the interest rate was?

2 A. The original interest rate was -- with Community
3 First, I don't remember the rate.

4 Q. Does 5.95 sound about right?

5 A. Because -- well, it could have been. I don't
6 remember. I don't remember the interest rate. Most
7 of the time the interest rates were based on prime at
8 the time -- prime plus a quarter, prime plus a half,
9 prime plus three-quarters. Different banks did
10 different things.

11 Q. I'll tell you this. Would you think it would have
12 been the same terms on Lot 26 and 27?

13 A. Twenty-seven and 29.

14 Q. Oh, excuse me, 29 and 27.

15 A. I'm sure it would have been.

16 Q. Well, I'll tell you Mr. Belk has been unable to locate
17 a copy of that note. We're going to have to get a
18 copy, I guess, from Community First. He had a copy of
19 your HUD and a copy of all your checks, but he didn't
20 have a copy of your note. I'll tell you I have a copy
21 of the other one.

22 A. 29?

23 Q. Lot 29. And it stated 5.95, 12-month term, interest
24 only.

25 A. That's how much interest we paid. This one here is

1 Lot 27. This is the same thing you just handed me, I
2 think.

3 Q. It looks like you might have a copy of it, right
4 there. Jim might need you to make him a copy of it.
5 He might need it for later.

6 A. Recording fees. Do you want to look at that?

7 Q. This is the exact same thing I just handed you, but I
8 see on the back of that clip --

9 A. Do you have two pages there?

10 Q. Yes, sir, I do. But I see on the back of that clip,
11 a copy of a note. It looks like a Community First
12 note.

13 A. Community First. This note was May 26, 2006,
14 Community First, at the rate of 5.950.

15 Q. Yes, sir.

16 MR. RICHARDSON:

17 Charles, do you care if we make a copy of this, so we
18 can have it?

19 MR. GRIFFIN:

20 That would be fine. That looks like the original.

21 MR. RICHARDSON:

22 If I may, I'm going to step out and have my staff make
23 a copy of this.

24 (OFF RECORD)

25 MR. RICHARDSON:

1 I'm going to hand the court reporter a copy of that
2 document you just handed me, and have her put it in as
3 Exhibit 3.

4 (Plaintiff's Exhibit No. 3 marked for identification.)

5 EXAMINATION RESUMED BY MR. RICHARDSON:

6 Q. Mr. Gray, as you said earlier, 5.95 was the rate on
7 that loan.

8 A. Yes, sir.

9 Q. Was that a fixed rate or was that a variable?

10 A. What was the question again?

11 Q. The rate was fixed or a variable?

12 A. No, it was -- I guess it was fixed.

13 Q. It looks like it was fixed.

14 A. It was fixed for that -- for this time frame of one
15 year.

16 Q. One year.

17 A. And so -- and so that was probably the derivative of
18 whatever the prime was on the -- when I signed the
19 note May 25, 2006. The prime, you know, may have been
20 five. They go three-quarters or something above
21 prime, whatever it --

22 Q. Do you recall what prime was around that time?

23 A. I never paid much attention to it on any of these
24 lots, because it was -- it was just what everybody
25 did, prime plus something. And we didn't sit down and

1 negotiate the interest rates, basically. You just
2 -- you had to listen to whatever they give you. It
3 depended on -- well, I guess in those times, this was
4 before the crash.

5 Q. Yes, sir.

6 A. What I'm recalling the real estate crash of 2008, when
7 we all got in the same boat. So the prime, at that
8 time, was probably five percent or something.

9 Q. Probably five, five and a half, --

10 A. Yeah, something like that.

11 Q. -- something in that range. This note says it matured
12 May 25th of 2007.

13 A. Uh-huh (affirmative).

14 Q. That was before you did the deal with First Savers.
15 What happened when it matured with Community First?

16 A. They renewed.

17 Q. They renewed it? Do you recall the terms?

18 A. Same thing, interest only, whatever it -- that rate
19 may have changed. I don't have a copy of that at all.

20 Q. But it was interest only?

21 A. Yeah, that's correct.

22 Q. Was it another 12-month term, would you say?

23 A. Uh-huh (affirmative).

24 Q. I'm going to go back to your other real properties.
25 Other than your Crescent lots, have you bought other

1 properties over the years? Let's start with just
2 Keowee. Any other Keowee properties or lake
3 properties?

4 A. Anything on Keowee, that I bought on Keowee, there
5 were a few that we would buy and just flip. And I
6 don't remember which properties they were, but it was
7 from an individual person, from individual realtors.

8 Q. So when you say buy it and flip, you buy it for
9 investment with the hope of reselling for a profit?

10 A. That's correct. If somebody was in trouble or
11 somebody was moving or something, whatever the deal
12 was. Once you get involved in that, the people would
13 know that you was doing that or would help, you know,
14 keep you -- you kept your ears to the grindstone.

15 Q. In your life, how many flip transactions do you think
16 you've been involved with?

17 A. A dozen, probably.

18 Q. So would you say you have pretty good experience
19 buying and selling properties?

20 A. Uh-huh (affirmative), until you know when.

21 Q. We all know what happened. I agree with you. But I'm
22 just asking you, would you consider yourself
23 sophisticated when it comes to buying and selling
24 properties? Have you done that a lot?

25 A. Yeah, I've done enough of it to know whether it was a

1 good deal or a bad deal. And I've had some -- some
2 lots, I'd buy it, and someone would sell it. I mean,
3 I would sell it to someone, and they'd turn around and
4 sell it back to me, and I'd sell it back to somebody
5 else. It's just --

6 Q. So you've made some money on some, and not on others?

7 A. I made some money in real estate at that time, yes.

8 Q. When the loan with Community First matured the second
9 time, what did you do then?

10 A. Well, I was told by Community First that it went from
11 May 25, 2006 to May 29, 2007 on the first loan. The
12 second one was May 29, 2007 to May 29, 2008.

13 Q. And that's Community First?

14 A. Community First.

15 Q. I see you've got some notes there.

16 A. And -- well, because I figured you were going to be
17 asking questions.

18 Q. And I appreciate --

19 A. I'm coming to a deposition. But it --

20 Q. So May 2008 rolls around.

21 A. I was informed by Community First that there were no
22 more interest on their loans. This is in 2008. It's
23 at the beginning of the crash.

24 Q. Who at Community First informed you of that?

25 A. Mr. Shane Smith.

- 1 Q. At Community First?
- 2 A. Correct.
- 3 Q. So he was not employed with First Savers at that time?
- 4 A. No. He did both of these.
- 5 Q. At Community First?
- 6 A. Uh-huh (affirmative).
- 7 Q. So how were you introduced to First Savers?
- 8 A. By Mr. Smith.
- 9 Q. Well, he couldn't have been employed by Community
- 10 First and First Savers.
- 11 A. Not at the same time, but he -- along about that time,
- 12 he made a transition to First -- whether he knew he
- 13 was going to go to First Savers or not, I don't know.
- 14 First Savers just opened up the bank. It was a brand
- 15 new bank in a little shopping center there, in Seneca,
- 16 two offices in it.
- 17 Q. I'm going to back you up, because I want to make sure
- 18 I understand what you're saying. You're saying when
- 19 May 2008 came around, Shane Smith, to your
- 20 recollection, was still at Community First?
- 21 A. Uh-huh (affirmative).
- 22 Q. And he told you Community First would not renew your
- 23 loan?
- 24 A. Not -- he -- they would not do an interest only.
- 25 Q. Did they offer you an alternative?

1 A. I don't remember. They probably did. But I knew Mr.
2 Hamrick, had done business with Mr. Hamrick, had known
3 him at all the auctions. And he knew we'd buy lots.
4 So he -- we knew him. He was also on the Board of
5 Directors for Community First.

6 Q. John Hamrick?

7 A. John Hamrick was and is, I guess, to this day. I
8 don't know. But either John or Shane Smith, one.
9 Somebody at Community First said there was no -- they
10 would do no more interest only loans. And whether I
11 was offered an alternative to that or not, I don't
12 remember. But my main interest was to go and look and
13 see if I could find it -- BB&T, or go somewhere, and
14 see who -- if I could get a loan on this same lot at
15 this price, in interest only.

16 Q. Do you recall talking to some other banks?

17 A. I may have. I don't know. I just -- I had a
18 daughter-in-law that worked at BB&T. I may have
19 discussed in private -- not in private, just it
20 probably came up in conversation over dinner or
21 something. I don't know. But it was a known fact
22 that we weren't going to be able to keep it there. If
23 we wanted to do that, we had two choices, either make
24 a decision to stay there with a fixed loan -- you
25 know, a 15-year or 30-year loan, ever how you could

1 finance it. I would -- but anyway, we found -- when
2 Shane -- I don't remember the time frame, when Shane
3 Smith left Community First. I don't know. You'd have
4 to look at the records for Shane Smith. We'd have to
5 depose him, I guess, to find out. He's no longer in
6 the banking business. He works -- he's an Allstate
7 agent in Seneca. Clemson, rather.

8 Q. But come May of 2008, you were faced with a choice.
9 Either move this loan or to accept the terms that
10 Community First was putting on the table?

11 A. That is correct.

12 Q. But you don't recall what terms they were putting on
13 the table?

14 A. You mean the alternative terms for --

15 Q. For Community First.

16 A. -- Community First? I had no -- I can't remember,
17 don't recall. I don't have it in writing anymore.

18 Q. Well, let me ask you this. They didn't offer to renew
19 it, at interest only; is that correct?

20 A. Yeah, that was a fact, they did not. They would not
21 do it.

22 Q. Community First would not renew it, at interest only?

23 A. They weren't going to renew any of them.

24 Q. Do you recall getting a term sheet from anybody other
25 than First Savers, in May of 2008?

- 1 A. No. I'm sure I may have talked to somebody, but --
- 2 Q. But you can't recall who?
- 3 A. -- I can't recall who. And Mr. Smith went -- about
- 4 this same time, he went to work for First Savers and
- 5 opened up that bank.
- 6 Q. This is probably a good time for me to say this. I
- 7 know you all bought two lots. One was in your name
- 8 and one was in your wife's name. Is it safe to say
- 9 you were the person most familiar with the details?
- 10 A. Oh, sure.
- 11 Q. So you would understand the financing, who did what,
- 12 that type thing?
- 13 A. Yeah, much more so than my wife. I mean, she was at
- 14 all the auctions with me. She knew what -- how we got
- 15 the lots, and she knew we had built houses. And she
- 16 knew what our income was.
- 17 Q. But if I were to ask her the same questions I'm asking
- 18 you, sir -- banks, finance, and interest rates
- 19 -- would she know that information, or just you?
- 20 A. Not to the detail that I do, no.
- 21 Q. I just want to make sure, because I know you keep
- 22 referring to both lots.
- 23 A. Because it was a -- it's almost like a -- when you
- 24 went to auction, when you left there, you had two lots
- 25 you had bought.

1 Q. But you could only buy one in your name; is that
2 right?

3 A. That's correct, that's the rule of engagement.

4 Q. As we go through this now, I may start referring to
5 both lots.

6 A. Yeah.

7 Q. If you're not comfortable answering questions on both
8 lots, --

9 A. No, I --

10 Q. -- I want you to speak up.

11 A. -- don't know of a time where we split the lots, and
12 one was with one bank and one was with another bank,
13 or the time frames are different. They always went as
14 a package deal.

15 Q. Then I'm going to back up and ask you some questions
16 about Ms. Gray's lot. When you bought that Lot 29
17 over at Waterford, was it the same terms in financing
18 on that one?

19 A. Yes.

20 Q. Community First?

21 A. Correct.

22 Q. Do you think you had the same kind of terms, as far as
23 that loan, as the same as the loan on 27?

24 A. I never checked it. I'd almost bet it is. If you've
25 got the paperwork --

1 Q. I've got the paperwork, but I'm going to go through
2 that with Ms. Gray. I'm just asking some general
3 questions right now, because she's the one that signed
4 it. So when these loans came up for renewal, May of
5 2008, do you recall how you came to take that loan to
6 First Savers, when you went to refinance the Community
7 First?

8 A. Well, I knew Mr. Smith.

9 Q. You knew Shane Smith?

10 A. I knew him when he worked with BB&T. He worked with
11 BB&T first, and then he went to Community First. And
12 the reason I knew him at BB&T, because I banked with
13 BB&T at the time. And I walked in the office one day
14 when I first moved to Seneca, Westminster. And Mr.
15 Smith, I got to talking to him, and come to find out
16 he was the grandson of a man by the name of Ray Smith,
17 that I used to work with in the FAA in Charlotte for
18 16 years. I worked with his grandfather. So we -- I
19 never did any financing with him there, at BB&T, but
20 we just -- we knew each other, and I knew his
21 grandfather. And we always had a conversation about
22 airplanes and things his grandfather did. His
23 grandfather also worked for Clemson University in the
24 agriculture department for years and years, before he
25 went to work for the FAA. So we had a -- so we just

1 -- not that we were, you know, deep friends, but we
2 just knew each other. We'd have a conversation to
3 transact business. He'd say hello and I'd say hello,
4 and have you heard anything from your granddad, stuff
5 like that. But that's about the extent of it. And
6 from there he went to First -- Community First as a
7 V.P.. And I -- and he was at the auction representing
8 Community First. So he went -- he helped me walk over
9 the lot, like I indicated before, and we agreed to
10 -- with all the other banks, I agreed to go to
11 Community First on those two lots, 27 and 29, with
12 him, since I sort of knew him and interest only. And
13 all the banks standing there was interest only, so
14 might as well go with him.

15 Q. Did he influence your decision to buy that lot? You
16 keep saying he walked it with you.

17 A. No, because I could -- there may have been some other
18 bankers or other people that walked it with me.

19 Q. I understand. This is seven years ago. I understand.
20 I just want to make sure I get your details.

21 A. Well, I know it's seven years ago. I got a fairly
22 good memory. But I didn't go to these auctions and
23 buy lots unless I was pretty sure I could build on
24 them or flip them, or do something with him. I wasn't
25 just up there spending money. I was there -- I had a

1 reason for being there, and so sometimes I'd get real
2 estate people to help me with it. Sometimes I'd get
3 some of the bankers to help me with it, if they
4 thought it was a pretty good deal or not, you know.
5 But I didn't just depend on my knowledge, because I'm
6 in the aviation business so I was new to the real
7 estate business. I set up a mobile home park, you
8 know, 17 homes. And so I went from mobile homes to
9 small houses, from small houses to medium size houses
10 to big houses.

11 Q. When you say you relied on bankers to help you, what
12 do you mean by that?

13 A. Well, he was -- any banker ever -- whoever was
14 representing the banks, but the banks themselves
15 always had people at those auctions. And it's always
16 ready to finance the purchasers, help purchasers --

17 Q. With financing?

18 A. -- with financing. That was their reason for being
19 there. And they wanted to make sure that when they
20 did do a loan they was pretty well familiar with what
21 they just helped you finance.

22 Q. Yes, sir.

23 A. They weren't sitting in their office. They were
24 sitting there and they'd get their boots on, and
25 they'd go out there and walk over the stuff with us to

1 get the -- to see the views, the valleys, the goods
2 and the bads and the uglies of each lot. So I'm sure
3 that Shane went with me, probably a couple of times,
4 because -- these, 27 and 29, was back to back to each
5 other, not on one street.

6 Q. Back to back on one street? You mean like --

7 A. No, I mean, you went down the hill and there was No.,
8 I'm thinking, 27. There was a left-hand turn before
9 you got to 27. You went down this other little loop,
10 and it would be 29. And it just so happened the back
11 of one almost joined the back of the other.

12 Q. I got you, basically sandwiched between two roads and
13 the back property lines meet.

14 A. And the reason, I guess, that they made a big
15 difference in the price is because it was a little bit
16 difference in the view. One had a little more view of
17 the lake, especially in the wintertime when the leaves
18 was off the trees. It wasn't waterfront, but it was
19 sitting high up on a hill. It had a pretty nice view
20 of the mountains and the lake and so, in the
21 wintertime. And the other lot didn't have quite that
22 view, because it faced a different direction. So I
23 can't tell you the difference in the price of the two
24 lots, but I'm sure there was probably \$5,000
25 difference in them or something.

1 Q. And your opinion is because of the views?

2 A. Well, the views and -- but, anyway, Shane, I'm sure he
3 was on that lot with me.

4 Q. Did Shane ever say, Mr. Gray, I think you can resell
5 this lot for X?

6 A. No.

7 Q. Did he ever say I think you're going to make a bunch
8 of money on this transaction?

9 A. No.

10 Q. Is it safe to say he was there to make sure you had
11 some financing options? That's what his purpose for
12 being there was, to discuss financing?

13 A. Well, he was one of the options. There was other
14 people that I could have used other than him.

15 Q. So you could have selected somebody other than
16 Community --

17 A. Sure.

18 Q. -- First?

19 A. There was probably three or four banks I could have
20 done business with, with my track record and my credit
21 rating. I just had --

22 Q. Let's go back to when that loan matured with Community
23 First. For the purposes of this deposition, we're
24 just going to talk about 26 and 29, kind of in a
25 general --

1 A. 27 and 29.

2 Q. 27. Someone else was 26. But, anyway, I've got here
3 a copy of the promissory note.

4 A. You may have been in the Deeds Office in Walhalla, and
5 they're bad about getting wrong lot numbers on stuff.

6 MR. RICHARDSON:

7 And she's going to mark this as Exhibit 4.

8 (Plaintiff's Exhibit No. 4 marked for identification.)

9 EXAMINATION RESUMED BY MR. RICHARDSON:

10 Q. Mr. Gray, I'm going to ask you to refer to that.

11 A. (Reviewing document.)

12 Q. Mr. Gray, can you identify that?

13 A. Well, it's a promissory note for \$180,000.

14 Q. The last page has the signature page. Take a look at
15 that and tell me if that's your signature or not.

16 A. That's my signature. That is my signature.

17 Q. So you did execute this note?

18 A. That's correct.

19 Q. I'm going to refer you back to that first page. Up at
20 the top, there's a block there.

21 A. Uh-huh (affirmative).

22 Q. Can you tell me how much the amount of that loan was?

23 A. \$180,000.

24 Q. What was the interest rate on that?

25 A. It looks like 5.5.

- 1 Q. And is that a variable rate? I think it is, because
2 it's got "based on margin."
- 3 A. Yeah, I guess it is.
- 4 Q. I'm going to refer to that second column, the bottom
5 part. What was the index with margin? Would you take
6 a look at that, and tell me what that says?
- 7 A. Index of margin. I can't -- show me where I'm at.
- 8 Q. I'm talking about that part right there.
- 9 A. Index in the margin, Wall Street Journal prime. Is
10 that prime plus .5?
- 11 Q. Yes, sir. So it was a variable rate, Wall Street
12 prime, plus --
- 13 A. Yes.
- 14 Q. Was that the going rate back then?
- 15 A. I assume it was.
- 16 Q. In your experience, is that what you were accustomed
17 to receiving?
- 18 A. I never paid any attention to it. I never -- I guess
19 that's a fallacy, that I probably should. But to sit
20 here and tell you that on every time I signed one of
21 these notes for all these lots I bought and
22 transferred over the five-, six- or seven-year period,
23 I can't sit there and say that I got down to that
24 detail on every one of them. I just know that we were
25 dealing with prime plus. And sometimes one bank may

- 1 be prime plus a half. Sometimes it would be prime
2 plus three-quarters. And in this case it's half.
- 3 Q. Would you say you were happy with prime plus a half?
- 4 A. Yeah.
- 5 Q. Five and a half, was that a pretty good rate back
6 then?
- 7 A. On raw dirt, yes.
- 8 Q. Do you recall, is this an interest only loan?
- 9 A. It was an interest only, yes, sir.
- 10 Q. Maturity date on that, can you tell me what the
11 maturity date is? That's up in the block, too, on
12 your far right-hand side, maturity date.
- 13 A. It was -- oh, that's terrible. (Reviewing document).
14 Something about it was '08. Maturity date was '09,
15 May something, '09.
- 16 Q. Is it safe to say 12 months? May '08 to May '09?
- 17 A. That is correct.
- 18 Q. Do you dispute signing this document?
- 19 A. No.
- 20 Q. Do you think you signed all the loan documents they
21 presented for you?
- 22 A. Sure.
- 23 Q. Who were you represented by? Did you have an attorney
24 in this transaction?
- 25 A. No, other than I may have run it by Jim Belk. I'm not

1 sure.

2 Q. Did Jim Belk close this transaction?

3 A. I don't think he -- I don't know. I don't remember
4 how all that happened.

5 Q. If it were closed by an attorney, would you say it was
6 Jim Belk?

7 A. Yeah, probably.

8 Q. Did he do most of your closings?

9 A. Yeah, that's correct. I'd been using him for five or
10 six years up to that point.

11 MR. RICHARDSON:

12 We are up to Exhibit 5.

13 (Plaintiff's Exhibit No. 5 marked for identification.)

14 EXAMINATION RESUMED BY MR. RICHARDSON:

15 Q. Mr. Gray, she's marked Exhibit 5. That's a closing
16 statement dated June 5, 2008, prepared by James Belk.

17 A. Okay.

18 Q. On that last page, is that your signature?

19 A. It is.

20 Q. I'm going to point you to the front page, line number
21 303 at the very bottom. It says "Cash from." What is
22 that amount?

23 A. Ten thousand, three hundred and something. I can't
24 hardly read it. Three-something-85 -- 359.85, I think
25 it is.

1 Q. Can you explain to me why you had to bring cash to
2 closing? Do you recall?

3 A. Did I bring cash to closing?

4 Q. The amount. Why you brought that amount to closing.

5 A. Because it was, well as I remember, demanded by First
6 Savers. They wanted me to pay down the principal or
7 something. I can't remember the details of it, but
8 that's what I paid. I had a cashier's check. I paid
9 a cashier's check of \$10,684.85 on Lot No. 27.

10 (Plaintiff's Exhibit No. 6 marked for identification.)

11 EXAMINATION RESUMED BY MR. RICHARDSON:

12 Q. While you're talking about that, Exhibit 6, I've got
13 a copy of that as well. I think that's a copy of what
14 you just referenced.

15 A. Uh-huh (affirmative).

16 Q. Mr. Gray, can you identify that's the certified check
17 you were just referring to?

18 A. That is correct.

19 Q. All right, thank you, sir. And you say First Savers
20 demanded you bring that? Was that a term of the loan?

21 A. I would say yes.

22 Q. But you didn't have to refinance Community First to
23 First Savers?

24 A. I didn't do what, now?

25 Q. At the time, your loan had matured with Community

1 First.

2 A. Yes, and they had sent me a statement saying my
3 -- according to their records, I had paid off that
4 loan, period. Community First did.

5 Q. But when it matured with Community First, you had to
6 find another bank or accept Community First's terms,
7 correct?

8 A. Yes, that is correct.

9 Q. But you had other options?

10 A. I'm assuming I would. There's other banks in town.

11 Q. You used the term, "First Savers demanded".

12 A. Once I sat down -- I'm not sure I had renewed the loan
13 with Community First without paying the \$10,000. But
14 when I went to First Savers after I got involved with
15 the loan, at closing or sometime before that, we were
16 instructed to bring \$10,000. And I can't remember how
17 the instruction took place, but for some reason I went
18 to the bank and made a cashier's check for
19 10,000-and-some dollars.

20 Q. In order for First Savers to extend you the financing?

21 A. That is correct.

22 Q. But if you had chosen not to do that, you were under
23 no obligation to accept the loan from First Savers?

24 A. I don't think they would have done it if I hadn't
25 given them the \$10,000 down, or whatever. And I don't

- 1 know why it's such an odd number. I'm using 10,000.
- 2 Q. Yes, sir, we know what you mean, that 10,3-whatever.
- 3 A. Yeah.
- 4 Q. But what I'm driving at, at that point in time you
- 5 didn't have a relationship with First Savers Bank.
- 6 A. Yes, I did, with Shane Smith.
- 7 Q. But First Savers Bank? You didn't have any banking
- 8 relationship with First Savers.
- 9 A. No, because they weren't even in business there.
- 10 Q. But when Mr. Smith, as an employee of First Savers,
- 11 offered you these terms, you had the choice to either
- 12 accept it or reject it.
- 13 A. I'm not sure we ever discussed the \$10,000 until I got
- 14 to the closing, or a day or two something before the
- 15 closing, because I had -- I think the cashier's check
- 16 is probably dated the same date as the closing.
- 17 Q. It is.
- 18 A. And I guess somewhere in the process, and I had -- the
- 19 lot wasn't secured by anybody, by the time I drive
- 20 from Community First to the time I walked up the hill
- 21 a quarter of a mile to First Savers. So I don't know
- 22 the time frame. There may have been five or six or
- 23 seven days after -- when Community First's -- theirs
- 24 matured --
- 25 Q. Yes, sir.

- 1 A. -- till the time First Savers began.
- 2 Q. But Community First had the lien on it until you
- 3 refinanced with First Savers, even though it had
- 4 matured.
- 5 A. I don't know how that works.
- 6 Q. Okay, fair enough.
- 7 A. It would be impossible to get it down to the hour and
- 8 the minute.
- 9 Q. I understand. Fair enough. Let me rephrase that,
- 10 then. Until you took out the loan with First Savers,
- 11 you still owed Community First on this particular lot?
- 12 A. Community First matured on May 29th. And they sent me
- 13 a letter on June the 9th, which was about ten days
- 14 later, saying thanks for my business and yada, yada,
- 15 yada.
- 16 Q. But that's because they received a check.
- 17 A. And the letter stated that the loan had been paid in
- 18 full.
- 19 Q. Right. And where did the money to pay that loan in
- 20 full come from?
- 21 A. It had to have come from First Savers. I don't know
- 22 where it came from or how it happened.
- 23 Q. I'm going to refer you back to this document. I
- 24 believe that would be Exhibit 5.
- 25 A. Okay.

- 1 Q. If you'll look up towards the top, line number 104, do
2 you want to go ahead and read that?
- 3 A. 104?
- 4 Q. Yes, sir, it says to Community First Bank.
- 5 A. Yeah, it was \$189,633 and some change.
- 6 Q. Yes, sir. So the loan proceeds from First Savers was
7 taken in by Mr. Belk, and then paid to Community
8 First. Is that your understanding?
- 9 A. I guess that's what happened.
- 10 Q. Nobody handed you a check for 189,000?
- 11 A. No.
- 12 Q. Is it your understanding then, that First Savers' loan
13 was used to pay off Community First?
- 14 A. Well, yes, I mean, it's only -- without me seeing the
15 check, that's the only way it could have happened.
16 But whether it all happened on the same day or not, I
17 don't know that.
- 18 Q. Regardless of whether it happened on the 10th, the
19 20th, that was your understanding?
- 20 A. But First Savers had to pay Community First, yes.
- 21 Q. All right, thank you.
- 22 A. The time frame? I don't know how it all worked out on
23 the time frame.
- 24 Q. On the day you took out this loan, were you satisfied
25 with the term of the First Savers loan?

1 A. Well, I don't -- I can't say I was unsatisfied and I
2 can't say that I was satisfied, because I didn't -- I
3 had to pay the 10,000-some dollars with the cashier's
4 check at closing, to make the numbers work out for
5 First Savers, which I'm not sure we had ever discussed
6 that before we got to this closing.

7 Q. But at closing you had Mr. Belk? He was at closing?

8 A. Yeah, I guess. I'm sure he was.

9 Q. And he was your attorney?

10 A. Yeah.

11 Q. You paid him his fees?

12 A. That's correct.

13 Q. And it was his job to advise you on this loan and what
14 you were signing?

15 MR. GRIFFIN:

16 Object to the form of the question.

17 WITNESS:

18 Yeah, that's --

19 EXAMINATION RESUMED BY MR. RICHARDSON:

20 Q. Did Mr. Belk advise you as to what you were signing?

21 A. I can't remember the words or how it took place. I
22 don't know.

23 Q. Was anybody else present at the closing besides you
24 and Mr. Belk?

25 A. My wife.

1 Q. Anyone else?

2 A. I can't recall. No, I don't think so.

3 MS. GRAY:

4 Was Shane there?

5 EXAMINATION RESUMED BY MR. RICHARDSON:

6 Q. Did you ask Mr. Belk about what you were signing,
7 whether it be what's the date on it or how much money
8 do I need, or anything of that nature?

9 A. After having done probably 25 loans with Jim Belk, the
10 attorney, to sit here and say that I questioned him
11 line for line about what he was doing and why he was
12 doing it, no. I trusted the man. He was my attorney.

13 Q. I understand.

14 A. And so did I read all these documents to the fine
15 letter of the law? No. But I was somewhat surprised,
16 as well as I remember, about the \$10,000 on that lot
17 and the six or seven thousand dollars on the other
18 lot. And they were different numbers, different
19 amounts for some reason.

20 Q. Did you ask Jim why --

21 A. No, I never did ask why. I just did what the man told
22 me to do, to come with two cashier's checks.

23 Q. Did you trust him as your lawyer then, to --

24 A. Yes, I did. Yes.

25 Q. But you don't recall ever asking why you had to bring

1 this amount?

2 A. No.

3 Q. You previously testified that there was a maturity on
4 this note of May 5, 2009.

5 A. Uh-huh (affirmative).

6 Q. Do you recall what happened when it was time that that
7 loan matured?

8 A. Do I recall what now?

9 Q. What happened when that loan matured? When May of
10 2009 came around, what happened then? Did you renew
11 the note?

12 A. Yes, I did.

13 (Plaintiff's Exhibit No. 7 marked for identification.)

14 EXAMINATION RESUMED BY MR. RICHARDSON:

15 Q. The court reporter is going to hand you, I think,
16 Exhibit 7. And we're going to hand her those back,
17 before we get confused.

18 A. Well, I'm trying to get 6 on top of the pile. Okay,
19 go ahead.

20 Q. Mr. Gray, I'm going to ask you to flip to that back
21 page.

22 A. Okay. Page 4, okay.

23 Q. Yes, sir. Is that your signature?

24 A. That's correct.

25 Q. Do you dispute executing the documents --

1 A. No, I don't.

2 Q. -- associated with the loan?

3 A. No, I don't dispute it.

4 Q. Do you recall what collateral you had to put up for
5 this particular note? And this is the one just in
6 your name.

7 A. I'm showing on July 7, 2009 I made a payment of
8 \$6,218.75.

9 Q. And that's not what I'm asking you. What property was
10 collateral for this First Savers loan?

11 A. Lot 29. No, Lot 27. I'm sorry. Lot 27.

12 Q. It's easy to get confused. The court reporter is
13 marking Exhibit No. 8, and I'll ask you to take a look
14 at it as well.

15 (Plaintiff's Exhibit No. 8 marked for identification.)

16 EXAMINATION RESUMED BY MR. RICHARDSON:

17 Q. You'll see that's a copy of a mortgage recorded in
18 Book 2627 at page 187, stamped by Mr. Belk. Mr. Belk
19 was your attorney for that transaction as well?

20 A. Correct.

21 Q. I'm going to ask you to flip -- there's going to be a
22 page with a signature on here. It looks like page no.
23 7.

24 A. (Reviewing document). Yes.

25 Q. Is that your signature?

- 1 A. Correct.
- 2 Q. I recognize that one as Mr. Belk, and it looks like
3 maybe a witness was in his office. Do you understand
4 what a mortgage is, Mr. Gray?
- 5 A. Yes, I do.
- 6 Q. And was it secured by a lien on Lot No. 27, this
7 mortgage?
- 8 A. Correct.
- 9 Q. Do you not dispute executing that mortgage?
- 10 A. No.
- 11 Q. I'm going to have you go back to that renewal note,
12 the document that's underneath that mortgage.
- 13 A. Exhibit 7?
- 14 Q. Yes, sir. What's the note amount there?
- 15 A. One hundred seventy-five thousand dollars (\$175,000),
16 even money.
- 17 Q. And what's the rate on that?
- 18 A. Six percent.
- 19 Q. Is that a fixed rate?
- 20 A. It must have been. I don't know.
- 21 Q. It appears that it is, a six percent fixed. And
22 what's the term on that? It would be the next column
23 over.
- 24 A. The maturity date was July 9, 2010, and then we signed
25 it July 9, 2009.

1 Q. Do you recall the terms of repayment on this note?

2 A. The terms of what?

3 Q. Repayment. Was it principal and interest, interest
4 only?

5 A. It was interest only.

6 Q. Interest only?

7 A. Uh-huh (affirmative).

8 Q. This action was instituted in March of 2010. So it
9 was instituted prior to the maturity date on this
10 note. Have you made all the payment that was due
11 under this note?

12 A. No, I quit paying on that note. I think I made the
13 last payment December 8, 2009.

14 Q. Can you explain why you stopped making payments?

15 A. When the note was signed in 2008 -- when I paid the
16 \$6,218.75 on Lot 27 in July of 2009 -- and that was
17 requested by First Savers Bank to pay some principal.
18 As well as I remember, they used the word,
19 "principal." And why such an odd number, I don't
20 know, other than to get it down to an even number. I
21 suppose. I don't know what the deal was. And they
22 informed me at that time they would not do an interest
23 only unless I paid them that money and paid some
24 principal down. And they took my note to six percent.
25 And I have a letter that I signed -- made a note to

1 myself, for the file, that after this happened I was
2 also informed that the next time this thing matured,
3 that they would not go interest only. And I would
4 have to go to a 15-year fixed mortgage at eight and a
5 half to nine percent. And I informed Mr. Smith at the
6 time, on such-and-such a date -- on March 4th of 2009,
7 at 2:00 p.m. in the afternoon. I went to Mr. Smith's
8 office and I referenced -- had a discussion about
9 these two notes, Lot 27 and Lot 29. I explained the
10 packages that I had done with John Hamrick. I had
11 taken these two lots and two lots I had with First
12 Savers. And the lot I still had was Lot No. 24, my
13 own personal lot. I put all five of them in a package
14 deal. And I listed them on the market to sell as a
15 package to Mr. Smith, and he knew it. And Mr. Shane
16 said he could not -- and I asked -- Mr. Shane
17 -- Shane. I just said Shane stated he could not give
18 me an amount or a percentage that the bank would
19 reduce the principal down to. But he was -- he
20 assured us the bank would work with us, if we brought
21 him an offer that someone would provide to us. It was
22 told we were just about out of all savings, stocks,
23 and any -- and my work at the time as a consultant to
24 the FAA, he was told we were just about out of all of
25 our savings, stocks, and my work was very, very slow.

1 He told -- we told him we were using equity in our
2 house, in our home, to make these payments. The
3 meeting was very cordial. And I stopped there. So he
4 knew that I was using my house on Lake Hartwell before
5 the crash occurred. It was fully paid for and it was
6 worth 769,000 on the market, \$769,000 in 2007. And
7 all my financial statements to the bank. That's what
8 was in there, in that neighborhood. So I had borrowed
9 \$200,000 from BB&T and \$200,000 from Bank of America,
10 for a total of \$400,000 to start the company and to
11 keep the company going and do this, transactions. So
12 when the market went bad, my home on Lake Hartwell
13 went bad. It went -- I sold it six months ago,
14 whenever it was. I finally sold it for \$340,000 from
15 769. So I lost all my equity in that house, all my
16 savings, all my stocks, and I'm completely broke. So
17 I had to quit making payments. I had no more money.
18 I have no money.

19 Q. And, I'm sorry, you're saying March of 2009 is when
20 you had this meeting with Mr. Smith?

21 A. March 4, 2009 at 2:00 p.m. in the afternoon.

22 Q. But that was prior to the first note maturing. So at
23 the time you were making interest only --

24 A. No, see, I'd signed the note -- when did I sign the
25 note, the last note?

1 Q. The last note you signed July 9, 2009.

2 A. Okay, so this meeting took place before that.

3 Q. Right, before the note matured.

4 A. So when it came -- when it did mature, then he came up
5 with this 'pay the principal.' Apparently he'd talked
6 to his supervisors or somebody, I don't know who he
7 talked to, but I had to pay those two things down,
8 because he said we've got to have -- he didn't want to
9 do an interest only. But he got concession from
10 somebody in the bank, if I would pay some principal
11 down they would raise the rate to six percent. But
12 they would go one more year with it, whatever they
13 were thinking. I don't know what they were thinking.
14 So this was in March. And in July, when it matured,
15 he did do it with that -- I'm going to call it a
16 penalty. It's just I had to pay principal.

17 Q. You made a principal payment towards --

18 A. And this is when I was told at that meeting -- when I
19 did that closing, I was told that they would not do it
20 again unless I went to a fixed mortgage, period, a
21 15-year mortgage. And the rate would be somewhere
22 between eight and a half and nine percent. So I went
23 in and -- I went ahead and did it, because I had no
24 other choice. I had to do it. And I did it, but I
25 just -- when I run out of money, I couldn't do it.

1 And I had told him in this meeting that I was going to
2 run out of money. I had none. All my stocks had been
3 sold. That was it. I had no cash.

4 Q. Yes, sir.

5 A. Don't to this day. Other than, you know, I have some
6 in my bank account. What I do, I still work. I work
7 every day. I travel all over the world from Australia
8 to Jevon, Africa, to Nairobi, Kenya, to South Africa,
9 to Germany, Italy, to France -- all over the world, in
10 import and export airplanes. So I had no other
11 choice, because I didn't have no other income. And
12 all my 401 -- all my self-employed money that I had to
13 keep all this stuff going, once that market failed.
14 And I had these lots with First Citizens and First
15 Savers. And it's just -- it went. It's just -- and
16 that's where we're at today, and that's why we're
17 here.

18 Q. Well, let me back up, if I may.

19 A. Okay.

20 Q. You said quite a bit there. So let me just follow up.

21 A. All right.

22 Q. When it was time to renew the note in July of '09, did
23 you talk with some other banks about refinancing this
24 loan?

25 A. No.

1 Q. Why not?

2 A. In July of 2009, I'm not sure a bank would have talked
3 to me.

4 Q. And why is that?

5 A. Because they were all in deep doo-doo, if you want to
6 know the truth about the matter, I suppose. And I
7 don't know. But there was just no other option. I
8 was trying to sell them. I was doing the best I could
9 to sell them, any way I could sell them. And I asked
10 Shane if they could lower the percentage payment,
11 because I told him at this meeting, "If I have to go
12 fixed on these two loans, Lot 27 and 29," I said, "it
13 will probably double or triple my payments." And I
14 said, "I know I can't do that."

15 Q. Meaning if they went to a 15-year term?

16 A. Yeah.

17 Q. I want to clarify, if I may, because when he renewed,
18 he renewed it at six percent fixed, but it was still
19 interest only. Is that your understanding?

20 A. Yeah, it wasn't -- you know, it was just -- I knew the
21 term of it. It was going to mature in a year. I
22 mean, it was interest only. Yes, I understood that,
23 but I had to pay the \$6,000 per lot and they called it
24 principal. Like I said a while ago, they called it
25 principal. The only way they would give it to me, in

1 2009, is I had to pay the principal down.

2 Q. Yes, sir.

3 A. So they figured, I guess, the \$6,000 would be the
4 amount of principal I would have paid on it.

5 Q. And just to clarify, we're talking about both lots and
6 both loans?

7 A. Yes, because we wrote two cashier's checks. They were
8 different payments, because I guess the amount -- but
9 these two lots here, in July of 2009, we paid them the
10 same amount of money on Lot 27 and Lot No. 29.

11 Q. But, Mr. Gray, you could have refinanced these loans
12 with another bank; couldn't you?

13 A. I don't know. I said a while ago, I didn't even go
14 ask, because I knew it was a useless exercise to go
15 ask.

16 Q. And I heard what you said about the banks being in
17 trouble. And what's why you didn't ask?

18 A. Well, I didn't. I knew Community First wasn't, and I
19 knew BB&T probably was not. I just didn't. As far as
20 just getting on the Internet and shopping around for
21 mortgage companies, you know, Green Tree or whomever,
22 I didn't do that, no.

23 Q. Why not, though?

24 A. Well, I don't know why. I just can't answer that
25 question. I don't know why. I'd been local with

1 Shane, but I knew that it would be impossible. I
2 guess my thinking on it, Brad, at the time, was I had
3 a better of chance of dealing with someone that knew
4 me than someone that did not know me, and maybe go
5 another interest only, to keep the payments as low as
6 I possibly could until -- in case the market did come
7 back and I could package sell these things and get out
8 of this whole mess. But because I, you know, lost all
9 my equipment, dump trucks, the whole nine yards -- I
10 had to sell everything. And I lost over somewhere in
11 that neighborhood of one to one-point-five million
12 dollars.

13 Q. And I have an idea of why that happened, and I think
14 you have an idea, but I want to hear you say it. Why
15 do you think all those things happened? Why did you
16 have to lose your equipment? Why did you have to go
17 dip into your savings, that type of thing?

18 A. To make the payments on these loans.

19 Q. But prior to all that, how were you making payments?
20 When this loan first started out, how were you making
21 payments?

22 A. I started out probably -- I was probably drawing
23 equity out of my home equity lines every month to make
24 the payments to First Savers.

25 Q. And when do you think you started that?

1 A. I don't remember. Probably two years ago. I mean, I
2 guess --

3 Q. This loan started in '08 with First Savers.

4 A. Uh-huh (affirmative).

5 Q. Were you using the equity on your home to pay it then?

6 A. Probably so. I don't know. I don't remember.

7 Q. Because you said your work had fallen off, you weren't
8 bringing in as much income. When did you experience
9 a drop-off?

10 A. Okay, I'll read the figures to you real quick.

11 Q. Okay.

12 A. I'm going to give you some answers, taxable income off
13 of 1040 forms. Do you want to hear it?

14 Q. Sure.

15 WITNESS:

16 I want to give him taxable income off of 1040 forms.

17 MR. GRIFFIN:

18 That would be fine.

19 WITNESS CONTINUES:

20 A. In 2005, my taxable income was -- off my 1040 Form --
21 was \$205,467; 2006, it was \$41,532; 2007, it was
22 50,959. In 2008, it was 32,890. 2009, it had
23 dropped, \$25,140. 2010, it was 24,329. In 2011 the
24 market is -- my business is starting to come back, as
25 a consultant, \$63,784.

1 EXAMINATION RESUMED BY MR. RICHARDSON:

2 Q. And I assume we don't have 2012 yet --

3 A. No, because I had to file an extension. But that's a
4 trend.

5 Q. Yes, sir.

6 A. So whether I took it out of one bank account or
7 another bank account, or whether I took it out
8 -- whatever, I'm having to use equity. And I used all
9 the equity up, and I owed BB&T 200 and I owed Bank of
10 America 200.

11 Q. Yes, sir. But your decline in income, First Savers
12 didn't have anything to do with that; it was the
13 overall economy?

14 A. No. When I had the meeting with Shane Smith in March
15 of 2009, I told him I was taking it out of my home, my
16 equity line. And if he had any sense at all, he'd
17 have to know I was going to run out of equity at some
18 point. But he --

19 Q. Let me ask you this, Mr. Gray. Let's just say you
20 didn't have the equity. What would you have done?
21 Were you able to sell the lot back then?

22 A. If I didn't --

23 Q. If you'd have tried in 2008, would you have been able
24 to sell the lot?

25 A. I tried in 2008, probably. I don't know what -- the

1 dates that I listed the lots. I probably listed them.
2 They was always all for sale to start with, all the
3 time.

4 Q. So you always had a listing on these properties?

5 A. But when I actually started listing them with John
6 Hamrick as a formal listing, or whatever, maybe I had
7 a meeting with John and he suggested, "Well, Charlie,
8 maybe you can lump them all together."

9 Q. So maybe prior to you getting with John Hamrick about
10 listing these, you just had like a for-sale-by-owner
11 kind of sign on it, or was it with an agent?

12 A. Yeah, it was something like that. I don't remember
13 how we had it.

14 Q. But they were always for sale?

15 A. Yeah, everything was for sale.

16 Q. Did you get any offers on Lot 27?

17 A. No.

18 Q. Did you ever get any offers on Lot 29?

19 A. No.

20 Q. Do you recall what you had a sales price on them for?
21 Did you have a sales price on the sign, or was it just
22 a 'For Sale, call this number' kind of thing?

23 A. I don't remember how I did it. By the time we got
24 those lots, we was on the very edge of the economy
25 going bad on Keowee in 2006, you know. They had -- I

1 think they only had one auction after that, and I
2 think it was up in Pickens County.

3 Q. But for those of us that don't invest in Keowee
4 property, from your perspective what happened after
5 2006 with the real estate market up there?

6 A. It started slowing down, and you couldn't -- we had
7 'For Sale' signs on it. You got no offers. And to
8 this day, that community up there, Waterford Ridge --
9 I'd say six months after the auction there was one
10 house built probably three years -- whenever we had
11 that auction. And there's still only one house there.
12 And we did have to pay \$10,000 each for a boat slip
13 one year after we bought the lots. So the lots are
14 attached to -- have a \$10,000 boat slip attached to
15 them. Crescent comes out and puts in 35 boat slips,
16 beautiful boat slips. And I think they use a lottery
17 type method, some way to figure out who gets the end
18 slip and who gets the deep water, and who gets this
19 and who gets that.

20 Q. Each area has a slip with these lots?

21 A. Each one of them, yes. And there's been no -- all of
22 the slips are empty, which is across the street from
23 The Lighthouse Restaurant. Across the street
24 -- across the cove from The Lighthouse Restaurant.
25 That's where this is located.

1 Q. Do you think the property is worth what you paid for
2 it?

3 A. At the time it was, but today it's not.

4 Q. And why do you think that is?

5 A. Well, everything up there -- there's 1,000 lots up
6 there for sale that's in the same boat I'm in.

7 Q. Is there a demand there for properties on Keowee?

8 A. No.

9 Q. Why do you suppose that is? I know you and I both
10 have our opinions, but I want to hear your opinion.

11 A. Well, the market's bad. It's just the real estate
12 market is just -- almost bankrupt this country. I
13 mean, why are the people that lay brick not working?
14 Because we're not building any houses, you know. So
15 I got a double whammy. The double whammy was I had
16 never lost money in real estate. I never dealt with
17 it too much, till I moved to Seneca. I'll go back
18 just a little bit. The reason I got in the market, to
19 begin with, I had two sons. One son lives in
20 Knoxville, Tennessee. He's in his mid fifties. And
21 I've got one that lives in Seneca, which is in his
22 early fifties. And as I got older -- I'm now -- I'll
23 be 77 in August. So as I got older, about in my
24 -- approaching 70, I could not leave them -- I'm an
25 aviation consultant. I've been in aviation 55 years

1 of my life, and I now represent the FAA in all the
2 import and export. I'm appointed and designee, by the
3 FAA, to import and export airplanes and parts around
4 the world on their behalf. My job, I have to sign a
5 contract with those folks every year that they can
6 terminate my contract at any time for no reason
7 whatsoever. If they didn't like the way I combed my
8 hair, I can lose that job tonight, today. So you sit
9 on pins and needles at age 57, and that's your
10 livelihood. So I still have to work. I wanted to set
11 up a business for my two boys and teach them that as
12 long as you're an honest person and you pay your bills
13 in all the things that you do, we'll build a business
14 together and there will be -- I can leave you
15 something. I can't leave what's in my head to you,
16 because that's aviation, and you're not in aviation.
17 So I decided to open a business called The Gray Group,
18 Incorporated, and started a group. My son -- my
19 youngest son was a mobile home salesman in the
20 Charlotte area for 15 years, and he wanted to move to
21 Seneca. So he came down, helped start this mobile
22 home business, The Gray Group. So we bought some
23 property, set up double-wide mobile homes and became
24 the No. 1 rated double-wide mobile home park in Oconee
25 County. The Gray Group did. We only did

1 double-wides, did concrete front porches, 30-foot
2 wooden decks and brick underpinning. And when we sold
3 the homes -- we'd buy the homes, set them up, 80-foot
4 double-wides. All of them are 80-foot double-wides.
5 Set them up. And when they went on the market, the
6 fans were turning and the water was running. All the
7 people had to do was move in. Very successful. Then
8 a Mr. Cromer, here in Anderson, owns a food business.

9 MR. GRIFFIN:

10 No, that's not the same one.

11 WITNESS CONTINUES:

12 A. Not the same one? But, anyway, somebody messed up.
13 Somebody got in --

14 Q. I'm familiar with what happened to manufactured homes
15 in Anderson County.

16 A. Okay, when that happened I got stuck with four homes
17 in inventory. And when that happened, all with the
18 exception of a couple in Pickens and Oconee County,
19 all the mobile home dealers went out of business
20 because they couldn't get the financing. Up until
21 that point, if a person came -- if a family came to us
22 to buy a mobile home, we had a choice of 66 lenders
23 across the country, based on their credit score and
24 based on their purpose in life, that we could choose
25 from and send them to. After that episode in Oconee

1 County, here in Anderson, we got down to two.

2 Q. If I could jump in, were you just selling the houses
3 or were you selling houses and land?

4 A. Houses and land.

5 Q. So did you all do a subdivision?

6 A. Yes.

7 Q. How many lots were in the subdivision?

8 A. Seventeen.

9 Q. When you went into that business, did you appreciate
10 there was some risk in it? In other words, if you
11 didn't sell the lots you'd be stuck with them?

12 A. Well, you didn't think -- you evaluate the market, and
13 the market was good. And if you set up a nice home
14 and build nice streets and put in water, you know, and
15 all the other stuff -- and you had restrictions, and
16 you kept the roads -- you knew that -- to prove my
17 point to my kids that it could work, and it did.

18 Q. Sure.

19 A. And we sold the --

20 Q. Was that all before the crash of '08?

21 A. Oh, yes, this was in 2005, '04, '03.

22 Q. If that happened in '08, do you think you'd been able
23 to sell them?

24 A. No. I couldn't sell them after we couldn't get the
25 financing for them. That's why I started building

1 houses. I would have preferred to stay in mobile
2 homes, tell you the God's truth about it.

3 Q. I'm sorry?

4 A. I said I'd preferred to stay in the mobile homes, to
5 tell you the truth about it, because there's more
6 money in it.

7 Q. Yes, sir.

8 A. But, anyway, that's how we got into the lot business.

9 Q. I'm going to circle back around to this renewal note.
10 How did you feel about the terms of that renewal note,
11 six percent, interest only, for another 12 months?

12 A. I wasn't happy with it, because I had to pay \$6,000 to
13 renew it.

14 Q. But did you have an option to do anything else with
15 another bank?

16 A. You asked me that a while ago, and I'm going to tell
17 you the same thing. I could have gone to other banks,
18 but I think that they were on the same boat and I
19 don't think you would have an interest only. But you
20 asked me why did I not do that, and I can't tell you
21 why I did not do that, other than I did answer the
22 question by saying I thought my better chances of
23 getting any type of an interest only, that I could
24 afford the payments on, was to deal with the people
25 I'd been dealing with. So I didn't go shopping, to

- 1 answer your question.
- 2 Q. You said you all had stopped making payments in
- 3 December of '09.
- 4 A. Uh-huh (affirmative).
- 5 Q. Why did you stop making payments?
- 6 A. I was out of money.
- 7 Q. Out of money?
- 8 A. Uh-huh (affirmative).
- 9 Q. About the time of the crash, let's use '08, what other
- 10 investments or loans did you have out there? Did you
- 11 have other lots with other banks, other properties
- 12 with other banks? You mentioned First Citizens
- 13 earlier.
- 14 A. I had two lots with First Citizens probably in the
- 15 '06, '07 era. I've forgotten when it was. Lot No. 49
- 16 and Lot No. 61 at Pointe Harbor II.
- 17 Q. What happened with those loans and those lots?
- 18 A. The same thing. I quit paying on them, and I had to
- 19 -- we made a settlement, a deed in lieu of.
- 20 Q. So they're in foreclosure also, went through
- 21 foreclosure?
- 22 A. No.
- 23 Q. No foreclosure was filed?
- 24 A. Uh-uh (negative).
- 25 Q. I disagree with you. I just wanted to ask you.

1 A. When I say foreclosure --

2 Q. Well, was a legal action filed by the bank against you
3 on those lots?

4 A. I don't know. They never notified me I was in
5 foreclosure, that I can recall.

6 MR. GRIFFIN:

7 I think I accepted service.

8 EXAMINATION RESUMED BY MR. RICHARDSON:

9 Q. How did you resolve those matters with First Citizens?

10 A. How I resolved it? By giving them a deed in lieu of,
11 on December 31st of that year.

12 Q. What year was that?

13 A. Don't remember.

14 Q. '08, '09, '10?

15 A. Yeah, in that neighborhood.

16 Q. I'll tell you, Mr. Gray, I've looked at the public
17 records. I found them as a foreclosure or some sort
18 of a legal action. But you don't recall that being a
19 legal action?

20 A. I've never been in foreclosure in my life, so I don't
21 know what action I would have seen. Would I have been
22 notified? I did go to a deposition with Cassidy,
23 Attorney Cassidy in Greenville.

24 MR. GRIFFIN:

25 I can clear this up. I think I filed an action and

1 they filed an action about the same time.

2 MR. RICHARDSON:

3 So one way or another, an action was filed, and there
4 was a Crossclaim from the other side.

5 MR. GRIFFIN:

6 I think one us told the other one it could be an
7 Answer and Counterclaim. We filed within days of each
8 other.

9 MR. RICHARDSON:

10 That clarifies that.

11 MR. GRIFFIN:

12 I think I accepted service.

13 WITNESS:

14 You all are using terms that I'm -- I am familiar with
15 the term "foreclosure", obviously. But I don't know
16 these claims and counterclaims that legal people talk
17 about.

18 EXAMINATION RESUMED BY MR. RICHARDSON:

19 Q. Somebody filed a lawsuit, whether it was you against
20 them or them against you.

21 A. I filed a lawsuit against them.

22 Q. And then they filed one in turn against you?

23 A. I guess so. And I eventually went to a deposition.
24 And after the deposition they came back, and I guess
25 made an offer or something. And I accepted the offer

1 of a deed in lieu of.

2 Q. Had you stopped paying them, too?

3 A. Uh-huh (affirmative).

4 Q. And it was two loans?

5 A. Uh-huh (affirmative).

6 Q. And was one in your name and one in Ms. Gray's name?

7 A. Uh-huh (affirmative).

8 Q. Is that right?

9 A. Uh-huh (affirmative).

10 Q. Any other investments at that time, that you stopped
11 making payments on?

12 A. No.

13 Q. Have you deeded any other properties back, deed in
14 lieu?

15 A. No.

16 Q. No other foreclosures that you can think of?

17 A. No.

18 Q. Do you agree that the documents that you signed with
19 First Savers gives them the right to foreclosure if
20 you don't repay the loan?

21 A. Yes, I understand they probably have that option.
22 Yeah.

23 Q. And do you understand not making payments is
24 considered a term of default?

25 A. Yes.

1 Q. You have countersued First Savers Bank. Do you want
2 to tell me a little bit about why you've elected to do
3 that?

4 A. I don't think the way -- I don't think it was a fair
5 way of going about the lending business, and I wanted
6 to take it before 12 of my peers.

7 Q. What would you have liked for them to have done?

8 A. Well, I haven't had a chance to talk to them, period,
9 as far as I know.

10 Q. I'm talking way back when. In '08, when they gave you
11 the loan, you took the loan. What would have you
12 preferred they done?

13 A. I think if they'd have kept the interest only, that I
14 could have maybe, maybe have been able to earn enough
15 money to make the payments on the interest only at a
16 decent interest rate, whatever the interest rate was
17 at the time. I think I could have done it longer than
18 I did do it. But when they went from one percentage
19 point to the sixth, that set loan went from -- the
20 payments went from 500-and-some dollars a month to
21 900-and-some dollars a month. So that was a total of
22 1,800. So it went from 1,000 to 1,800, and my income
23 was going down. But looking at the clock, I would
24 have liked for them -- if they could have done
25 interest on it. I may have been able to borrow some

1 money from a family member or do something, somewhere,
2 to keep this thing going until maybe the lot come back
3 or maybe this package deal could have been worked out.
4 Because you can't see in the future, all you can do is
5 bet on the future. And everybody was saying, well,
6 it's going to come back, it's going to come back, it
7 may is going to take longer. And I was doing
8 everything in my power to try to do what I could,
9 including keeping my payments to First Savers as low
10 as possible. And they -- they're the ones that made
11 me pay the principal that one year of \$12,000, six on
12 each lot, and then said, this is the last time that's
13 going to happen, because the next time we know what's
14 going to happen, you ain't going to get interest only.
15 So I was fighting and working as hard as I could. And
16 the whole time I was doing all this, my income was
17 going down.

18 Q. Yes, sir.

19 A. So I don't -- to tell you what I think would have
20 happened, I don't know what would happen. I was
21 trying to get at least interest only and kept it
22 going.

23 Q. But, sir, you were at interest only when you stopped
24 making payments.

25 A. Because I was out of money, because they'd gone from

1 1,000 to 1,800 a month in July that year. And it just
2 -- it depleted the funds. It's just -- it was just a
3 --

4 Q. But when you started out, it was at prime plus a half.
5 The first time it was prime plus a half, starting out
6 at five and a half. Correct?

7 A. I don't remember. You've got the numbers, you know,
8 whatever it is.

9 Q. Well, it went from five and a half to six. That half
10 a percentage point was the difference in you being
11 able to make the payments or not? I'm just asking.

12 A. I don't know how you figure -- all I know, is the
13 checks that we wrote to First Savers, at some point,
14 was \$562.50, and then it went to \$908.33.

15 Q. Can we agree, at least that when you stopped making
16 payments, it was still at interest only, though?

17 A. Yeah, you can say that, but there's an asterisk to
18 that. But to answer your question, when I stopped
19 paying, that loan was interest only. Now what's
20 unfair about it is how they made it happen. To make
21 it happen, I had to pay a lot of money, \$12,000, to
22 make it happen. And that would have made a lot
23 -- another year's payments. And it -- and then
24 everybody telling me at that point it wasn't going to
25 happen again, we weren't going to do it again. Then

1 that really was -- and I never expected that from
2 First Savers. I was never told by First Savers, Shane
3 Smith, at one time, that that loan would ever go to a
4 permanent loan until they -- till the banks got in
5 trouble.

6 Q. So let me ask you this. The first note you signed was
7 for 12 months, interest only, with a balloon balance
8 at the end of 12 months.

9 A. Uh-huh (affirmative).

10 Q. Do we agree that First Savers could have called that
11 loan and not refinanced it?

12 A. Yeah, you could have, I guess. Based on what I know
13 now, you could have called it any time other than the
14 one-year time. But the other bank, we've been doing
15 that for three or four, five years. So there was a
16 pattern.

17 Q. But this was the first time you had done business with
18 First Savers.

19 A. But you make decisions based on your experience level.
20 My experience was I'd been getting interest only on
21 lots for four or five years from different banks,
22 including First Savers Bank.

23 Q. But when they renewed it, they still gave you interest
24 only --

25 A. Yeah, they did.

- 1 Q. -- at six percent.
- 2 A. But I just said, the first time they did it with no
- 3 questions asked. It was prime plus one, like I had
- 4 been doing for five or six years with other banks.
- 5 When Community First stopped doing it and I went up
- 6 the street with Shane Smith, because he was my banker
- 7 at First -- Community First, I went up the street with
- 8 him, with First Savers. And it's interest only and it
- 9 was never mentioned to me at that time that it would
- 10 ever go permanent, because apparently he didn't know
- 11 it was going to go permanent.
- 12 Q. Back to those other foreclosures, did you have to
- 13 confess judgment in addition to that? In other words,
- 14 did you have to agree to pay them a certain amount of
- 15 money --
- 16 A. No.
- 17 Q. -- or get a judgment --
- 18 A. No.
- 19 Q. At the present time, do you owe anybody else?
- 20 A. No.
- 21 Q. Any outstanding tax liabilities?
- 22 A. No.
- 23 Q. Any tax liens, --
- 24 A. No.
- 25 Q. -- pending judgments, anything of that nature?

1 A. No.

2 Q. Your Counterclaim indicated that you felt like my
3 client had committed fraud. Can I ask you in what
4 ways?

5 A. I think I just explained it to you. And I guess my
6 attorney advised me -- I guess used that term. I
7 don't know. I don't know what term to use. I'm not
8 an attorney.

9 Q. I understand. Well, let me ask you this.

10 A. I don't think what he did was fair.

11 Q. Did you anticipate they would renew this loan,
12 interest only, forever?

13 A. I had no reason not to believe that.

14 Q. Did anyone ever tell you that?

15 A. Probably not and I never did ask. I had five years of
16 experience with interest only. So I didn't know --

17 Q. No one at First Savers ever told you, we'll renew this
18 thing forever, if you need us to?

19 A. I never asked them. I just -- up until that point, I
20 guess the banks were satisfied with the interest only.

21 Q. If you and I sitting right here -- me, you, and Mr.
22 Griffin -- could resolve this matter, how would you
23 propose to resolve it? What would you like to see be
24 the outcome?

25 MS. GRAY:

1 You need to talk to your attorney first.

2 EXAMINATION RESUMED BY MR. RICHARDSON:

3 Q. And I'm not talking settlement. I'm just saying, in
4 your mind, if you could put all this behind you, how
5 would you like to see it put behind you?

6 A. Well, I made several offers.

7 Q. I'm not talking specifics, okay? How would you want
8 it resolved? Do you want it to go through a jury
9 trial? I'm just asking. What's your expectations?
10 This is not settlement negotiations.

11 A. I have no problem going before a jury of my -- 12 of
12 my peers with this information.

13 Q. I understand.

14 A. And tell them my story of what happened. And I
15 believe that -- I believe it enough that they will
16 listen to me and rule in my favor or partial in my
17 favor. And if there isn't, there's got to be a
18 compromise somewhere, because I have other options,
19 you know. But I don't know what -- what my attorney
20 has told me, they were talking about a deficiency
21 judgment. They were talking about a deed in lieu of.
22 We talked about giving me 1099s. And based on my
23 experience of 77 years, almost 77 years, I don't
24 -- with 1099s, and I had to file insolvency after the
25 other deal, because when I settled with First Citizens

1 they sent me a 1099 for three or four hundred thousand
2 dollars on the two lots. They wanted both of them
3 closed the same day, December 31st. And I did sign
4 over the deeds to them. And then in the middle of
5 January I got two 1099s and they totaled, you know,
6 three or four hundred thousand dollars, which was sent
7 to the Internal Revenue. And the only way I could get
8 out of that was to file insolvency, and I did.

9 Q. You don't mean insolvency as in like a Chapter 7 or
10 Chapter 13 bankruptcy?

11 A. No, just insolvency.

12 Q. Through the IRS?

13 A. There's an IRS Form No. 1039, or whatever the form is,
14 1069 or something. And I filed that with my
15 accountant. And she filed it. And so what I -- the
16 settlement, the reason I have such a hang-up about the
17 1099s -- which has been mentioned to me by my lawyer.
18 I guess it came from you or from First Savers Bank,
19 that they can't -- there's no way they can do it
20 without filing a 1099. So if that's the case, and I
21 don't want to owe the Internal Revenue since I can't
22 file insolvency. Since I've sold my house and there's
23 no insolvency left, I can't file it. So I'm stuck.
24 And so the point being, I would rather owe First
25 Savers and take my chance with First Savers in the

1 Court than I would with the Internal Revenue Service,
2 paying \$400,000, knowing that they'd put -- you know,
3 jail, or what they do for people that owe them
4 \$400,000. So that's where I'm at in life, at 77. And
5 I don't know tomorrow morning whether I'll even have
6 a -- I'm self-employed. I have no employees. I'm
7 self-employed, do all my own work and travel all the
8 time. And so, consequently, I sit on pins and
9 needles. I've seen the -- I've seen times I may go a
10 month without a telephone call. So you go from a
11 \$200,000 capital income to \$24,000, it's hard to make
12 --

13 MS. GRAY:

14 If people aren't buying houses, they're not buying
15 airplanes.

16 EXAMINATION RESUMED BY MR. RICHARDSON:

17 Q. Before we all break, we can talk about that. That's
18 really not what I was asking, but --

19 A. Well, what -- I don't know what other reason you'd
20 ask. You asked what I would like to see happen.

21 Q. Yes, sir.

22 A. And I'm -- I'll repeat again. I'm perfectly willing,
23 before a jury of my peers, to see if we can't come to
24 some agreement on this thing. We'll let them decide
25 it.

- 1 Q. I'm going to ask just a few more, and then I'm going
2 to let Charles jump in here. We can agree, though,
3 that you have defaulted on your payments?
- 4 A. Yes, sir. I have no -- yes, I have.
- 5 Q. First Savers, Plantation Federal, they have the right
6 to foreclose on the mortgage that you signed?
- 7 A. Yes, I have no problem with that.
- 8 Q. You mentioned Gray Group. What other LLCs have you
9 been a member of, or corporations have you had
10 interest in? Have there been any others?
- 11 A. The Gray Group was a sub-S corporation. It is now not
12 -- we turned that certificate in, I guess, to the
13 State, Secretary of State, whatever it is. Upstate
14 Development, LLC.
- 15 Q. And what was that? I know the Gray Group was your
16 manufactured housing subdivision.
- 17 A. Uh-huh (affirmative).
- 18 Q. What was the Upstate, LLC? What was it?
- 19 A. That's the same thing. We just went from the Gray
20 Group to that name. And we were doing some grading
21 work and stuff like that, and it just didn't fit the
22 other thing. So we went to Upstate Development, LLC.
- 23 Q. Other than the lot that's the subject of this action
24 and your primary residence, no other real estate?
- 25 A. When you say other real estate -- is that what you're

1 saying, asking?

2 Q. Yes, sir.

3 A. Lots and stuff like that, no. There's no --

4 Q. Houses?

5 A. No.

6 Q. Condos?

7 A. No.

8 Q. Real estate in LLCs or corporations that you have an
9 interest in?

10 A. I'm not sure whether the Gray Group or -- there's a
11 mobile home that I have income from, that I sold years
12 ago, and I hold the mortgage on it.

13 Q. You owner-financed kind of thing?

14 A. Yeah.

15 Q. But you don't own the land anywhere?

16 A. No.

17 Q. Any land in you or Ms. Gray's name --

18 A. No.

19 Q. -- or any of your companies?

20 A. No.

21 MR. GRIFFIN:

22 Other than your condo, home.

23 EXAMINATION RESUMED BY MR. RICHARDSON:

24 Q. You own your residence?

25 A. Own my residence. Well --

1 Q. That was the property you identified when we first got
2 started?

3 A. Yes. And you need to change your address, because I'm
4 getting mail at the old address. And it's about to
5 expire. I've been there a year. So they won't --

6 Q. We'll do our best.

7 A. -- forward the mail, I don't guess.

8 Q. Do you think if the crash of 2008 had not happened,
9 you would have been able to sell that lot?

10 A. Uh-huh (affirmative).

11 Q. I think the court reporter needs to make sure she
12 hears you.

13 A. Yes.

14 Q. Do you agree it's really nobody's fault, locally;
15 it's just something that happened in the economy?

16 A. Yes. Yes, I agree with that.

17 MR. RICHARDSON:

18 All right, Mr. Gray. I thank you for your time today.
19

20 DEPOSITION CONCLUDED AT APPROXIMATELY 1:01 P.M.
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) C E R T I F I C A T E

I, Karen A. Belanger, notary public in and for the State of South Carolina, acting as court reporter, do hereby certify that pursuant to agreement and/or notice in the foregoing cause, the deposition of Joseph Charles Gray was taken by me at Anderson, South Carolina, on Monday, March 25, 2013.

I further certify that the said Joseph Charles Gray was first duly sworn to testify as hereinabove shown, and the testimony of said deponent was reduced to writing.

I further certify that I am neither counsel nor attorney to either of the parties in said litigation nor interested in the event of the cause.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 15th day of April, 2013.

Karen Belanger

Karen A. Belanger
Notary Public for South Carolina
My Commission Expires 4/18/13

EXHIBITS

CAMPBELL/HADAWAY & ASSOCIATES
Deposition and Court Reporters
Post Office Box 4034
Greenville, South Carolina 29608-4034
(864) 801-4007

THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT AND IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET SEQ., CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.

SUBDIVISION: Waterford Ridge (the "Subdivision")

on Lake Keowee (the "Lake")

Oconee County, South Carolina (the "County")

PROPERTY REPORT: OILSR NO. 31587

having an effective date of: March 15, 2006 (the "Property Report")

LOT PURCHASE AND SALE AGREEMENT

SELLER: The entity signing as "Seller" on page 7 of this Agreement, whose address is 400 South Tryon Street, Suite 1300, P.O. Box 1003, Charlotte, NC 28201-1003

PURCHASER: Charles Gray

LOT: Lot(s) 27 Block _____ Phase _____ of the Subdivision.

1. **Purchase and Sale.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the above-described Lot.

2. **Purchase Price.** The Purchase Price for the Lot is \$ 199,251 (the "Purchase Price") and shall be paid as follows:

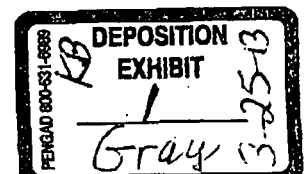
(a) \$ 19,925.10 in earnest money (the "Earnest Money") paid upon delivery of this Lot Purchase and Sale Agreement (this "Agreement"), to be held by ~~Lake Keowee Real Estate, Inc.~~ as escrow agent (the "Escrow Agent") until Closing (as defined below), at which time it will be credited to Purchaser, or until this Agreement is otherwise terminated and it is disbursed in accordance with the provisions of Paragraph 8 below.

(b) \$ 179,325.90 the balance of the Purchase Price shall be paid in cash at Closing.

3. **Loan Contingency.**

(a) This Agreement is subject to Purchaser being able to obtain, after diligent efforts, a first lien mortgage loan at the then prevailing rates in the amount of \$ to be determined (a "Qualifying Loan"). Purchaser must apply for such Qualifying Loan within five (5) business days after the Agreement Date set forth below and accept same if offered by any lender. If Purchaser fails to so apply within the agreed five (5) business day period or refuses to accept a Qualifying Loan obtained by Seller (or by Escrow Agent, acting as broker) on Purchaser's behalf or does any other act to prevent the timely closing of this transaction, then in any such event, Purchaser shall be in default hereunder and Seller shall have the right to exercise its remedies under Paragraph 8 of this Agreement.

(b) If, within thirty (30) calendar days from the Agreement Date set forth below, Purchaser has been turned down for a Qualifying Loan in writing by a reputable mortgage lender and no Qualifying Loan can be obtained by Purchaser or Seller (or by Escrow Agent, acting as broker), then Seller or Purchaser may, at any time thereafter, elect to cancel this Agreement. In the event of the cancellation of this Agreement pursuant to this Paragraph 3(b), Seller, upon receipt of a cancellation notice from Purchaser or upon Seller giving notice of cancellation to



Purchaser, shall cause Escrow Agent to return the Earnest Money to Purchaser, whereupon this Agreement shall become null and void.

4. Closing. The closing of the purchase and sale of the Lot (the "Closing") shall take place on or before May 25, 2006. Closing shall be at a time and place designated by Seller. If the Closing date falls on a weekend or federal holiday, the Closing date shall be the next business day immediately following such weekend or holiday. Time is of the essence as to the Closing date. If Purchaser is unable or unwilling to close on the Closing date provided for above, Purchaser shall be in default under this Agreement. In the event of such default, Seller shall have the option to exercise all of its rights and remedies as provided in this Agreement for Purchaser's default. Seller shall deliver possession of the Lot to Purchaser at Closing.

5. Additional Documents. Purchaser acknowledges that it has received, read, understood and agreed to each of the documents listed below and that Purchaser will be bound by the provisions thereof. As further evidence of its receipt from Seller of such documents, Purchaser has initialed on the line corresponding to each document:

→ (a) [Signature] Declaration of Covenants, Conditions and Restrictions for the Subdivision (as amended and supplemented, from time to time, the "Declaration") recorded or to be recorded in the Office of the Clerk of Court (or the Register of Deeds, as applicable) for the County (the "Recording Office").

→ (b) [Signature] Copy of Plat Book _____, Page _____.

→ (c) [Signature] Architectural, Landscape and Lake Buffer Guidelines for the Subdivision (the "Guidelines").

→ (d) [Signature] Consultant's Report or governmental approval concerning sewer septic tank, as referenced in Paragraph 23(b) below.

(e) N/A Septic System Installation and Inspection Program Manual.

Purchaser acknowledges that Seller has certain rights following recording to amend the provisions of the Declaration, from time to time, and Purchaser hereby agrees to be bound by the provisions of such Declaration, as amended.

6. Setback Lines. Purchaser acknowledges that the Lot is subject to minimum building setback lines as shown on the recorded plat of the Lot and as required by the appropriate governmental entity under its zoning authority.

7. Inspection by Purchaser. Purchaser acknowledges that Purchaser, or his or her spouse, has made a personal, on-the-lot inspection of the Lot prior to signing this Agreement and that Purchaser is satisfied with the Lot in all material respects. Purchaser acknowledges that, except for the warranties of title to be included in Seller's deed to the Lot, Seller, by the execution and delivery of this Agreement or of any document executed and delivered in connection with the Closing, makes no warranty, express or implied, as to the suitability or fitness of the Lot for any purpose, as to the existence or non-existence of radon or any other substance on or about the Lot or as to the merchantability, value, quality, condition or salability of the Lot (including, but not limited to, soil and rock conditions). Purchaser warrants that its decision to purchase is based solely on its own inspection of the Lot and its independent investigation and evaluation of the merits of entering into this Agreement.

8. Earnest Money. In the event Purchaser breaches this Agreement, the Earnest Money shall be retained by Seller as liquidated damages and Seller's sole remedy and relief under this Agreement, and this Agreement shall thereafter be of no further force or effect. Additionally, if Purchaser has entered into a Contract to Enter into Boatslip Lease (the "Boatslip Contract") contemporaneously herewith, in the event Purchaser breaches the Boatslip Contract, such breach shall be a breach of this Agreement, and Seller may also exercise its remedies under the Boatslip Contract. In the event Seller breaches this Agreement, or in the event of a dispute between the parties regarding the obligations of either or both of them hereunder and upon the election of

Seller to terminate this Agreement, the Earnest Money shall be returned to Purchaser together with interest thereon at the rate of eight percent (8%) per annum (prorated over the applicable time period) as liquidated damages and Purchaser's sole remedy and relief, and this Agreement shall thereafter be of no further force or effect. The amounts identified above in this Paragraph as liquidated damages are not intended as a penalty and have been agreed upon by Seller and Purchaser after due deliberation and discussion, and the same constitute good faith estimates of the damages of the party which would be entitled thereto pursuant to this Agreement, the respective party's actual damages being difficult, if not impossible, to ascertain.

9. Prorations and Adjustments. The items below shall be adjusted and paid at Closing as follows:

(a) Ad valorem taxes on the Lot shall be prorated between the parties on a calendar year basis to the date of Closing. In the event a separate tax bill for the Lot is not available at Closing, Seller shall estimate the amount of tax that will be due as to the Lot and shall collect from Purchaser at Closing Purchaser's pro rata share of such estimated amount. When the tax becomes due and payable, Seller shall pay the tax. If the actual tax owed for the Lot is less than as estimated by Seller, Seller shall refund the difference to Purchaser, and if greater, Purchaser shall pay the difference to Seller. Such payment by Seller or Purchaser, as the case may be, shall be made within ten (10) days of Seller's payment of the taxes on the Lot. The obligations contained in this Paragraph 9 (a) shall survive Closing.

(b) Purchaser shall pay in advance at Closing the pro rata portion of assessments on the Lot levied by the property owners association for the Subdivision (the "Association") from the date of Closing through the end of the then current annual period. Thereafter, Purchaser shall pay assessments in accordance with the Declaration and Association policies.

10. Closing Expenses; New Loan. Seller shall pay for the preparation of the deed and for the deed recording fee (which is the name of the transfer tax required by South Carolina law). Purchaser shall pay for the cost of recording the deed, for any title insurance obtained by Purchaser and for all costs with respect to any Qualifying Loan obtained by Purchaser. Seller shall have no obligation to pay any discount fee or other charge in connection with Purchaser's Qualifying Loan.

11. Deed. At Closing, Seller shall deliver to Purchaser fee simple marketable title to the Lot by limited warranty deed, which limited warranty deed must be delivered within one hundred eighty (180) days of the date of signing this Agreement, free and clear of all liens and encumbrances, subject to (and together with, as the case may be) the following exceptions:

- (a) all easements, restrictions, conditions and covenants of record, including, but not limited to, the easements, restrictions, conditions and covenants set forth in the Declaration;
- (b) sewer, water, electric, gas, telephone, drainage, cable television and other easements and matters shown on the recorded plat(s) of the Lot or as otherwise would be disclosed by a current, accurate physical survey of the Lot, and
- (c) matters of zoning and the lien of the current year's city/county ad valorem property taxes (to be prorated at Closing).

12. Title Policy. Purchaser shall be responsible for providing a title insurance policy for the Lot, and Purchaser shall pay all related costs of procuring such title insurance policy for the Lot. If any dispute should arise between the parties as to whether title to the Lot is as required by the terms of this Agreement, the willingness of the title insurance company to issue a title insurance commitment for an owner's title insurance policy for the Lot, subject only to the matters set forth in Paragraph 11 above and the usual and customary exceptions contained in an owner's policy of title insurance issued by such title insurance company, shall be binding and conclusive upon the parties that title to the Lot which Seller proposes to convey to Purchaser is such as is required by the terms hereof.

13. No Offer of Gifts. Purchaser acknowledges that it has not been contacted by direct mail or by telephone with an offer of a gift, trip, dinner or similar promotional item in connection with the marketing of the Lot.

14. Assignment. Purchaser may not assign this Agreement without the prior written consent of Seller, which consent Seller shall have the right to grant or withhold in its sole and absolute discretion.

15. Parties. This Agreement shall be binding upon and shall inure to the benefit of the parties and their heirs, successors and assigns. As used herein, words in the singular include the plural and vice versa, as appropriate.

16. Entire Agreement. This Agreement contains the entire understanding of the parties and there are no representations, inducements or other provisions other than those specifically expressed or referred to herein. All changes, additions or deletions hereto must be in writing and signed by Purchaser and Seller. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

17. Survival. If any provision herein contained is required by its nature and effect to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto and their respective successors and assigns until fully observed, kept or performed. Provisions that by their terms shall be binding upon Purchaser and survive the Closing shall run with title to the Lot and be binding upon subsequent owners of the Lot.

18. Governing Law. This Agreement shall be governed by and construed under the laws of the State of South Carolina.

19. Affiliates of Seller. Purchaser acknowledges that Seller shall be the sole party responsible for the performance of Seller's obligations under this Agreement and acknowledges that no other person, firm or entity, including, without limitation, any entity affiliated with Seller, shall have any obligation or liability under this Agreement. Purchaser therefore waives all claims against all companies and persons affiliated with Seller for any loss, cost or damage arising out of Seller's performance or nonperformance of its obligations to Purchaser in connection with this Agreement or any other instrument relating to the Subdivision.

20. Utility Easements Disclosure. Purchaser acknowledges that street lights and utility facilities may be installed in the street right-of-way in front of or near the Lot and/or within the utility easements established under the terms of the Declaration. Purchaser acknowledges that development activities are continuing within the easement areas described below, and that additional cutting, clearing and grading may occur within such areas. Purchaser acknowledges that it is purchasing the Lot subject to the easement holder's rights to perform such work within the easement areas. The areas on the Lot subject to additional cutting, clearing and grading are as follows:

(a) The areas designated as landscape, irrigation, access, sidewalk, utility, sanitary sewer and/or drainage easements (or the like) on the recorded plats of Subdivision and of the Lot; and

(b) The areas described in the Declaration.

21. Arbitration. Any controversy, dispute or claim arising out of this Agreement or the breach or alleged breach of this Agreement shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association currently in effect (unless the parties mutually agree otherwise). The award rendered by the arbitrator(s) shall be final and any judgment upon the award rendered by the arbitrator(s) shall be entered in a state court in the County in which the Subdivision is located. The party demanding arbitration of

any controversy, dispute or claim arising out of this Agreement or any breach or alleged breach of this Agreement shall file a written notice of such demand with the other party and with the American Arbitration Association. Such written notice shall be given no later than sixty (60) days after the controversy, dispute or claim arises or the breach or alleged breach of this Agreement occurs. Neither the parties to this Agreement nor the arbitrator(s) may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Agreement or the breach or alleged breach of this Agreement, (ii) the existence of an arbitration proceeding under this Agreement, or (iii) the results of any arbitration proceeding under this Agreement; provided, however, the filing of a civil action in a state court in the County in which the Subdivision is located, confirming an arbitration award pursuant to this Paragraph shall not be deemed a violation of this confidentiality provision. The terms and provisions in this Paragraph shall survive the Closing of the sale and purchase of the Lot as contemplated by this Agreement.

22. Lake.

(a) Duke Energy Control of the Lake. Purchaser hereby acknowledges for itself and its successors and assigns as follows: (i) Duke Energy Corporation controls access to, use of and water levels in the Lake; (ii) Seller makes no oral, express or implied representation or commitment as to the continued existence, purity, depth or levels of water in the Lake; and (iii) Seller shall have no liability with respect to these matters.

(b) Permissions Needed for Purchaser's Construction of Pier. In the event Purchaser is entitled under the Declaration to place or construct any pier, structure or other improvement within or upon, or conduct any activity altering the topography of, the waters of the Lake with respect to the Lot, Purchaser must receive permission from Duke Energy Corporation (or a successor manager of the Lake under authority from the Federal Energy Regulatory Commission ("FERC")) prior to commencing such activity. Seller makes no oral, express or implied representation or commitment as to the likelihood of Purchaser obtaining such permission, and Seller shall have no liability with respect to same. Construction of any of the aforesaid improvements is also subject to the provisions of the Declaration and any other matters of record in the Recorder's Office affecting the Lot.

23. Utilities, Amenities and Facilities.

(a) To the extent applicable to the Subdivision, as disclosed in the Property Report, Seller shall provide, at Seller's sole cost and expense, certain roads, public sewer, water and electrical service lines (i.e., utility service lines) to the boundary line of each Lot in the Subdivision, and recreational facilities, if any, which Seller agrees to provide with respect to the Subdivision in which the Lot is located. Details concerning such improvements and the estimated dates for completion of construction thereof are set forth in the Property Report, which is incorporated herein by this reference. Seller does hereby agree, and does hereby become contractually bound to Purchaser, to complete any such improvements in accordance with the disclosures made in the Property Report. Each lot purchaser (including Purchaser) shall be required to extend said utility service lines to the house constructed on such Lot and pay all "turn-on" charges in connection therewith, including, without limitation, any connection, activation, tap, reservation or other fee or charge in connection with such utility services.

(b) If the Lot is not served by a central sanitary sewer system, then simultaneously with its acceptance of this Agreement, Seller has delivered to Purchaser a consultant's report or a general approval letter from the appropriate governmental authority indicating that the Lot is generally acceptable for the use of individual sewage disposal systems. If the blank below is filled in with a septic field easement number, the septic sewer system for the Property will be located on a septic field easement area ("SFE") which will initially be owned by Seller, and eventually conveyed to the Association, subject to a septic easement in favor of Purchaser, for the operation of a septic system on the septic field easement area: "SFE" # N/A and the septic field easement area may be subject to an option for its repurchase by Seller if sewer service is extended to the Lot, at which time Purchaser's septic field easement rights shall be terminated. (IF THIS BLANK IS NOT FILLED IN OR HAS "N/A" FILLED IN, THE SEPTIC SEWER SYSTEM CAN BE LOCATED ENTIRELY ON THE LOT WITHOUT AN "SFE").

(c) Purchaser and Seller acknowledge that there have been no representations or agreements regarding the Seller's obligation to provide or complete roads, sewer, water, electric or other utility services or recreational amenities made by Seller or relied upon by Purchaser, except as are set forth herein or in the Property Report.

24. Completion of Development. Purchaser acknowledges that as of the Agreement Date indicated below and as of the date of Closing, certain roads and utilities specified in the Property Report may not be complete and that there may be certain inconveniences until construction of such facilities is complete, and Purchaser hereby waives all claims with respect thereto. Purchaser further agrees to assume all risks and indemnify and hold Seller harmless with respect to Purchaser's entry onto the Lot or surrounding land while such facilities are under construction.

25. Special Stipulations. The following matters, if any, are hereby made a part of this Agreement:

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Agreement Date indicated below.

This Agreement shall become a binding contract only when it has been signed below by both Purchaser and Seller and any changes have been initialed by both parties.

YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT OR AGREEMENT OF SALE BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE SEVENTH DAY FOLLOWING THE SIGNING OF THE CONTRACT OR AGREEMENT.

IF YOU DID NOT RECEIVE A PROPERTY REPORT PREPARED PURSUANT TO THE RULES AND REGULATIONS OF THE OFFICE OF INTERSTATE LAND SALES REGISTRATION, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, IN ADVANCE OF YOUR SIGNING THE CONTRACT OR AGREEMENT, THE CONTRACT OR AGREEMENT OF SALE MAY BE CANCELLED AT YOUR OPTION FOR TWO YEARS FROM THE DATE OF SIGNING.

PURCHASER:

[Signature]

SELLER:

CRESCENT COMMUNITIES S.C., LLC, a
Delaware limited liability company

Date: 03/26/06

By: [Signature]

Address: 103 Dove Cove Ln.
Westminster, SC 29693

Its: VP

Telephone No.: 247-4498

Agreement Date: 3-30-06

LISTING BROKER (please print):

SELLING BROKER (please print):

Firm Name: Lake Keowee Real Estate, Inc.

Firm Name: John Hamrick Real Estate

Address: 896 N. Walnut St.
Seneca, SC 29678

Address: 896 N. Walnut St.
Seneca, SC 29678

Phone No.: (864) 886-0098

Phone No.: 864-886-0098

Sales Representative:

Firm Representative: Cammy Green

John R. Hamrick

Party Represented by Selling Broker:

Broker-in-Charge:

☐ Purchaser
☒ Seller
(check one)

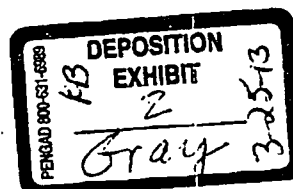
John R. Hamrick

U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT	D. TYPE OF LOAN: 1 ☐ FHA 2 ☐ Folia 3 ☒ CONV. UNINS. 4 ☐ VA 5 ☐ CONV. INS.				
	6. FILE NUMBER: GRAY, CHARLES (DT27)		7. LOAN NUMBER		
	8. MORTGAGE INS. CASE NUMBER:				

NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "P.O.D." were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

A. NAME AND ADDRESS OF BORROWER: Charles Gray 311 Lake Cove Lane Westminster, SC 29693	E. NAME AND ADDRESS OF SELLER: Crescent Communities, SC LLC Formerly Crescent Comm SC INC P.O. Box 1000 Charleston, SC 29621-1000	F. NAME AND ADDRESS OF LENDER: Community First Bank P.O. Box 459 Seneca, SC 29679
H. SETTLEMENT AGENT: James S. Bulk 57 0696435		I. SETTLEMENT DATE: May 25, 2006
J. PLACE OF SETTLEMENT: 1202 H. Main Street Aiken, SC 29621		
K. PROPERTY LOCATION: at 27 Waterford Ridge Seneca, SC Seneca County, South Carolina		

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
0. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
1. Contract Sales Price	199,251.00	401. Contract Sales Price	199,251.00
2. Personal Property		402. Personal Property	
3. Settlement Charges to Borrower (Line 1100)	3,865.15	403.	
4.		404.	
5.		405.	
Adjustments For Items Paid By Seller in Advance		Adjustments For Items Paid By Seller in Advance	
6. City/Town Taxes	to	406. City/Town Taxes	to
7. County Taxes	to	407. County Taxes	to
8. Assessments	to 01/01/07	408. Assessments	to
9.	366.44	409.	
10.		410.	
11.		411.	
12.		412.	
13. GROSS AMOUNT DUE FROM BORROWER	203,502.59	420. GROSS AMOUNT DUE TO SELLER	199,251.00
0. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
1. Deposit or escrow money	19,925.10	501. Excess Deposit (See Instructions)	
2. Principal Amount of New Loan(s)	180,325.00	502. Settlement Charges to Seller (Line 1400)	20,663.25
3. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
4.		504. Payoff of first Mortgage	
5.		505. Payoff of second Mortgage	
6.		506.	
7.		507. (Deposit disb. as proceeds)	
8.		508.	
9.		509.	
Adjustments For Items Unpaid By Seller		Adjustments For Items Unpaid By Seller	
1. City/Town Taxes	to	510. City/Town Taxes	to
2. County Taxes	to	511. County Taxes	to
3. Assessments	to	512. Assessments	to
4.		513.	
5.		514.	
6.		515.	
7.		516.	
8.		517.	
9.		518.	
10.		519.	
11. TOTAL PAID BY/FOR BORROWER	200,250.10	620. TOTAL REDUCTION AMOUNT DUE SELLER	20,663.25
1. CASH AT SETTLEMENT FROM/TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
1. Gross Amount Due From Borrower (Line 13)	203,502.59	601. Gross Amount Due To Seller (Line 420)	199,251.00
2. Less Amount Paid By/Fr. Borrower (Line 11)	(200,250.10)	602. Less Reductions Due Seller (Line 520)	20,663.25
3. CASH FROM (X TO) BORROWER	3,252.51	603. CASH (X TO) (FROM) SELLER	178,587.75



L. SETTLEMENT CHARGES

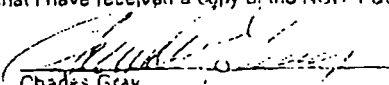
700 TOTAL COMMISSION Based on Price	\$	00	%	19,925.10		
Division of Commission (line 700) as Follows:					PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
701 \$ 9,962.55	to	John Hancock Real Estate, Inc.				
702 \$ 9,962.55	to	John Hancock Real Estate, Inc.				
703 Commission Paid at Settlement						19,925.10
704	to					
800 ITEMS PAYABLE IN CONNECTION WITH LOAN						
801 Loan Origination Fee	1.0000 %	to	Community First Bank		1,883.25	
802 Loan Discount	%	to				
803 Appraisal Fee		to	Community First Bank, FBO Certified Appraisal Solist		300.00	
804 Credit Report		to				
805 Lender's Inspection Fee		to				
806 Mortgage Ins. App. Fee		to				
807 Assumption Fee		to				
808 Flood Certification Fee		to				
809 Tax Service Fee		to				
810 Underwriting Fee		to				
811 Processing Fee		to				
900 ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE						
901 Interest From 05/25/06	to 06/01/06	at \$	1day (7 days %)			
902 Mortgage Insurance Premium for	months to					
903 Hazard Insurance Premium for	1.0 years to					
904						
905						
000. RESERVES DEPOSITED WITH LENDER						
001 Hazard Insurance	months at \$		per month			
002 Mortgage Insurance	months at \$		per month			
003 City/Town Taxes	months at \$		per month			
004 County Taxes	months at \$		per month			
005 Assessments	months at \$		per month			
006	months at \$		per month			
007	months at \$		per month			
008	months at \$		per month			
100 TITLE CHARGES						
101 Pay Prep Fee	to	James S. Bell			125.00	
102 Abstract or Title Search	to	Abstracting Associates			192.50	
103 Title Examination	to					
104 Title Insurance Binder	to	James S. Bell			75.00	
105 Document Preparation	to					
106 Notary Fees	to					
107 Attorney's Fees	to	James S. Bell			300.00	
(includes above item numbers)						
108 Title Insurance	to	Commonwealth Land Title Insurance Company			911.90	
(includes above item numbers)						
109 Lender's Coverage	\$	100,325.00		461.90		
110 Owner's Coverage	\$	109,251.00		450.00		
11						
12						
13						
00. GOVERNMENT RECORDING AND TRANSFER CHARGES						
01 Recording Fees: Deed \$	10.00, Mortgage \$	25.00,	Refinance \$		35.00	
02 City/County Tax/Stamp/Deed		738.15 Mortgage				738.15
03 State Tax/Stamp	Revenue Stamp		Mortgage			
04						
05						
00. ADDITIONAL SETTLEMENT CHARGES						
01 Survey	to	F. & S. Surveying Engineers and Planners, Inc.				
02 Post Inspection	to					
03 Wires	to	Burd. of Ambassadors				
04 Copies, Processing, & UPS	to				62.50	
05						
10. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)					3,885.15	20,663.25

Certified to be a true copy

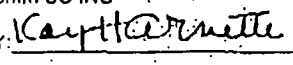
ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT STATEMENT

Borrower: Charles Gray
Seller: Crescent Communities, SC LLC formerly Crescent Comm SC INC
Lender: Community First Bank
Settlement Agent: James S. Belk
(864)224-8123
Place of Settlement: 1202 N. Main Street
Anderson, SC 29621
Settlement Date: May 25, 2006
Property Location: Lot 27 Waterford Ridge
Seneca, SC
Oconee County, South Carolina

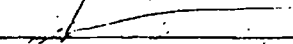
I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.


Charles Gray

Crescent Communities, SC LLC formerly Crescent
Comm SC INC

BY: 

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.


James S. Belk
Settlement Agent

J CHARLES GRAY 103 DOVE COVE LANE WESTMINSTER, SC 29693 BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	COMMUNITY FIRST BANK P.O. BOX 459 1600 SANDIFER BLVD. SENECA, SC 29678 LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	Loan Number _____ Date <u>05-25-2006</u> Maturity Date <u>05-25-2007</u> Loan Amount \$ <u>188,325.00</u> Renewal Of _____

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of ONE HUNDRED EIGHTY EIGHT THOUSAND THREE HUNDRED TWENTY FIVE AND NO/100 Dollars \$ 188,325.00

☒ **Single Advance:** I will receive all of this principal sum on 05-25-2006. No additional advances are contemplated under this note.

☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 05-25-2006 at the rate of 5.950% per year until 05-25-2007

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

☐ **Index Rate:** The future rate will be _____ the following index rate: _____

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

☐ **Frequency and Timing:** The rate on this note may change as often as _____
A change in the interest rate will take effect _____

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

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

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change

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 15 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MAX OF \$100.00

☒ **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:
11 MONTHLY INTEREST PAYMENTS RANGING FROM \$871.53 TO \$1151.66 BEGINNING 07-01-2006 AND 1 PAYMENT OF \$189,072.02 ON 05-25-2007.

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date): MORTGAGE DATED 5/25/06

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

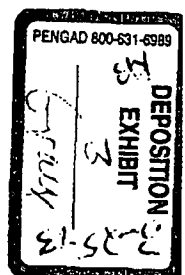
Signature for Lender

SHANE SMITH, VICE PRESIDENT

PURPOSE: The purpose of this loan is PURCHASE LOT 27 WATERFORD RIDGE

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

J CHARLES GRAY



LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
101	J Charles Gray	8800024927	06/05/08	SOS
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$180,000.00	Wall Street Journal Prime plus 0.500%	5.500%	06/05/08	Commercial

Creditor Use Only

PROMISSORY NOTE

(Commercial - Single Advance)

DATE AND PARTIES. The date of this Promissory Note (Note) is June 5, 2008. The parties and their addresses are:

LENDER:

FIRST SAVERS BANK
935 South Main Street, Suite 300
Greenville, South Carolina 29601
Telephone: (864) 477-2660

BORROWER:

J CHARLES GRAY
103 Dove Cove Lane
Westminster, South Carolina 29693

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together. "You" and "Your" refer to the Lender.
- B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. Percent. Rates and rate change limitations are expressed as annualized percentages.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of \$180,000.00 (Principal) plus interest from June 5, 2008 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

3. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 5.500 percent (Interest Rate) until June 6, 2008, after which time it may change as described in the Variable Rate subsection.

- A. Post-Maturity Interest. After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et. seq.
- D. Accrual. Interest accrues using an Actual/360 days counting method.
- E. Variable Rate. The Interest Rate may change during the term of this transaction.

(1) Index. Beginning with the first Change Date, the Interest Rate will be based on the following index: the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks known as the Wall Street Journal Prime Rate.

The Current Index is the most recent index figure available on each Change Date. You do not guaranty by selecting this index, or the margin, that the Interest Rate on this Note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers. If this index is no longer available, you will substitute a similar index. You will give me notice of your choice.

(2) Change Date. Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change June 6, 2008 and daily thereafter.

(3) Calculation Of Change. On each Change Date you will calculate the Interest Rate, which will be the Current Index plus 0.500 percent. The result of this calculation will be rounded to the nearest .001 percent. Subject to any limitations, this will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note.

(4) Effect Of Variable Rate. A change in the Interest Rate will have the following effect on the payments: The amount of scheduled payments and the amount of the final payment will change.

4. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

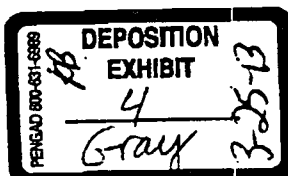
- A. Late Charge. If a payment is more than 15 days late, I will be charged 5.000 percent of the Amount of Payment. I will pay this late charge promptly but only once for each late payment.

5. PAYMENT. I agree to pay this Note in installments of accrued interest beginning July 5, 2008, and then on the 5th day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on June 6, 2009.

J Charles Gray
South Carolina Promissory Note
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Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 28th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

6. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

7. LOAN PURPOSE. This is a business-purpose loan transaction.

8. SECURITY. The Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name
Mortgage - Lot 27 Waterford Ridge

Parties to Document
J Charles Gray

9. DEFAULT. I will be in default if any of the following occur:

A. Payments. I fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.

C. Death or Incompetency. I die or am declared legally incompetent.

D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.

E. Other Documents. A default occurs under the terms of any other Loan Document.

F. Other Agreements. I am in default on any other debt or agreement I have with you.

G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. I fail to satisfy or appeal any judgment against me.

I. Foreclosure. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. I change my name or assume an additional name without notifying you before making such a change.

K. Property Transfer. I transfer all or a substantial part of my money or property.

L. Property Value. You determine in good faith that the value of the Property has declined or is impaired.

M. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

10. DUE ON SALE OR ENCUMBRANCE. You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

11. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

(4) You, or any institution participating in this Note, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guaranteeing or relating to this Note.

B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

12. REMEDIES. After I default, you may at your option do any one or more of the following.

A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due.

B. Sources. You may use any and all remedies you have under state or federal law or in any Loan Document.

C. Insurance Benefits. You may make a claim for any and all insurance benefits or refunds that may be available on my default.

D. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.

E. Set-Off. You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

J Charles Gray
South Carolina Promissory Note
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Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

F. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

13. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

14. **COMMISSIONS.** I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

15. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

16. **APPLICABLE LAW.** This Note is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

17. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not effect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

18. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

19. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

20. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

21. **CREDIT INFORMATION.** I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

22. **ERRORS AND OMISSIONS.** I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you or of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

23. **AGREEMENT TO ARBITRATE.** You or I may submit to binding arbitration any dispute, claim or other matter in question between or among you and me that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as you and I agree to in writing. For purposes of this section, this Transaction includes this Note and the other Loan Documents, and proposed loans or extensions of credit that relate to this Note. You or I will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws.

You and I must consent to arbitrate any Dispute concerning a debt secured by real estate at the time of the proposed arbitration. You may foreclose or exercise any powers of sale against real property securing a debt underlying any Dispute before, during or after any arbitration. You may also enforce a debt secured by this real property and underlying the Dispute before, during or after any arbitration.

You or I may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law, seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to you or me; or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

You and I acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among you and me involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Note, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Note or another writing.

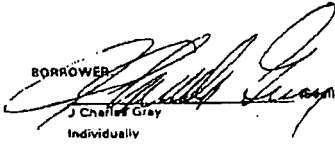
24. **WAIVER OF TRIAL FOR ARBITRATION.** You and I understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes through arbitration instead of litigation. If any Dispute is arbitrated, you and I voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

25. **SIGNATURES.** By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

J Charles Grey
South Carolina Promissory Note
SC14Xdbaiy000690005586010060308N

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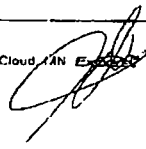
Page 3

BORROWER

J Charles Gray
Individually

J Charles Gray
South Carolina Promissory Note
SC/4.Xdbaleiy00005900005588010060308N

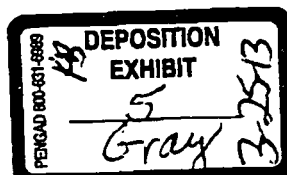
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Page 4



A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT		B. TYPE OF LOAN: 1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS. 6. FILE NUMBER: G-771 7. LOAN NUMBER: 101 8. MORTGAGE INS CASE NUMBER:	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "POC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals. 1.0 368 (GRAY,CHARLES/REFLOT2)MT.PFDGRAY,CHARLES/REFLOT			
D. NAME AND ADDRESS OF BORROWER: J. Charles Gray 103 Dove Cove Lane Westminster, SC 29693		E. NAME AND ADDRESS OF SELLER: James S. Belk PLACE OF SETTLEMENT 1202 N. Main Street Anderson, SC 29621	
G. PROPERTY LOCATION: Lot 27 Waterford Seneca, SC 29678 Oconee County, South Carolina		F. NAME AND ADDRESS OF LENDER: First Savers Bank 935 South Main Street, Suite 300 Greenville, SC 29601	
H. SETTLEMENT AGENT: 57-0696435 James S. Belk PLACE OF SETTLEMENT 1202 N. Main Street Anderson, SC 29621		I. SETTLEMENT DATE: June 5, 2008	

J. SUMMARY OF BORROWER'S TRANSACTION <table style="width:100%; border-collapse: collapse;"> <tr><td colspan="2">100. GROSS AMOUNT DUE FROM BORROWER:</td></tr> <tr><td>101. Contract Sales Price</td><td></td></tr> <tr><td>102. Personal Property</td><td></td></tr> <tr><td>103. Settlement Charges to Borrower (Line 1400)</td><td>726.00</td></tr> <tr><td>104. to Community First Bank/268531</td><td>189,633.85</td></tr> <tr><td>105.</td><td></td></tr> <tr><td colspan="2"><i>Adjustments For Items Paid By Seller in advance</i></td></tr> <tr><td>106. City/Town Taxes to</td><td></td></tr> <tr><td>107. County Taxes to</td><td></td></tr> <tr><td>108. Assessments to</td><td></td></tr> <tr><td>109.</td><td></td></tr> <tr><td>110.</td><td></td></tr> <tr><td>111.</td><td></td></tr> <tr><td>112.</td><td></td></tr> <tr><td>120. GROSS AMOUNT DUE FROM BORROWER</td><td>190,359.85</td></tr> <tr><td colspan="2">200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:</td></tr> <tr><td>201. Deposit or earnest money</td><td></td></tr> <tr><td>202. Principal Amount of New Loan(s)</td><td>(360,000.00)</td></tr> <tr><td>203. Existing loan(s) taken subject to</td><td></td></tr> <tr><td>204.</td><td></td></tr> <tr><td>205.</td><td></td></tr> <tr><td>206.</td><td></td></tr> <tr><td>207. Construction Draw</td><td>180,000.00</td></tr> <tr><td>208.</td><td></td></tr> <tr><td>209.</td><td></td></tr> <tr><td colspan="2"><i>Adjustments For Items Unpaid By Seller</i></td></tr> <tr><td>210. City/Town Taxes to</td><td></td></tr> <tr><td>211. County Taxes to</td><td></td></tr> <tr><td>212. Assessments to</td><td></td></tr> <tr><td>213.</td><td></td></tr> <tr><td>214.</td><td></td></tr> <tr><td>215.</td><td></td></tr> <tr><td>216.</td><td></td></tr> <tr><td>217.</td><td></td></tr> <tr><td>218.</td><td></td></tr> <tr><td>219.</td><td></td></tr> <tr><td>220. TOTAL PAID BY/FOR BORROWER</td><td>180,000.00</td></tr> <tr><td colspan="2">300. 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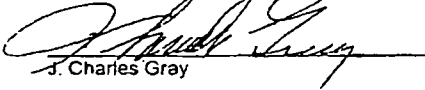
L. SETTLEMENT CHARGES						
700. TOTAL COMMISSION Based on Price			\$	@	%	
Division of Commission (line 700) as Follows:						
701. \$ to						
702. \$ to						
703. Commission Paid at Settlement						
704. to						
800. ITEMS PAYABLE IN CONNECTION WITH LOAN						
801. Loan Origination Fee % to						
802. Loan Discount % to						
803. Appraisal Fee to First Savers Bank POC:B225.00						
804. Credit Report to						
805. Lender's Inspection Fee to						
806. Mortgage Ins. App. Fee to						
807. Assumption Fee to						
808. Flood Certification Fee						
809. Tax Service Fee						
810. Underwriting Fee						
811. Processing Fee						
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE						
901. Interest From 06/05/08 to 07/01/08 @ \$ /day (26 days %)						
902. Mortgage Insurance Premium for months to						
903. Hazard Insurance Premium for 1.0 years to						
904.						
905.						
1000. RESERVES DEPOSITED WITH LENDER						
1001. Hazard Insurance months @ \$ per month						
1002. Mortgage Insurance months @ \$ per month						
1003. City/Town Taxes months @ \$ per month						
1004. County Taxes months @ \$ per month						
1005. Assessments months @ \$ per month						
1006. months @ \$ per month						
1007. months @ \$ per month						
1008. months @ \$ per month						
1100. TITLE CHARGES						
1101. MORTGAGE SATISFACTION FEE to James S. Belk						46.00
1102. Abstract or Title Search to Abstracting Associates						192.50
1103. Package Prep Fee to James S. Belk						125.00
1104. Title Insurance Binder to James S. Belk						
1105. Document Preparation to						
1106. Notary Fees to						
1107. Attorney's Fees to James S. Belk						250.00
(includes above item numbers:)						
1108. Title Insurance to Commonwealth Land Title Insurance Company						
(includes above item numbers:)						
1109. Lender's Coverage \$						
1110. Owner's Coverage \$						
1111.						
1112.						
1113.						
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES						
1201. Recording Fees: Deed \$; Mortgage \$ 25.00; Releases \$						25.00
1202. City/County Tax/Stamps: Deed ; Mortgage						
1203. State Tax/Stamps: Revenue Stamps ; Mortgage						
1204. Recording Sat. Mortgage to Oconee County Register of Deeds						15.00
1205.						
1300. ADDITIONAL SETTLEMENT CHARGES						
1301. Survey to						
1302. Pest Inspection to						
1303.						
1304. Copies, Processing, Wire & UPS to						72.50
1305.						
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)						726.00

Certified to be a true copy.

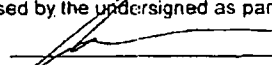
ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT STATEMENT

Borrower: J. Charles Gray
Lender: First Savers Bank
Settlement Agent: James S. Belk
(864)224-8123
Place of Settlement: 1202 N. Main Street
Anderson, SC 29621
Settlement Date: June 5, 2008
Property Location: Lot 27 Waterford
Seneca, SC 29678
Oconee County, South Carolina

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.


J. Charles Gray

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.


James S. Belk
Settlement Agent

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

(GRAY,CHARLES(REFILOT27WT.PFD)GRAY,CHARLES(REFILOT

App. 000385

THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD TO LIGHT TO VIEW

M16779 08116093

OFFICIAL CHECK

5000568071

ISSUING BRANCH ~~3019301~~ - SENECA - MAIN

DATE JUNE 05, 2008

68-236/514

PAY TO THE ORDER OF JAMES S. BELK

BB&T

BB&T TEL 0684 DOLLARS 85 CTS

\$ **** \$10,684.85 ****

DOLLARS

[Signature]

MEMO PURCHASER EST. 2 WATERFORD RIDGE

Security Features Included.

PENGAD 800-631-6989

KB

Gray

6

32513

DEPOSITION
EXHIBIT

Record P. 333



6/5/2008 001482474 053208118 Community South Bank

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
101	J Charles Gray		07/09/09	SDS
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$175,000.00	Not Applicable	6.000%	07/09/10	Commercial
Creditor Use Only				

PROMISSORY NOTE
(Commercial - Single Advance)
RENEWAL NOTE

DATE AND PARTIES. The date of this Promissory Note (Note) is July 9, 2008. The parties and their addresses are:

LENDER:

PLANTATION FEDERAL BANK
AS SUCCESSOR TO FIRST SAVERS BANK
935 South Main Street, Suite 300
Greenville, SC 29601
Telephone: (884) 477-2660

BORROWER:

J CHARLES GRAY
103 Dove Cove Lane
Westminster, SC 29693

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together. "You" and "Your" refer to the Lender.
- B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. Percent. Rates and rate change limitations are expressed as annualized percentages.

2. RENEWAL. This Note is a renewal of the following described note:

Note Date	Note Number	Note Amount
June 5, 2008		\$180,000.00

I have requested that the note listed in the table above be renewed. The remaining balance of the note listed in the table above is \$175,000.00.

3. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of \$175,000.00 (Principal) plus interest from July 9, 2009 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

4. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 6.000 percent (Interest Rate).

- A. Post-Maturity Interest. After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-606, 37-3-105 and 37-10-101 et. seq.
- D. Accrual. Interest accrues using an Actual/360 days counting method.

5. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

- A. Late Charge. If a payment is more than 15 days late, I will be charged 5.000 percent of the Amount of Payment. I will pay this late charge promptly but only once for each late payment.

6. PAYMENT. I agree to pay this Note in installments of accrued interest beginning August 9, 2009, and then on the 9th day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on July 9, 2010.

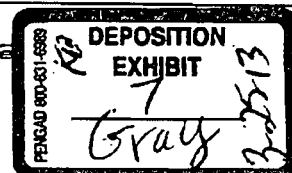
Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

7. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

J Charles Gray
South Carolina Promissory Note
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8. **LOAN PURPOSE.** This is a business-purpose loan transaction.

9. **SECURITY.** The Loan is secured by previously executed, separate security instruments described as follows:

Description	Date
Mortgage	June 5, 2008

10. **DEFAULT.** I will be in default if any of the following occur:

- A. **Payments.** I fail to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.
- C. **Death or Incompetency.** I die or am declared legally incompetent.
- D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Note.
- E. **Other Documents.** A default occurs under the terms of any other Loan Document.
- F. **Other Agreements.** I am in default on any other debt or agreement I have with you.
- G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgment.** I fail to satisfy or appeal any judgment against me.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.
- K. **Property Transfer.** I transfer all or a substantial part of my money or property.
- L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.
- M. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

11. **DUE ON SALE OR ENCUMBRANCE.** You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

12. **WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers By Borrower.** In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

- (1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.
- (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
- (3) You may release, substitute or impair any Property securing this Note.
- (4) You, or any institution participating in this Note, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

13. **REMEDIES.** After I default, you may at your option do any one or more of the following.

- A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Note immediately due.
- B. **Sources.** You may use any and all remedies you have under state or federal law or in any Loan Document.
- C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.
- D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.
- E. **Set-Off.** You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

F. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

15. COMMISSIONS. I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

16. WARRANTIES AND REPRESENTATIONS. I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

17. APPLICABLE LAW. This Note is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

18. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

19. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, as a result, this Loan would become subject to Section 870 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

20. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

21. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

22. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

23. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

24. AGREEMENT TO ARBITRATE. You or I may submit to binding arbitration any dispute, claim or other matter in question between or among you and me that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as you and I agree to in writing. For purposes of this section, this Transaction includes this Note and the other Loan Documents, and proposed loans or extensions of credit that relate to this Note. You or I will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws.

You and I must consent to arbitrate any Dispute concerning a debt secured by real estate at the time of the proposed arbitration. You may foreclose or exercise any powers of sale against real property securing a debt underlying any Dispute before, during or after any arbitration. You may also enforce a debt secured by this real property and underlying the Dispute before, during or after any arbitration.

You or I may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law; seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to you or me; or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

You and I acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among you and me involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Note, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Note or another writing.

25. WAIVER OF TRIAL FOR ARBITRATION. You and I understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes through arbitration instead of litigation. If any Dispute is arbitrated, you and I voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

26. SIGNATURES. By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER:

 (Seal)
J Charles Gray
Individually

8800024927 note 101

Record P. 338

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

Doc ID: 001477480008 Type: MTG
BK 2627 Pg 187-194

2008 JUN 11 P 2:42

Ret. JAMES S. BELK, ATTORNEY
1202 NORTH MAIN STREET
ANDERSON, SC 29621
ew

1400

019276

Space Above This Line For Recording Date

This document was prepared by Dawn Bailey, First Savers Bank, 935 South Main Street, Suite 300, Greenville, South Carolina 29601

MORTGAGE

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is June 5, 2008. The parties and their addresses are:

MORTGAGOR:

J CHARLES GRAY
103 Dove Cove Lane
Westminster, South Carolina 29693

LENDER:

FIRST SAVERS BANK
Organized and existing under the laws of South Carolina
935 South Main Street, Suite 300
Greenville, South Carolina 29601

1. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property:

SEE ATTACHED EXHIBIT A

The property is located in Oconee County at Lot 27 Waterford Ridge, Seneca, South Carolina 29672.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time will not exceed \$360,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants

J Charles Gray
South Carolina Mortgage
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contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 101, dated June 5, 2008, from Mortgagor to Lender, with a loan amount of \$180,000.00.

B. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

5. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

6. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor has the right and authority to enter into this Security Instrument. The execution and delivery of this Security Instrument will not violate any agreement governing Mortgagor or to which Mortgagor is a party.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. DEFAULT. Mortgagor will be in default if any of the following occur:

A. **Payments.** Mortgagor fails to make a payment in full when due.

B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. **Death or Incompetency.** Mortgagor dies or is declared legally incompetent.

D. **Failure to Perform.** Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. **Other Documents.** A default occurs under the terms of any other document relating to the Secured Debts.

F. **Other Agreements.** Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. **Misrepresentation.** Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. **Judgment.** Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. **Name Change.** Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. **Property Transfer.** Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. **Property Value.** Lender determines in good faith that the value of the Property has declined or is impaired.

M. **Insecurity.** Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

13. REMEDIES. On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the

collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

15. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of

any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

16. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

17. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

18. CO-SIGNERS. If Mortgagor signs this Security Instrument but is not otherwise obligated to pay the Secured Debts, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debts and Mortgagor does not agree by signing this Security Instrument to be personally liable on the Secured Debts. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

19. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

20. FIXTURE FILING. Mortgagor gives to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.

21. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

22. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms

of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

23. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

24. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

25. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

26. AGREEMENT TO ARBITRATE. Lender or Mortgagor may submit to binding arbitration any dispute, claim or other matter in question between or among Lender and Mortgagor that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as Lender and Mortgagor agree to in writing. For purposes of this section, this Transaction includes this Security Instrument and any other document relating to the Secured Debts, and proposed loans or extensions of credit that relate to this Security Instrument. Lender or Mortgagor will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws.

Lender and Mortgagor must consent to arbitrate any Dispute concerning the Secured Debt secured by real estate at the time of the proposed arbitration. Lender may foreclose or exercise any powers of sale against real property securing the Secured Debt underlying any Dispute before, during or after any arbitration. Lender may also enforce the Secured Debt secured by this real property and underlying the Dispute before, during or after any arbitration.

Lender or Mortgagor may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law; seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to Lender or Mortgagor; or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter, at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

Lender and Mortgagor acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among Lender and Mortgagor involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Security Instrument, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Security Instrument or another writing.

27. WAIVER OF TRIAL FOR ARBITRATION. Lender and Mortgagor understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes

through arbitration instead of litigation. If any dispute is arbitrated, Lender and Mortgagor voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

J Charles Gray (Seal)
J Charles Gray
Individually

[Signature]
(Witness)
[Signature]
(Witness)

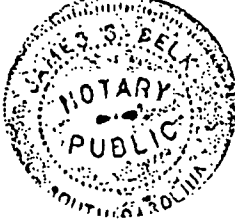
ACKNOWLEDGMENT.

(Individual)

I, James S. Belk of S. Carolina County of Oconee ss.
a notary public for South Carolina do
hereby certify that J Charles Gray, personally appeared before me this day and acknowledged the due execution
of the foregoing instrument.
Witness my hand and official seal this 5th day of June, 2008.

Signature of Notary Public

My commission expires: 10-18-14



FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2008 JUN 11 P 2:42

YAMROU
TUESDAY



JAMES S. BELK, ATTORNEY
1202 NORTH MAIN STREET
ANDERSON, SC 29621

G-771

G-771

Exhibit "A"

PROPERTY DESCRIPTION

All that certain piece, parcel or lot of land situate, lying and being in the County of Oconee, State of South Carolina and being shown and designated as Lot Number Twenty Seven (27), as shown on that certain plat of record in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book B129 at Page 1-8. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This conveyance is specifically made subject to any and all recorded rights-of-way, easements, conditions and restrictions pertaining to the property herein conveyed, and in addition are subject to any of the foregoing which may appear from an inspection of the premises.

This being a portion of that property conveyed unto Charles Gray herein by Deed of Crescent Communities S.C. LLC., dated May 12, 2006 and recorded June 6, 2006 of record in the Office of the Clerk of Court for Oconee County, South Carolina in Book 1508 at Page 35 .

TMS# P/O 165-00-01-001

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS

Plantation Federal
Bank, as successor in
interest to First
Savers Bank,

Plaintiff,

-vs-

J. Charles Gray and
Waterford Ridge Owners
Association,

Defendants.)

COPY

C.A. No. 2010-CP-37-417

DEPOSITION OF PEGGY B. GRAY

PURSUANT to Notice and/or agreement between the parties, the deposition of PEGGY B. GRAY was taken at the law offices of Bradley K. Richardson, Esquire, 133 Straight Drive, Anderson, South Carolina, on Monday, March 25, 2013, commencing at the hour of approximately 1:13 p.m.

KAREN A. BELANGER, CVR-M

CAMPBELL/HADAWAY & ASSOCIATES
Deposition and Court Reporters
Post Office Box 4034
Greenville, South Carolina 29608-4034
(864) 801-4007

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APPEARANCES:

BRADLEY K. RICHARDSON, ESQUIRE
BRADLEY K. RICHARDSON, P.C.
133 Straight Drive
Anderson, South Carolina 29625

..... on behalf of the Plaintiff

CHARLES P. GRIFFIN, JR, ESQUIRE
THE GRIFFIN FIRM, LLC
210 North McDuffie Street, Suite 103
Anderson, South Carolina 29621

..... on behalf of the Defendants

ALSO PRESENT:

Joseph Charles Gray

STIPULATIONS:

1. The deposition is taken pursuant to the South Carolina Circuit Court Rules of Civil Procedure.
2. The reading and signing of the deposition transcript by the deponent are expressly reserved.

EXHIBITS:

See Index, page 2.

1 PEGGY B. GRAY

2 being first duly sworn was examined and testified as
3 follows:

4 EXAMINATION BY MR. RICHARDSON:

5 Q. Ms. Gray, I'm Brad Richardson. I represent the
6 plaintiff in this action, First Savers Bank. I'm
7 going to be asking you some questions this afternoon.
8 If you don't understand a question at any point in
9 time, I ask that you ask me for clarification and not
10 your attorney. And I appreciate how you helped your
11 husband along in the last deposition, but I'm going to
12 be asking you questions today. I'm sure my wife can
13 answer all kinds of questions on my behalf, but I'm
14 going to be asking you, and you alone, for the
15 answers. Ma'am, what is your current address?

16 A. 30 Round Spinney, Seneca, South Carolina.

17 Q. And do you own that home?

18 A. We own it with the -- Oconee Federal has the mortgage.

19 Q. Oconee Federal has the mortgage on it?

20 A. They do.

21 Q. But the deed holders are you and Mr. Gray?

22 A. That's correct.

23 Q. I know you were present for Mr. Gray's deposition.
24 And he testified that when it came to your real estate
25 investments, he's probably the detail person.

1 A. That's correct.

2 Q. I'm going to run through some questions and some
3 documents with you. And I'm going to ask you to
4 please answer them as best as you can.

5 A. Okay.

6 Q. Are you the owner of Lot 29 at Waterford Ridge?

7 A. I am.

8 Q. The deed is in your name?

9 A. That's correct.

10 Q. I'm going to hand you a copy of a contract.

11 MR. RICHARDSON:

12 Actually I'm going to hand it to the court reporter
13 and ask her to label it Exhibit 1.

14 (Plaintiff's Exhibit No. 1 marked for identification.)

15 EXAMINATION RESUMED BY MR. RICHARDSON:

16 Q. I'm going to ask you to flip to that last page.

17 A. That's my signature.

18 Q. You did execute that contract?

19 A. Uh-huh (affirmative).

20 Q. And I'm going to ask you to flip back over to the
21 front page, page number 2 -- I'm sorry. Paragraph
22 number 2, not page number 2.

23 A. That's correct.

24 Q. And what is the purchase price there?

25 A. 196,251.

1 Q. I know you heard Mr. Gray testify how the auction
2 went. This was an auction as well; is that correct?

3 A. Uh-huh (affirmative).

4 Q. Do you recall how many rounds of bidding you all went
5 through, when you got to this one?

6 A. Most of the time it was just two. Like he said, they
7 gave -- they had like a big board, and they had those
8 lots listed for what they would sell, what they would
9 take for them, more or less what the price would be.
10 And then you start -- your first bid was that price.
11 After you got -- if you were interested in that lot --
12 say Lot 27 had the most people interested in it, so
13 that was the lot that went first, if that be the case.
14 And you put down what you would buy it for, and then
15 it was brought to them again and whoever was the
16 highest bidder at that time got it. Like he said, it
17 was a silent bid. There was nothing hollered out or
18 anything like that.

19 Q. Who did the bidding? You or Mr. Gray?

20 A. Mr. Gray.

21 Q. Was anybody with you all that day, that you recall?

22 A. The only person that possibly could have been with us
23 might have been our son and daughter-in-law at that
24 time.

25 Q. Did this lot come with a boat slip also?

1 A. Yes, it did.

2 Q. Who did you obtain financing for the purchase from?
3 Do you recall?

4 A. Community First.

5 (Plaintiff's Exhibit No. 2 marked for identification.)

6 EXAMINATION RESUMED BY MR. RICHARDSON:

7 Q. The court reporter's going to hand you a document,
8 Exhibit 2. It's a copy of a promissory note dated May
9 25th, 2006. The signature is not real good there, at
10 the bottom. But do you feel like that was your
11 signature on it, based on what you can see? It's not
12 very good. It came over a fax.

13 A. I guess that would be it, right here.

14 Q. That came from Mr. Belk's office.

15 A. Uh-huh (affirmative). I'm sure that it would be my
16 signature, seems to be.

17 Q. Do you recall what the loan amount is? It's up there,
18 in that top corner.

19 A. I can't hardly -- I can't really read it. One
20 eighty-five? Maybe I can see it better with these
21 (indicating eyeglasses). 185,625.

22 Q. And the interest rate shows on there 5.95. Do you
23 think that's correct? It's about a third of the way
24 down.

25 A. Yeah.

1 Q. And was that an interest only loan?

2 A. Yes, it was.

3 Q. The note says that it matured May 25, 2007.

4 A. Uh-huh (affirmative).

5 Q. What did you do when it matured?

6 A. Renewed it.

7 Q. And that was with Community First?

8 A. Community First.

9 Q. And do you recall what terms that was on?

10 A. No, I do not.

11 Q. Do you think it may have been interest only as well?

12 A. It was interest only, but I don't know what the amount

13 --

14 Q. But you don't recall the rate?

15 A. I don't recall the rate.

16 (Plaintiff's Exhibit No. 3 marked for identification.)

17 EXAMINATION RESUMED BY MR. RICHARDSON:

18 Q. She's got another document to show you there. It's a
19 copy of a closing statement prepared by Mr. James S.
20 Belk. Your husband testified that Mr. Belk did most
21 of your closings, if not all your closings.

22 A. He did.

23 Q. Did he do all your closings as well?

24 A. That's correct.

25 Q. He was your attorney for the purchase?

- 1 A. Uh-huh (affirmative).
- 2 Q. And any subsequent refinance?
- 3 A. Do what?
- 4 Q. Any other refinancing of this lot, Mr. Belk was your
- 5 attorney?
- 6 A. He was always the attorney, uh-huh (affirmative),
- 7 unless -- yeah, he was always the attorney.
- 8 Q. Did you put 10 percent down on this lot? I'm looking
- 9 at line 201. It looks like 19,625.10.
- 10 A. We put the same amount on this one that we put on the
- 11 other one, whatever -- I don't have those figures.
- 12 Q. What was your purpose in buying this lot?
- 13 A. To build a house on.
- 14 Q. For your own personal use --
- 15 A. No.
- 16 Q. -- or for resale?
- 17 A. For resale.
- 18 Q. Had you bought other properties before?
- 19 A. Well, like Mr. Gray explained to you, when we go to an
- 20 auction, one would be in my name and one would be in
- 21 his, because that's the only way you could -- one
- 22 person could only buy one lot.
- 23 Q. How many lots do you think you may have owned in the
- 24 last 10 or 12 years?
- 25 A. The same amount he said.

1 Q. I think he said six or seven.

2 A. Six or seven, uh-huh (affirmative).

3 Q. And were those also for investment and resale as well?

4 A. Uh-huh (affirmative), except for one, that No. 24 he
5 mentioned.

6 Q. Just so I'm on the same page with you, that was
7 Westwood Bay, Lot 24?

8 A. Correct.

9 Q. When the loan matured with Community First, did you
10 refinance with First Savers?

11 A. We did.

12 Q. Bear with me; I want to make sure I hand you the right
13 document.

14 (Plaintiff's Exhibit No. 4 marked for identification.)

15 EXAMINATION RESUMED BY MR. RICHARDSON:

16 Q. That document I just handed you is a mortgage recorded
17 in Book 2627, page 195. I think the signature page is
18 No. 7 on that.

19 A. That's my signature.

20 Q. Do you dispute that you executed the loan documents,
21 such as the mortgage and the note, to First Savers?
22 In other words, did you sign them with Mr. Belk in his
23 office?

24 A. Uh-huh (affirmative).

25 Q. Do you recall the terms of that promissory note?

1 A. At that point, the note that we had -- the first note
2 with First Savers was 3.75.

3 Q. Ma'am, I'm going to have the court reporter mark that
4 copy of the note and hand it to you.

5 (Plaintiff's Exhibit No. 5 marked for identification.)

6 EXAMINATION RESUMED BY MR. RICHARDSON:

7 Q. The copy I have says prime plus .5, which on the day
8 that you did it was at five and a half.

9 A. Okay, I have a copy of the note that they sent every
10 month, and on that note it says 3.4. He's got a copy
11 of it right there.

12 Q. The statement that you were showing me earlier?

13 A. The statement I got every month, uh-huh (affirmative).

14 Q. And we can get to that. I'm just asking about this
15 note on the day you signed it, which was June 5, 2008.

16 A. Okay.

17 Q. Was that a variable rate loan?

18 A. It was interest only, is all I know to tell you. I
19 don't know --

20 Q. Up at the top it says "Wall Street Journal plus a
21 half," rate being five and a half. Do you agree that
22 it was interest only at a variable rate?

23 A. I agree it was interest only, yes.

24 Q. But you don't agree it was a variable rate?

25 A. I don't -- like him, I'm not familiar with all those

1 terms, you know.

2 Q. I'm going to ask you to direct your attention to No.

3 3 on that document. It says "Interest."

4 A. Uh-huh (affirmative).

5 Q. If you'll read that, it says interest will accrue on

6 the unpaid principal balance at the rate of --

7 A. Five-point-five, uh-huh (affirmative).

8 Q. And it says at which time?

9 A. That was June of '08.

10 Q. Yes, ma'am. And it says after which time it may

11 change as described?

12 A. Uh-huh (affirmative).

13 Q. Do you agree, after reading that, it was a variable

14 rate?

15 A. I guess it was, yeah.

16 Q. You don't disagree that you signed this note?

17 A. No, I don't disagree. I did sign it, yes.

18 Q. And you would put Lot 27 up as collateral for

19 repayment of the note?

20 A. Uh-huh (affirmative).

21 MR. GRAY:

22 29.

23 EXAMINATION RESUMED BY MR. RICHARDSON:

24 Q. 29.

25 A. 29. Excuse me.

1 Q. You're 29; he's 27. At least I'm not calling it 26
2 now. Do you understand that the note and mortgage
3 gives the bank the rights to foreclosure, if the
4 payments aren't made?

5 A. Uh-huh (affirmative).

6 Q. I appreciate your answers, but I think she would
7 appreciate yes or no.

8 A. Yes.

9 Q. Thank you, ma'am. When the loan came up for renewal
10 with Community First, did you contact any other banks
11 to see about financing options?

12 A. No.

13 Q. And why is that?

14 A. They said they'd go interest -- the second time they
15 said they'd go interest only, the second time around.
16 We did contact -- well, we really didn't contact First
17 Savers. They really came to us. Shane Smith said,
18 "Come on. I'm going to go over to First Savers, and
19 you can come with me."

20 Q. But did you talk to any other banks --

21 A. No.

22 Q. -- about what they had to offer?

23 A. Uh-uh (negative).

24 Q. So Community First comes up for renewal. You go over
25 to Jim Belk's office and do the closing --

- 1 A. Uh-huh (affirmative).
- 2 Q. -- and paid off Community First?
- 3 A. Uh-huh (affirmative).
- 4 Q. I'm handing you there a copy of the closing statement
- 5 for that original June 5, 2008 refinance from Jim, Jim
- 6 Belk's office. I keep calling him Jim. Jim's a
- 7 friend of mine, so I apologize.
- 8 A. Yeah.
- 9 Q. Go to line 104, and it says "to Community First Bank."
- 10 A. Uh-huh (affirmative).
- 11 Q. And is it your estimation that was the payoff on the
- 12 Community First --
- 13 A. Uh-huh (affirmative).
- 14 Q. -- Bank note and mortgage?
- 15 A. It was.
- 16 Q. And it says, down on line 303, you brought some money
- 17 to closing.
- 18 A. It does.
- 19 Q. How much was that?
- 20 A. \$7,238.31.
- 21 Q. Do you recall why you brought that?
- 22 A. I'm sure we were asked to bring it.
- 23 Q. Did Mr. Belk review all these loan documents with you?
- 24 A. Yes.
- 25 Q. He was your attorney for this closing?

1 A. He was our attorney.

2 (Plaintiff's Exhibit No. 6 - 8 marked for
3 identification.)

4 EXAMINATION RESUMED BY MR. RICHARDSON:

5 Q. The court reporter is going to hand you a copy of a
6 check that's made out to James S. Belk in the amount
7 of \$75,063.31.

8 A. Uh-huh (affirmative).

9 Q. And is that the amount you brought to closing that
10 day, you think?

11 A. Yes.

12 Q. When the loan comes up for renewal and it matured, did
13 you sign a renewal note with First Savers? In other
14 words, when it matured in 2009?

15 A. Yes.

16 Q. And what was your understanding of the terms of that
17 loan?

18 A. The same thing that Mr. Gray had told you, that it was
19 -- we had to put up more collateral.

20 Q. What I'm asking about is the loan terms. Was it an
21 interest only repayment?

22 A. It was interest only.

23 Q. Was it a fixed rate?

24 A. I guess it was. I don't know. It was a fixed rate
25 for six -- for one -- for 12 months. Six percent for

1 12 months.

2 Q. And what was that maturity date? The maturity date is
3 up there at the top.

4 A. Maturity date would have been 7/09/10.

5 Q. July 9, 2010?

6 A. Uh-huh (affirmative).

7 Q. Do you recall, when is the last time you made a
8 payment?

9 A. End of December.

10 Q. Of what year?

11 A. Of 2010. I mean 2009. I'm sorry.

12 Q. And I heard Mr. Gray's testimony as to why he stopped
13 making payments.

14 A. Because we ran out of money. It was just that simple.

15 Q. Ms. Gray, I know you were present for Mr. Gray. I
16 know I keep saying that.

17 A. Uh-huh (affirmative).

18 Q. But did you disagree with anything he said, as far as
19 the financing terms?

20 A. No.

21 Q. I know he was more familiar and did a lot of the
22 negotiations.

23 A. Yeah.

24 Q. And I know you are your own person. You do your own.

25 A. Yeah.

1 Q. But was he the person most familiar with that?

2 A. He's -- well, yeah, he's the one most familiar with
3 it. And like he said, if we had not had to put this
4 money down, we could have possibly went longer making
5 payments.

6 Q. How much longer do you think you could have made it?

7 A. I don't know, because we -- at that point, we did not
8 know his salary was going to go down, too. Because
9 like I said before, the housing market fell. When
10 that fell, people quit buying airplanes, too, so our
11 salary fell.

12 Q. So you all were depending on the airplane business and
13 --

14 A. Yeah.

15 Q. -- the real estate business?

16 A. Yeah.

17 Q. Do you agree that First Savers has the right to
18 foreclose for nonpayment?

19 A. I do.

20 Q. Do you dispute any of the documents I've presented
21 with were signed by anyone other than you?

22 A. No, I do not.

23 Q. I've heard his answers. What other investments were
24 you involved with? Were you on the First Citizens
25 loans that he mentioned?

1 A. I was.

2 Q. Were you part of The Gray Group? Is it Gray Group,
3 Incorporated?

4 A. Uh-huh (affirmative).

5 Q. And that was the manufactured home subdivision?

6 A. Uh-huh (affirmative).

7 Q. You all bought, developed the land for resale?

8 A. Yeah.

9 Q. What was your understanding of the note with First
10 Savers? Did you understand that it would be interest
11 only in perpetuity?

12 A. Uh-huh (affirmative).

13 Q. Did someone promise you that?

14 A. (Affirmative nod)

15 MR. GRIFFIN:

16 You've got to say yes or no.

17 EXAMINATION RESUMED BY MR. RICHARDSON:

18 Q. If you will say yes or no, please, ma'am.

19 A. I understood, yes, uh-huh (affirmative).

20 Q. Yes, that they would continue to refinance it, as long
21 as it took, at interest only?

22 A. Yes.

23 Q. And who did you understand that from?

24 A. Just talking to Shane Smith at the bank.

25 Q. Shane?

- 1 A. At First Savers.
- 2 Q. Did he say that?
- 3 A. Well, as long as everything was going good at Keowee
- 4 and all, there was no problem, he said. Now, forever?
- 5 I don't know about forever.
- 6 Q. Well, let's back up then. Let's talk about the first
- 7 time it was renewed. And I'm talking about First
- 8 Savers.
- 9 A. Uh-huh (affirmative).
- 10 Q. He extended your terms to renew it, at interest only,
- 11 at six percent?
- 12 A. Uh-huh (affirmative).
- 13 Q. What was your understanding of what would happened at
- 14 the end of that term, when it matured in 2010?
- 15 A. Well, what he told Mr. Gray, that it would go to a
- 16 fixed -- that it would go to a regular mortgage, 15
- 17 years or whatever, that we'd have to pay principal and
- 18 interest.
- 19 Q. When you took the first loan out -- the first one I'm
- 20 going to say is the July 2008.
- 21 A. That was interest only.
- 22 Q. Interest only?
- 23 A. Uh-huh (affirmative).
- 24 Q. What did you think would happen when it was time to
- 25 renew that one, when you signed it in 2008?

1 A. I figured when we got ready to sign one in 2009, it
2 would be interest only.

3 Q. And why did you think that?

4 A. It was just my thinking.

5 Q. Did anyone promise you?

6 A. No, nobody. I don't have it in writing or anything,
7 no.

8 Q. Were you hoping you would sell it in the 12 months?

9 A. Of course. We tried.

10 Q. And you were aware of the package deal with Mr.
11 Hamrick?

12 A. Yes, I was.

13 Q. Do you recall about what time that happened?

14 A. No, I don't.

15 Q. Was it '09, '10?

16 A. I'm going to say it was '09, probably. Maybe toward
17 the end of '09, you know, somewhere along there.

18 Q. What is your take on what happened in the overall real
19 estate market at Lake Keowee?

20 A. I think a lot of things happened. I think it happened
21 in different parts of the country, that affected
22 Keowee as well. Like Florida, I think it got bad down
23 there, and there were a lot of people coming from
24 Florida to Keowee. They couldn't sell theirs, so they
25 couldn't come to Keowee. But I just think the whole

1 -- I mean, the whole country was in bad shape, you
2 know. It just wasn't one particular section. And I
3 don't -- there probably was one place that wasn't hit
4 as bad as -- you know, some places weren't hit as bad
5 as others. But I'd say that Florida, Nevada, Lake
6 Keowee, and Lake Hartwell, too, they were all hit bad.

7 Q. To your knowledge, did you ever get any kind of offer
8 on your lot?

9 A. No, haven't had the first offer on it.

10 Q. Any idea what you think it's worth today?

11 A. I'd say you'd be lucky to get 50,000 for it.

12 Q. And that's with the slip?

13 A. Uh-huh (affirmative), but now you'd have to talk to a
14 realtor over there, because they could probably tell
15 you more about it. I don't know.

16 Q. I'm just asking you your opinion.

17 A. Yeah.

18 Q. Do you think Mr. Smith made any fraudulent statements
19 to you, to you in particular?

20 A. No. I think Mr. Smith did exactly what he thought was
21 going to happen, you know. I think he was truthful
22 with us and he didn't -- I would like to believe he
23 didn't know any of this was coming down.

24 Q. When you say 'any of this coming down,' we're talking
25 about the downturn in the market?

- 1 A. Yeah.
- 2 Q. Can we agree that First Savers and Mr. Smith, if they
- 3 had it their way --
- 4 A. They would have not --
- 5 Q. -- the market would have kept going?
- 6 A. No, nobody would.
- 7 Q. I would have hoped it had kept going, too. Are you a
- 8 party to any other suits besides this one, any legal
- 9 actions?
- 10 A. This and the First Citizens.
- 11 Q. The First Citizens has been resolved?
- 12 A. Uh-huh (affirmative).
- 13 Q. The property in your name, do you recall which
- 14 property it was?
- 15 A. No, I don't.
- 16 Q. What subdivision was it in?
- 17 A. I don't even recall that.
- 18 Q. Was it an investment lot?
- 19 A. Yeah, it was an investment lot.
- 20 Q. Did you do a deed in lieu on it, as well?
- 21 A. Uh-huh (affirmative).
- 22 Q. Yes or no, please.
- 23 A. Yes.
- 24 Q. Did you all think you had pretty good experience
- 25 buying and selling properties?

1 A. We have. We sure have.

2 Q. Could you elaborate a little bit for me? What kind of
3 things were you involved with?

4 A. Well, just buying them and building houses on them,
5 and selling them. And like he said, the mobile home
6 subdivision did real good. And then the lots, at the
7 houses we were selling, after we built them and all,
8 were doing pretty good. And I don't -- you know,
9 everything was going pretty good until we just had the
10 fall.

11 Q. Was Waterford the first one you all had problems with,
12 that you can think of? Waterford Ridge, that is.

13 A. I would think so.

14 Q. Did the First Citizens problem kind of come in at the
15 same time?

16 A. Yeah.

17 Q. Did you all have to make the same decision, because
18 there was no more money to go around?

19 A. There was no more money to go around, that's correct.

20 Q. Had you broke even or made money on all your other
21 real estate investments?

22 A. Yeah, we did make money on it.

23 Q. If you think the crash hadn't have happened, we
24 wouldn't be sitting here today?

25 A. I think so. I'm pretty sure we wouldn't be.

1 Q. When the note with First Savers came up for renewal
2 after that first 12 months, did you talk to any other
3 banks?

4 A. No.

5 Q. Do you know if your husband talked to any other banks?

6 A. No, I don't think he did. I think he felt the same
7 way, you know. We felt the same way.

8 Q. And why was that? Why did you stay put?

9 A. Well, we just had a relationship with them.

10 Q. He had testified he thought there was no hope in
11 getting refinancing with another bank.

12 A. Well, that's true, there was no hope. But if there
13 had been any hope, it would have been the one you had
14 a relationship with.

15 Q. Do you disagree that you're in default on your
16 payments to First Savers?

17 A. Yes.

18 Q. You do disagree?

19 A. Do I disagree what?

20 Q. Do you agree with me that you're in default on your
21 payments?

22 A. We're in default, uh-huh (affirmative).

23 Q. Do you agree the bank has the right to foreclose on
24 this lot?

25 A. Uh-huh (affirmative).

1 Q. And I'm not asking you to enter into settlement
2 negotiations with me.

3 A. Yeah.

4 Q. But how would you like to see this litigation
5 resolved, this current action? I know you've got some
6 counterclaims and my client has a foreclosure action.

7 A. Uh-huh (affirmative).

8 Q. In a perfect world.

9 A. I would like to see it go away, you know. I'd just
10 snap my fingers. But anyway, it's been very, very
11 hard on us, health-wise and all. I don't want to get
12 emotional.

13 Q. Take your time, Ms. Gray.

14 A. And I just -- I think if we go to Court, we'll have a
15 good chance at it. We're in our 70s, you know. I
16 think we just might have a good chance, because
17 apparently First Citizens -- First Savers doesn't want
18 to do anything to work with us. And we can't pay them
19 any more money. As far as, you know, making any more
20 payments, we're not going to try to.

21 Q. What are you going to ask the jury to award you?

22 A. Just for you all to have the -- all I want out of this
23 is just my name off of everything, my husband's name
24 off of everything, no 1099, no foreclosure, nothing,
25 completely be finished with it. Now that's what I

1 would ask for.

2 Q. Do you feel like you've incurred any money damages,
3 monetary damages, as a result of him filing a
4 foreclosure?

5 A. I think we have paid them quite a bit of money through
6 the years. We've paid them down till we don't have
7 anything else to pay. So I don't think that I have to
8 pay them anything else.

9 Q. But do you think you've been damaged in any way?

10 A. Oh, yes. I think I've been damaged, yes.

11 Q. Can you articulate that to me? Can you explain it?

12 A. It's by being damaged by my health and my nerves.

13 Q. Can you explain just a little more for me? I'm not
14 trying to make you emotional.

15 A. Well, it's just something you live with every day.
16 And we were taught to pay our bills. We were brought
17 up that way. And this is -- this is all against
18 anything we ever stood for. And other than these four
19 lots, we've never missed a payment on anything in our
20 life.

21 MR. RICHARDSON:

22 Let's take about a five-minute break.

23 (SHORT RECESS)

24 EXAMINATION RESUMED BY MR. RICHARDSON:

25 Q. Do you understand what the term "balloon note" means?

- 1 A. Maybe not. Maybe you should explain it to me.
- 2 Q. My understanding is a balloon is that you agree to
3 finance for so many months or years, whether that be
4 one year, two years, ten years. And at the end of the
5 term, the balance that's owed is due and payable.
- 6 A. Okay, I'll take your word for it, that that's what it
7 means.
- 8 Q. On these notes you took out, you knew they were
9 12-month notes?
- 10 A. Yes, I did.
- 11 Q. And at the end of the 12 months, you knew they had to
12 be paid or renewed, correct?
- 13 A. Well, yeah, I guess we knew that. I never thought of
14 it that way, because they were just always willing to
15 refinance them until, you know, the crash.
- 16 Q. Do you think First Savers has done anything that's
17 caused you to be unable to sell these lots?
- 18 A. No.
- 19 Q. I know we talked about the crash.
- 20 A. Yeah.
- 21 Q. You all feel like the crash is what put us all in this
22 boat.
- 23 A. Uh-huh (affirmative).
- 24 Q. Your testimony is that you're just unable to make the
25 payments due on this note?

1 A. That's correct.

2 Q. And if you had it, you would?

3 A. If I had it, I certainly would. I wouldn't be sitting
4 here today.

5 Q. I know you talked about your health and your nerves
6 being damaged.

7 A. Uh-huh. (affirmative).

8 Q. Any other damages you feel like you suffered?

9 A. Well, I think we lost our home because of it. Not
10 just First Savers, but both of them.

11 Q. First Citizens as well?

12 A. Uh-huh (affirmative). We moved from 6,000 square feet
13 to 2,000. We're a lot more fortunate than a lot of
14 them, though. Some people didn't have anywhere to
15 move to.

16 Q. Other than Community First and First Savers, what
17 other banks have you done business with, as far as
18 loans?

19 A. We had the home equity line with BB&T, and we had a
20 home equity line with Bank of America.

21 Q. How about some of your prior investments? I think
22 your husband mentioned Carolina First.

23 A. Yeah, we had a loan with Carolina First back when we
24 had The Gray Group, and we did some business with the
25 Bank of Westminster.

- 1 Q. Palmetto Bank?
- 2 A. No.
- 3 Q. You never did anything at Palmetto Bank?
- 4 A. Oh, yeah, we did have the -- we did have something
5 with Palmetto Bank. That's way, way back. I can't
6 remember.
- 7 Q. And I know you mentioned BB&T.
- 8 A. Yeah.
- 9 Q. First Citizen?
- 10 A. Uh-huh (affirmative).
- 11 Q. Ocone? That's who you've got your loan with now?
- 12 A. That's who it's with now.
- 13 Q. Is it Federal Savings and Loan?
- 14 A. Uh-huh (affirmative).
- 15 Q. Bank of Westminster, you mentioned that.
- 16 A. Uh-huh (affirmative), which is now Community First.
- 17 Q. Oh, okay, I didn't know that. When you applied for
18 your loan, for your present residence, remind me,
19 that's the Bank of Westminster? Is that who you said?
- 20 A. No, the present home we have is with Ocone Federal
21 Savings and Loan. Our loan is with them.
- 22 Q. And they extended you a note and a mortgage? In other
23 words, they gave you the financing --
- 24 A. Yeah.
- 25 Q. -- on that note and mortgage?

- 1 A. Yeah.
- 2 Q. In your personal names?
- 3 A. Uh-huh (affirmative).
- 4 Q. Did you have any problems getting that financing?
- 5 A. No.
- 6 Q. Have you had any other problems with paying the
- 7 financing for anything else?
- 8 A. Paying for it, did you say?
- 9 Q. No, ma'am. Just a yes or no, please.
- 10 A. No.
- 11 Q. Not paying for it. Have you applied for any other
- 12 credit in the last couple of years, other than that
- 13 loan, the house loan?
- 14 A. No.
- 15 Q. Do you have any problems with anything else?
- 16 A. No.
- 17 Q. Just us and First Citizens?
- 18 A. That's correct.
- 19 Q. At any point in time, did you seek out alternative
- 20 financing on the First Savers loan?
- 21 A. No.
- 22 Q. Did anyone discourage you from doing that?
- 23 A. No.
- 24 Q. It's a choice you and your husband made?
- 25 A. Because of the times, uh-huh (affirmative).

1 Q. Do you work outside the home, ma'am?

2 A. No, I don't.

3 Q. I thank you for your time.

4 A. You're going to wish me a happy birthday, because
5 today's my birthday.

6 Q. Well, happy birthday.

7 A. A present I won't forget, right?

8

9 DEPOSITION CONCLUDED AT APPROXIMATELY 1:40 P.M.

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STATE OF SOUTH CAROLINA)
) C E R T I F I C A T E
COUNTY OF GREENVILLE)

I, Karen A. Belanger, notary public in and for the State of South Carolina, acting as court reporter, do hereby certify that pursuant to agreement and/or notice in the foregoing cause, the deposition of Peggy B. Gray was taken by me at Anderson, South Carolina, on Monday, March 25, 2013.

I further certify that the said Peggy B. Gray was first duly sworn to testify as hereinabove shown, and the testimony of said deponent was reduced to writing.

I further certify that I am neither counsel nor attorney to either of the parties in said litigation nor interested in the event of the cause.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 15th day of April, 2013.

Karen Belanger

Karen A. Belanger
Notary Public for South Carolina
My Commission Expires 4/18/13

THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT AND IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET SEQ. CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.

SUBDIVISION: Waterford Ridge (the "Subdivision")

on Lake Keowee (the "Lake")

Oconee County, South Carolina (the "County")

PROPERTY REPORT: OILSR NO. 31587

having an effective date of: March 15, 2006 (the "Property Report")

LOT PURCHASE AND SALE AGREEMENT

SELLER: The entity signing as "Seller" on page 7 of this Agreement, whose address is 400 South Tryon Street, Suite 1300, P.O. Box 1003, Charlotte, NC 28201-1003

PURCHASER: Peggy Gray

LOT: Lot(s) 29 Block _____ Phase _____, of the Subdivision.

1. Purchase and Sale. Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the above-described Lot.

2. Purchase Price. The Purchase Price for the Lot is \$ 196,251 (the "Purchase Price") and shall be paid as follows:

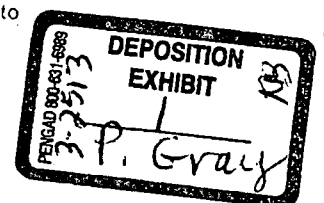
(a) \$ 19,625.10 in earnest money (the "Earnest Money") paid upon delivery of this Lot Purchase and Sale Agreement (this "Agreement"), to be held by ~~Lake Keowee Real Estate, Inc.~~ as escrow agent (the "Escrow Agent") until Closing (as defined below), at which time it will be credited to Purchaser, or until this Agreement is otherwise terminated and it is disbursed in accordance with the provisions of Paragraph 8 below.

(b) \$ 176,625.90 the balance of the Purchase Price shall be paid in cash at Closing.

3. Loan Contingency.

(a) This Agreement is subject to Purchaser being able to obtain, after diligent efforts, a first lien mortgage loan at the then prevailing rates in the amount of \$ _____ (a "Qualifying Loan"). Purchaser must apply for such Qualifying Loan within five (5) business days after the Agreement Date set forth below and accept same if offered by any lender. If Purchaser fails to so apply within the agreed five (5) business day period or refuses to accept a Qualifying Loan obtained by Seller (or by Escrow Agent, acting as broker) on Purchaser's behalf or does any other act to prevent the timely closing of this transaction, then in any such event, Purchaser shall be in default hereunder and Seller shall have the right to exercise its remedies under Paragraph 8 of this Agreement.

(b) If, within thirty (30) calendar days from the Agreement Date set forth below, Purchaser has been turned down for a Qualifying Loan in writing by a reputable mortgage lender and no Qualifying Loan can be obtained by Purchaser or Seller (or by Escrow Agent, acting as broker), then Seller or Purchaser may, at any time thereafter, elect to cancel this Agreement. In the event of the cancellation of this Agreement pursuant to this Paragraph 3(b), Seller, upon receipt of a cancellation notice from Purchaser or upon Seller giving notice of cancellation to



Purchaser, shall cause Escrow Agent to return the Earnest Money to Purchaser, whereupon this Agreement shall become null and void.

4. Closing. The closing of the purchase and sale of the Lot (the "Closing") shall take place on or before May 25, 2006. Closing shall be at a time and place designated by Seller. If the Closing date falls on a weekend or federal holiday, the Closing date shall be the next business day immediately following such weekend or holiday. Time is of the essence as to the Closing date. If Purchaser is unable or unwilling to close on the Closing date provided for above, Purchaser shall be in default under this Agreement. In the event of such default, Seller shall have the option to exercise all of its rights and remedies as provided in this Agreement for Purchaser's default. Seller shall deliver possession of the Lot to Purchaser at Closing.

5. Additional Documents. Purchaser acknowledges that it has received, read, understood and agreed to each of the documents listed below and that Purchaser will be bound by the provisions thereof. As further evidence of its receipt from Seller of such documents, Purchaser has initialed on the line corresponding to each document:

→ (a) PBB Declaration of Covenants, Conditions and Restrictions for the Subdivision (as amended and supplemented, from time to time, the "Declaration") recorded or to be recorded in the Office of the Clerk of Court (or the Register of Deeds, as applicable) for the County (the "Recording Office").

→ (b) PBB Copy of Plat Book _____, Page _____.

→ (c) PBB Architectural, Landscape and Lake Buffer Guidelines for the Subdivision (the "Guidelines").

→ (d) PBB Consultant's Report or governmental approval concerning sewer septic tank, as referenced in Paragraph 23(b) below.

(e) N/A Septic System Installation and Inspection Program Manual.

Purchaser acknowledges that Seller has certain rights following recording to amend the provisions of the Declaration, from time to time, and Purchaser hereby agrees to be bound by the provisions of such Declaration, as amended.

6. Setback Lines. Purchaser acknowledges that the Lot is subject to minimum building setback lines as shown on the recorded plat of the Lot and as required by the appropriate governmental entity under its zoning authority.

7. Inspection by Purchaser. Purchaser acknowledges that Purchaser, or his or her spouse, has made a personal, on-the-lot inspection of the Lot prior to signing this Agreement and that Purchaser is satisfied with the Lot in all material respects. Purchaser acknowledges that, except for the warranties of title to be included in Seller's deed to the Lot, Seller, by the execution and delivery of this Agreement or of any document executed and delivered in connection with the Closing, makes no warranty, express or implied, as to the suitability or fitness of the Lot for any purpose, as to the existence or non-existence of radon or any other substance on or about the Lot or as to the merchantability, value, quality, condition or salability of the Lot (including, but not limited to, soil and rock conditions). Purchaser warrants that its decision to purchase is based solely on its own inspection of the Lot and its independent investigation and evaluation of the merits of entering into this Agreement.

8. Earnest Money. In the event Purchaser breaches this Agreement, the Earnest Money shall be retained by Seller as liquidated damages and Seller's sole remedy and relief under this Agreement, and this Agreement shall thereafter be of no further force or effect. Additionally, if Purchaser has entered into a Contract to Enter into Boatslip Lease (the "Boatslip Contract") contemporaneously herewith, in the event Purchaser breaches the Boatslip Contract, such breach shall be a breach of this Agreement, and Seller may also exercise its remedies under the Boatslip Contract. In the event Seller breaches this Agreement, or in the event of a dispute between the parties regarding the obligations of either or both of them hereunder and upon the election of

Seller to terminate this Agreement, the Earnest Money shall be returned to Purchaser together with interest thereon at the rate of eight percent (8%) per annum (prorated over the applicable time period) as liquidated damages and Purchaser's sole remedy and relief, and this Agreement shall thereafter be of no further force or effect. The amounts identified above in this Paragraph as liquidated damages are not intended as a penalty and have been agreed upon by Seller and Purchaser after due deliberation and discussion, and the same constitute good faith estimates of the damages of the party which would be entitled thereto pursuant to this Agreement, the respective party's actual damages being difficult, if not impossible, to ascertain.

9. Prorations and Adjustments. The items below shall be adjusted and paid at Closing as follows:

(a) Ad valorem taxes on the Lot shall be prorated between the parties on a calendar year basis to the date of Closing. In the event a separate tax bill for the Lot is not available at Closing, Seller shall estimate the amount of tax that will be due as to the Lot and shall collect from Purchaser at Closing Purchaser's pro rata share of such estimated amount. When the tax becomes due and payable, Seller shall pay the tax. If the actual tax owed for the Lot is less than as estimated by Seller, Seller shall refund the difference to Purchaser, and if greater, Purchaser shall pay the difference to Seller. Such payment by Seller or Purchaser, as the case may be, shall be made within ten (10) days of Seller's payment of the taxes on the Lot. The obligations contained in this Paragraph 9 (a) shall survive Closing.

(b) Purchaser shall pay in advance at Closing the pro rata portion of assessments on the Lot levied by the property owners association for the Subdivision (the "Association") from the date of Closing through the end of the then current annual period. Thereafter, Purchaser shall pay assessments in accordance with the Declaration and Association policies.

10. Closing Expenses; New Loan. Seller shall pay for the preparation of the deed and for the deed recording fee (which is the name of the transfer tax required by South Carolina law). Purchaser shall pay for the cost of recording the deed, for any title insurance obtained by Purchaser and for all costs with respect to any Qualifying Loan obtained by Purchaser. Seller shall have no obligation to pay any discount fee or other charge in connection with Purchaser's Qualifying Loan.

11. Deed. At Closing, Seller shall deliver to Purchaser fee simple marketable title to the Lot by limited warranty deed, which limited warranty deed must be delivered within one hundred eighty (180) days of the date of signing this Agreement, free and clear of all liens and encumbrances, subject to (and together with, as the case may be) the following exceptions:

- (a) all easements, restrictions, conditions and covenants of record, including, but not limited to, the easements, restrictions, conditions and covenants set forth in the Declaration;
- (b) sewer, water, electric, gas, telephone, drainage, cable television and other easements and matters shown on the recorded plat(s) of the Lot or as otherwise would be disclosed by a current, accurate physical survey of the Lot; and
- (c) matters of zoning and the lien of the current year's city/county ad valorem property taxes (to be prorated at Closing).

12. Title Policy. Purchaser shall be responsible for providing a title insurance policy for the Lot, and Purchaser shall pay all related costs of procuring such title insurance policy for the Lot. If any dispute should arise between the parties as to whether title to the Lot is as required by the terms of this Agreement, the willingness of the title insurance company to issue a title insurance commitment for an owner's title insurance policy for the Lot, subject only to the matters set forth in Paragraph 11 above and the usual and customary exceptions contained in an owner's policy of title insurance issued by such title insurance company, shall be binding and conclusive upon the parties that title to the Lot which Seller proposes to convey to Purchaser is such as is required by the terms hereof.

13. No Offer of Gifts. Purchaser acknowledges that it has not been contacted by direct mail or by telephone with an offer of a gift, trip, dinner or similar promotional item in connection with the marketing of the Lot.

14. Assignment. Purchaser may not assign this Agreement without the prior written consent of Seller, which consent Seller shall have the right to grant or withhold in its sole and absolute discretion.

15. Parties. This Agreement shall be binding upon and shall inure to the benefit of the parties and their heirs, successors and assigns. As used herein, words in the singular include the plural and vice versa, as appropriate.

16. Entire Agreement. This Agreement contains the entire understanding of the parties and there are no representations, inducements or other provisions other than those specifically expressed or referred to herein. All changes, additions or deletions hereto must be in writing and signed by Purchaser and Seller. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

17. Survival. If any provision herein contained is required by its nature and effect to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto and their respective successors and assigns until fully observed, kept or performed. Provisions that by their terms shall be binding upon Purchaser and survive the Closing shall run with title to the Lot and be binding upon subsequent owners of the Lot.

18. Governing Law. This Agreement shall be governed by and construed under the laws of the State of South Carolina.

19. Affiliates of Seller. Purchaser acknowledges that Seller shall be the sole party responsible for the performance of Seller's obligations under this Agreement and acknowledges that no other person, firm or entity, including, without limitation, any entity affiliated with Seller, shall have any obligation or liability under this Agreement. Purchaser therefore waives all claims against all companies and persons affiliated with Seller for any loss, cost or damage arising out of Seller's performance or nonperformance of its obligations to Purchaser in connection with this Agreement or any other instrument relating to the Subdivision.

20. Utility Easements Disclosure. Purchaser acknowledges that street lights and utility facilities may be installed in the street right-of-way in front of or near the Lot and/or within the utility easements established under the terms of the Declaration. Purchaser acknowledges that development activities are continuing within the easement areas described below, and that additional cutting, clearing and grading may occur within such areas. Purchaser acknowledges that it is purchasing the Lot subject to the easement holder's rights to perform such work within the easement areas. The areas on the Lot subject to additional cutting, clearing and grading are as follows:

(a) The areas designated as landscape, irrigation, access, sidewalk, utility, sanitary sewer and/or drainage easements (or the like) on the recorded plats of Subdivision and of the Lot; and

(b) The areas described in the Declaration.

21. Arbitration. Any controversy, dispute or claim arising out of this Agreement or the breach or alleged breach of this Agreement shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association currently in effect (unless the parties mutually agree otherwise). The award rendered by the arbitrator(s) shall be final and any judgment upon the award rendered by the arbitrator(s) shall be entered in a state court in the County in which the Subdivision is located. The party demanding arbitration of

any controversy, dispute or claim arising out of this Agreement or any breach or alleged breach of this Agreement shall file a written notice of such demand with the other party and with the American Arbitration Association. Such written notice shall be given no later than sixty (60) days after the controversy, dispute or claim arises or the breach or alleged breach of this Agreement occurs. Neither the parties to this Agreement nor the arbitrator(s) may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Agreement or the breach or alleged breach of this Agreement, (ii) the existence of an arbitration proceeding under this Agreement, or (iii) the results of any arbitration proceeding under this Agreement; provided, however, the filing of a civil action in a state court in the County in which the Subdivision is located, confirming an arbitration award pursuant to this Paragraph shall not be deemed a violation of this confidentiality provision. The terms and provisions in this Paragraph shall survive the Closing of the sale and purchase of the Lot as contemplated by this Agreement.

22. Lake.

(a) Duke Energy Control of the Lake. Purchaser hereby acknowledges for itself and its successors and assigns as follows: (i) Duke Energy Corporation controls access to, use of and water levels in the Lake; (ii) Seller makes no oral, express or implied representation or commitment as to the continued existence, purity, depth or levels of water in the Lake; and (iii) Seller shall have no liability with respect to these matters.

(b) Permissions Needed for Purchaser's Construction of Pier. In the event Purchaser is entitled under the Declaration to place or construct any pier, structure or other improvement within or upon, or conduct any activity altering the topography of, the waters of the Lake with respect to the Lot, Purchaser must receive permission from Duke Energy Corporation (or a successor manager of the Lake under authority from the Federal Energy Regulatory Commission ("FERC")) prior to commencing such activity. Seller makes no oral, express or implied representation or commitment as to the likelihood of Purchaser obtaining such permission, and Seller shall have no liability with respect to same. Construction of any of the aforesaid improvements is also subject to the provisions of the Declaration and any other matters of record in the Recorder's Office affecting the Lot.

23. Utilities, Amenities and Facilities.

(a) To the extent applicable to the Subdivision, as disclosed in the Property Report, Seller shall provide, at Seller's sole cost and expense, certain roads, public sewer, water and electrical service lines (i.e., utility service lines) to the boundary line of each Lot in the Subdivision, and recreational facilities, if any, which Seller agrees to provide with respect to the Subdivision in which the Lot is located. Details concerning such improvements and the estimated dates for completion of construction thereof are set forth in the Property Report, which is incorporated herein by this reference. Seller does hereby agree, and does hereby become contractually bound to Purchaser, to complete any such improvements in accordance with the disclosures made in the Property Report. Each lot purchaser (including Purchaser) shall be required to extend said utility service lines to the house constructed on such Lot and pay all "turn-on" charges in connection therewith, including, without limitation, any connection, activation, tap, reservation or other fee or charge in connection with such utility services.

(b) If the Lot is not served by a central sanitary sewer system, then simultaneously with its acceptance of this Agreement, Seller has delivered to Purchaser a consultant's report or a general approval letter from the appropriate governmental authority indicating that the Lot is generally acceptable for the use of individual sewage disposal systems. If the blank below is filled in with a septic field easement number, the septic sewer system for the Property will be located on a septic field easement area ("SFE") which will initially be owned by Seller, and eventually conveyed to the Association, subject to a septic easement in favor of Purchaser, for the operation of a septic system on the septic field easement area: "SFE" # N/A and the septic field easement area may be subject to an option for its repurchase by Seller if sewer service is extended to the Lot, at which time Purchaser's septic field easement rights shall be terminated. (IF THIS BLANK IS NOT FILLED IN OR HAS "N/A" FILLED IN, THE SEPTIC SEWER SYSTEM CAN BE LOCATED ENTIRELY ON THE LOT WITHOUT AN "SFE").

(c) Purchaser and Seller acknowledge that there have been no representations or agreements regarding the Seller's obligation to provide or complete roads, sewer, water, electric or other utility services or recreational amenities made by Seller or relied upon by Purchaser, except as are set forth herein or in the Property Report.

24. Completion of Development. Purchaser acknowledges that as of the Agreement Date indicated below and as of the date of Closing, certain roads and utilities specified in the Property Report may not be complete and that there may be certain inconveniences until construction of such facilities is complete, and Purchaser hereby waives all claims with respect thereto. Purchaser further agrees to assume all risks and indemnify and hold Seller harmless with respect to Purchaser's entry onto the Lot or surrounding land while such facilities are under construction.

25. Special Stipulations. The following matters, if any, are hereby made a part of this Agreement:

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Agreement Date indicated below.

This Agreement shall become a binding contract only when it has been signed below by both Purchaser and Seller and any changes have been initialed by both parties.

YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT OR AGREEMENT OF SALE BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE SEVENTH DAY FOLLOWING THE SIGNING OF THE CONTRACT OR AGREEMENT.

IF YOU DID NOT RECEIVE A PROPERTY REPORT PREPARED PURSUANT TO THE RULES AND REGULATIONS OF THE OFFICE OF INTERSTATE LAND SALES REGISTRATION, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, IN ADVANCE OF YOUR SIGNING THE CONTRACT OR AGREEMENT, THE CONTRACT OR AGREEMENT OF SALE MAY BE CANCELLED AT YOUR OPTION FOR TWO YEARS FROM THE DATE OF SIGNING.

PURCHASER:

Debbie B. Green

SELLER:

CRESCENT COMMUNITIES S.C., LLC, a
Delaware limited liability company

Date: 03-25-07

By: Scott Mundy

Address: 103 Dove Cove Lane
Westminster, SC 29693

Its: Vice-President

Telephone No.: 647-7330
247-4498 (Charles)

Agreement Date: 3-30-06

LISTING BROKER (please print):

SELLING BROKER (please print):

Firm Name: Lake Keowee Real Estate, Inc.

Firm Name: John Hamrick RE

Address: 896 N. Walnut St.
Seneca, SC 29678

Address: 896 N. Walnut St.
Seneca, SC 29678

Phone No.: (864) 886-0098

Phone No.: 1-800-861-4904

Sales Representative:

Firm Representative: Carmon Green

John R. Hamrick

Party Represented by Selling Broker:

Broker-in-Charge:

☐ Purchaser
☒ Seller
(check one)

John R. Hamrick

PEGGY B. GRAY 103 DOVE COVE LANE WESTMINSTER, SC 29693	07-SENECA NORTH 449 HWY 123 BY-PASS SENECA, SC 29678	Loan Number _____ Date <u>05-25-2006</u> Maturity Date <u>05-25-2007</u> Loan Amount \$ <u>185,625.00</u> Renewal Of _____
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of ONE HUNDRED EIGHTY-FIVE THOUSAND SIX HUNDRED TWENTY-FIVE AND NO/100 Dollars \$ 185,625.00.

- ☒ **Single Advance:** I will receive all of this principal sum on 05-25-2006. No additional advances are contemplated under this note.
- ☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.
- Conditions: The conditions for future advances are _____

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____.

☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 05-25-2006 at the rate of 5.950% per year until 05-25-2007.

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

☐ **Index Rate:** The future rate will be _____ the following index rate: _____

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

☐ **Frequency and Timing:** The rate on this note may change as often as _____
A change in the interest rate will take effect _____

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

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

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

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

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

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is not made within 15 days after it is due, I agree to pay a late charge of 5.000% **OF THE LATE** AMOUNT WITH A MAX OF \$100.00

☒ **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:

11 MONTHLY INTEREST PAYMENTS RANGING FROM \$859.03 TO \$1135.15 BEGINNING 07-01-2006 AND 1 PAYMENT OF \$186,361.31 ON 05-25-2007.

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date): MORTGAGE DATED 5/25/06

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

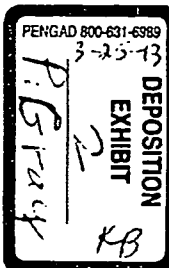
Signature for Lender

SHANE SMITH, VICE PRESIDENT

PURPOSE: The purpose of this loan is PURCHASE LOT 29
WATERFORD RIDGE

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

PEGGY B. GRAY



express written consent. Time is of the essence in this agreement.

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

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

PAYMENTS: Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

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

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

POST MATURITY RATE: For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS: If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS: If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

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

SET-OFF: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

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

the benefit of creditors, or become insolvent, or my assets become less than my liabilities, or I become unable to pay my debts as they become due, (6) I make any written statement or provide any financial information that is untrue or inaccurate of the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season if I am a producer of crops; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES: If I am in default on this note you have, but are not limited to, the following remedies:

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- (4) You may refuse to make advances to me or allow purchases on credit by me.
- (5) You may use any remedy you have under state or federal law.

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

COLLECTION COSTS AND ATTORNEY'S FEES: I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER: I give up my rights to require you to do certain things. I will not require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

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

OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. [OI course, you are entitled to only one payment in full.] I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without effecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

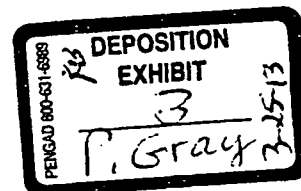
FINANCIAL INFORMATION: I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

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

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a pre-seizure hearing prior to seizure of any personal property which may secure this loan.

DATE OF TRANSACTION	PRINCIPAL ADVANCE	BORROWER'S INITIALS (not required)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE	INTEREST RATE	INTEREST PAYMENTS	INTEREST PAID THROUGH:
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	

A U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT		B. TYPE OF LOAN: 1. ☐ FHA 2. ☐ FVA 3. ☒ CONVENTIONAL 4. ☐ VA 5. ☐ OTHER	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "POC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.		6. FILE NUMBER: GRAY PEGGY (LO129) 7. LOAN NUMBER:	
D. NAME AND ADDRESS OF BORROWER: Peggy Gray 103 Dove Cove Ln Westminster, SC 29693		E. NAME AND ADDRESS OF SELLER: Crescent Communities, SC LLC formerly Crescent Comm SC LLC	
G. PROPERTY LOCATION: Lot 29 Waterford Ridge Seneca, SC Oconee County, South Carolina		F. NAME AND ADDRESS OF LENDER: Community First Bank P.O. Box 450 Seneca, SC 29679	
H. SETTLEMENT AGENT: James S. Reik PLACE OF SETTLEMENT: 1202 N. Main Street Anderson, SC 29621		I. SETTLEMENT DATE: May 26, 2006	
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER: 101. Contract Sales Price 196,251.00 102. Personal Property 103. Settlement Charges to Borrower (Line 1400) 3,021.00 104. 105.		400. GROSS AMOUNT DUE TO SELLER: 401. Contract Sales Price 196,251.00 402. Personal Property 403. 404. 405.	
Adjustments For Items Paid By Seller in advance 106. City/Town Taxes to 107. County Taxes to 108. Assessments 05/26/06 to 01/01/07 360.44 109. 110. 111. 112.		Adjustments For Items Paid By Seller in advance 406. City/Town Taxes to 407. County Taxes to 408. Assessments to 409. 410. 411. 412.	
120. GROSS AMOUNT DUE FROM BORROWER 200,439.04		420. GROSS AMOUNT DUE TO SELLER 196,251.00	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER: 201. Deposit or earnest money 19,625.10 202. Principal Amount of New Loan(s) 185,625.00 203. Existing loan(s) taken subject to 204. 205. 206. 207. 208. 209.		500. REDUCTIONS IN AMOUNT DUE TO SELLER: 501. Excess Deposit (See instructions) 502. Settlement Charges to Seller (Line 1400) 20,352.15 503. Existing loan(s) taken subject to 504. Payoff of first Mortgage 505. Payoff of second Mortgage 506. 507. (Deposit dist. as proceeds) 508. 509.	
Adjustments For Items Unpaid By Seller 210. City/Town Taxes to 211. County Taxes to 212. Assessments to 213. 214. 215. 216. 217. 218. 219.		Adjustments For Items Unpaid By Seller 510. City/Town Taxes to 511. County Taxes to 512. Assessments to 513. 514. 515. 516. 517. 518. 519.	
220. TOTAL PAID BY/FOR BORROWER 205,250.10		520. TOTAL REDUCTION AMOUNT DUE SELLER 20,352.15	
300. CASH AT SETTLEMENT FROM/TO BORROWER: 301. Gross Amount Due From Borrower (Line 120) 200,439.04 302. Less Amount Paid By/For Borrower (Line 220) (205,250.10) 303. CASH (FROM) (X TO) BORROWER 4,811.06		600. CASH AT SETTLEMENT TO/FROM SELLER: 601. Gross Amount Due To Seller (Line 420) 196,251.00 602. Less Reductions Due Seller (Line 520) (20,352.15) 603. CASH (X TO) (FROM) SELLER 175,898.85	



L. SETTLEMENT CHARGES				PARTIAL BORROWER'S CLOSING COSTS	PARTIAL SELLER'S CLOSING COSTS
700. TOTAL COMMISSION Based on Price \$ @ % 19,625.10					
Division of Commission (line 700) as Follows:					
701	\$ 9,812.55	to	Lake Keowee Real Estate, Inc.		
702	\$ 9,812.55	to	John Hamrick Real Estate, Inc.		
703	Commission Paid at Settlement				
704	to				19,625.10
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801	Loan Origination Fee	1.0000 %	to Community First Bank	1,956.25	
802	Loan Discount	%	to		
803	Appraisal Fee		to Community First Bank (No Duplity Appraisal)	275.00	
804	Credit Report		to		
805	Lender's Inspection Fee		to		
806	Mortgage Ins. App. Fee		to		
807	Assumption Fee		to		
808	Flood Certification Fee				
809	Tax Service Fee				
810	Underwriting Fee				
811	Processing Fee				
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901	Interest From	05/25/06	to 06/01/06	@ \$	/day (7 days %)
902	Mortgage Insurance Premium	for	months to		
903	Hazard Insurance Premium	for	1.0 years to		
904					
905					
1000. RESERVES DEPOSITED WITH LENDER					
1001	Hazard Insurance	months @ \$	per month		
1002	Mortgage Insurance	months @ \$	per month		
1003	City/Town Taxes	months @ \$	per month		
1004	County Taxes	months @ \$	per month		
1005	Assessments	months @ \$	per month		
1006		months @ \$	per month		
1007		months @ \$	per month		
1008		months @ \$	per month		
1100. TITLE CHARGES					
1101	Pkg Prep	to	James S. Belk	125.00	
1102	Abstract or Title Search	to	Abstracting Associates	192.50	
1103	Title Examination	to			
1104	Title Insurance Binder	to	James S. Belk	75.00	
1105	Document Preparation	to			
1106	Notary Fees	to			
1107	Attorney's Fees	to	James S. Belk	300.00	
(includes above item numbers:)					
1108	Title Insurance	to	Commonwealth Land Title Insurance Company	900.35	
(includes above item numbers:)					
1109	Lender's Coverage	\$	185,625.00	455.60	
1110	Owner's Coverage	\$	196,251.00	441.75	
1111					
1112					
1113					
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201	Recording Fees: Deed \$	10.00; Mortgage \$	25.00; Releases \$	35.00	
1202	City/County Tax/Stamp: Deed	727.05; Mortgage			727.05
1203	State Tax/Stamp: Revenue Stamps	Mortgage			
1204					
1205					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301	Survey	to	F & S Surveyors Engineers and Planners, Inc.		
1302	Pest Inspection	to			
1303	Wires	to	Bank of Anderson		
1304	Copies, Processing & UPS	to		62.50	
1305					
1400	TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)			3,921.00	20,352.15

Certified to be a true copy.

ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT STATEMENT

Borrower: Peggy Gray
 Seller: Crescent Communities, SC LLC formerly Crescent Comm SC INC
 Lender: Community First Bank
 Settlement Agent: James S. Belk
 (864)224-8123
 Place of Settlement: 1202 N. Main Street
 Anderson, SC 29621
 Settlement Date: May 25, 2006
 Property Location: Lot 29 Waterford Ridge
 Seneca, SC
 Oconee County, South Carolina

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

1/14/07 - 16/07
 Peggy Gray

Crescent Communities, SC LLC formerly Crescent Comm SC INC

BY: Carl Carnella

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

James S. Belk
 Settlement Agent

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Record P. 391
note 101

Doc ID: 001477490009 Type: MTG
BK 2627 Pg 195-203

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Ret.

JAMES S. BELK, ATTORNEY
1202 NORTH MAIN STREET
ANDERSON, SC 29621

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This document was prepared by Dawn Bailey, First Savers Bank, 935 South Main Street, Suite 300, Greenville, South Carolina 29601.

MORTGAGE

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is June 5, 2008. The parties and their addresses are:

MORTGAGOR:
PEGGY B GRAY
103 Dove Cove Lane
Westminster, South Carolina 29693

LENDER:
FIRST SAVERS BANK
Organized and existing under the laws of South Carolina
935 South Main Street, Suite 300
Greenville, South Carolina 29601

1. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property:

The property is located in Oconee County at Lot Waterford Ridge, Seneca, South Carolina 29693.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time will not exceed \$360,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants

Peggy B Gray
South Carolina Mortgage
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DEPOSITION
EXHIBIT
3-25-13
P. Gray

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contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 101, dated June 5, 2008, from Mortgagor to Lender, with a loan amount of \$180,000.00.

B. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

5. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

6. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor has the right and authority to enter into this Security Instrument. The execution and delivery of this Security Instrument will not violate any agreement governing Mortgagor or to which Mortgagor is a party.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. **Payments.** Mortgagor fails to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.
- C. **Death or Incompetency.** Mortgagor dies or is declared legally incompetent.
- D. **Failure to Perform.** Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Secured Debts.
- F. **Other Agreements.** Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.
- G. **Misrepresentation.** Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgment.** Mortgagor fails to satisfy or appeal any judgment against Mortgagor.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.
- K. **Property Transfer.** Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.
- L. **Property Value.** Lender determines in good faith that the value of the Property has declined or is impaired.
- M. **Insecurity.** Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

13. REMEDIES. On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the

Peggy B Gray
South Carolina Mortgage
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collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

15. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of

any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

16. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

17. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this Insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals will include a standard "mortgage clause" and, where applicable, "loss payee clause." If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include coverages not originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

18. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

19. CO-SIGNERS. If Mortgagor signs this Security Instrument but is not otherwise obligated to pay the Secured Debts, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debts and Mortgagor does not agree by signing this Security Instrument to be personally liable on the Secured Debts. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

20. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

21. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

22. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument, or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

23. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

24. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

25. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

26. AGREEMENT TO ARBITRATE. Lender or Mortgagor may submit to binding arbitration any dispute, claim or other matter in question between or among Lender and Mortgagor that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as Lender and Mortgagor agree to in writing. For purposes of this section, this Transaction includes this Security Instrument and any other document relating to the Secured Debts, and proposed loans or extensions of credit that relate to this Security Instrument. Lender or Mortgagor will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws. Lender and Mortgagor must consent to arbitrate any Dispute concerning the Secured Debt secured by real estate at the time of the proposed arbitration. Lender may foreclose or exercise any powers of sale against real property

securing the Secured Debt underlying any Dispute before, during or after any arbitration. Lender may also enforce the Secured Debt secured by this real property and underlying the Dispute before, during or after any arbitration.

Lender or Mortgagor may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law; seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to Lender or Mortgagor; or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

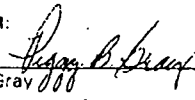
Lender and Mortgagor acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among Lender and Mortgagor involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

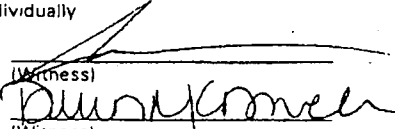
The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Security Instrument, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Security Instrument or another writing.

27. WAIVER OF TRIAL FOR ARBITRATION. Lender and Mortgagor understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes through arbitration instead of litigation. If any Dispute is arbitrated, Lender and Mortgagor voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

 (Seal)
Peggy B Gray
Individually


(Witness)

(Witness)

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JOHNS COUNTY, S.C.
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ACKNOWLEDGMENT.

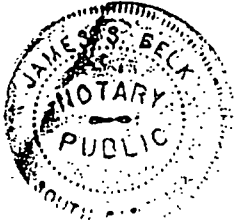
(Individual)

State of South Carolina County of Oconee ss.
I, James S. Bell a notary public for South Carolina do
hereby certify that Peggy B Gray, personally appeared before me this day and acknowledged the due execution of
the foregoing instrument.

Witness my hand and official seal this 5th day of June, 2008.

Signature of Notary Public

My commission expires: 10-18-14



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Peggy B Gray
South Carolina Mortgage
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Page 8



JAMES S. BELK, ATTORNEY
1202 NORTH MAIN STREET
ANDERSON, SC 29621
G-770

G-770

Exhibit "A"

PROPERTY DESCRIPTION

All that certain piece, parcel or lot of land situate, lying and being in the County of Oconee, State of South Carolina and being shown and designated as Lot Number Twenty Nine (29), as shown on that certain plat of record in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book B129 at Page 1-8. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This conveyance is specifically made subject to any and all recorded rights-of-way, easements, conditions and restrictions pertaining to the property herein conveyed, and in addition are subject to any of the foregoing which may appear from an inspection of the premises.

This being a portion of that property conveyed unto Peggy B. Gray herein by Deed of Crescent Communities S.C., LLC., dated May 12, 2006 and recorded June 6, 2006 of record in the Office of the Clerk of Court for Oconee County, South Carolina in Book 1508 at Page 43.

TMS# P/O 165-00-01-001

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
101	Peggy B Gray		06/05/08	SDS
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$180,000.00	Wall Street Journal Prime plus 0.600%	5.600%	06/05/09	Commercial

Creditor Use Only

PROMISSORY NOTE

(Commercial - Single Advance)

DATE AND PARTIES. The date of this Promissory Note (Note) is June 5, 2008. The parties and their addresses are:

LENDER:

FIRST SAVERS BANK
836 South Main Street, Suite 300
Greenville, South Carolina 29601
Telephone: (864) 477-2580

BORROWER:

PEGGY B GRAY
103 Dove Cove Lane
Westminster, South Carolina 29693

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together. "You" and "Your" refer to the Lender.
- B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. Percent. Rates and rate change limitations are expressed as annualized percentages.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of \$180,000.00 (Principal) plus interest from June 5, 2008 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

3. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 5.600 percent (Interest Rate) until June 5, 2008, after which time it may change as described in the Variable Rate subsection.

- A. Post-Maturity Interest. After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et. seq.
- D. Accrual. Interest accrues using an Actual/360 days counting method.
- E. Variable Rate. The Interest Rate may change during the term of this transaction.

(1) Index. Beginning with the first Change Date, the Interest Rate will be based on the following index: the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks known as the Wall Street Journal Prime Rate.

The Current Index is the most recent index figure available on each Change Date. You do not guaranty by selecting this index, or the margin, that the Interest Rate on this Note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers. If this index is no longer available, you will substitute a similar index. You will give me notice of your choice.

(2) Change Date. Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change June 6, 2008 and daily thereafter.

(3) Calculation Of Change. On each Change Date you will calculate the Interest Rate, which will be the Current Index plus 0.500 percent. The result of this calculation will be rounded to the nearest .001 percent. Subject to any limitations, this will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note.

(4) Effect Of Variable Rate. A change in the Interest Rate will have the following effect on the payments: The amount of scheduled payments and the amount of the final payment will change.

4. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

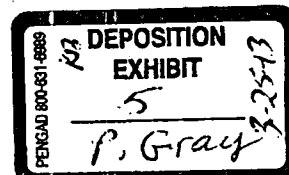
- A. Late Charge. If a payment is more than 15 days late, I will be charged 5.000 percent of the Amount of Payment. I will pay this late charge promptly but only once for each late payment.

5. PAYMENT. I agree to pay this Note in installments of accrued interest beginning July 5, 2008, and then on the 5th day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on June 5, 2009.

Peggy B Gray
South Carolina Promissory Note
SC/4XbbaleY0000580005586011060308N

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Page 1



Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

6. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

7. LOAN PURPOSE. This is a business-purpose loan transaction.

8. SECURITY. The Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name	Parties to Document
Mortgage - Lot Waterford Ridge	Peggy B Gray

9. DEFAULT. I will be in default if any of the following occur:

- A. Payments. I fail to make a payment in full when due.
- B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.
- C. Death or Incompetency. I die or am declared legally incompetent.
- D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.
- E. Other Documents. A default occurs under the terms of any other Loan Document.
- F. Other Agreements. I am in default on any other debt or agreement I have with you.
- G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. Judgment. I fail to satisfy or appeal any judgment against me.
- I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. Name Change. I change my name or assume an additional name without notifying you before making such a change.
- K. Property Transfer. I transfer all or a substantial part of my money or property.
- L. Property Value. You determine in good faith that the value of the Property has declined or is impaired.
- M. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

10. DUE ON SALE OR ENCUMBRANCE. You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

11. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

- (1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.
- (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
- (3) You may release, substitute or impair any Property securing this Note.
- (4) You, or any institution participating in this Note, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

12. REMEDIES. After I default, you may at your option do any one or more of the following.

- A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due.
- B. Sources. You may use any and all remedies you have under state or federal law or in any Loan Document.
- C. Insurance Benefits. You may make a claim for any and all insurance benefits or refunds that may be available on my default.
- D. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.
- E. Set-Off. You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Peggy B Gray
South Carolina Promissory Note
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Page 2

PBB

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

F. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

13. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any, in addition to the extent permitted by the United States Bankruptcy Code. I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

14. **COMMISSIONS.** I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

15. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

16. **INSURANCE.** I agree to obtain the insurance described in this Loan Agreement

A. **Property Insurance.** I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing the Loan.

B. **Insurance Warranties.** I agree to purchase any insurance coverages that are required, in the amounts you require, as described in this or any other documents I sign for the Loan. I will provide you with continuing proof of coverage. I will buy or provide insurance from a firm licensed to do business in the State where the Property is located. If I buy or provide the insurance from someone other than you, the firm will be reasonably acceptable to you. I will have the insurance company name you as loss payee on any insurance policy. You will apply the insurance proceeds toward what I owe you on the outstanding balance. I agree that if the insurance proceeds do not cover the amounts I still owe you, I will pay the difference. I will keep the insurance until all debts secured by this agreement are paid. If I want to buy the insurance from you, I have signed a separate statement agreeing to this purchase.

17. **APPLICABLE LAW.** This Note is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

18. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

19. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

20. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

21. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

22. **CREDIT INFORMATION.** I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

23. **ERRORS AND OMISSIONS.** I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you or of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

24. **AGREEMENT TO ARBITRATE.** You or I may submit to binding arbitration any dispute, claim or other matter in question between or among you and me that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as you and I agree to in writing. For purposes of this section, this Transaction includes this Note and the other Loan Documents, and proposed loans or extensions of credit that relate to this Note. You or I will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws.

You and I must consent to arbitrate any Dispute concerning a debt secured by real estate at the time of the proposed arbitration. You may foreclose or exercise any powers of sale against real property securing a debt underlying any Dispute before, during or after any arbitration. You may also enforce a debt secured by this real property and underlying the Dispute before, during or after any arbitration.

You or I may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law, seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to you or me; or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

You and I acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among you and me involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Note, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Note or another writing.

Peggy B Gray
South Carolina Promissory Note
SC/4Xdbseley00005900005586011060308N

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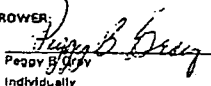
Page 3

P.B.B.

25. WAIVER OF TRIAL FOR ARBITRATION. You and I understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes through arbitration instead of litigation. If any Dispute is arbitrated, you and I voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

26. SIGNATURES. By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER:


Peggy B. Gray
Individually

(Seal)

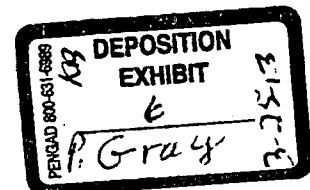
Peggy B Gray
South Carolina Promissory Note
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Page 4

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT		B. TYPE OF LOAN: 1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV. UNINS 4. ☐ VA 5. ☐ CONV. INS. 6. FILE NUMBER: G-770 7. LOAN NUMBER: 101 8. MORTGAGE INS CASE NUMBER:	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "POC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals. 1.0 358 (GRAY,PEGGY)(REFLOT2SWATE PFDGRAY,PEGGY)(REFLOT2)			
D. NAME AND ADDRESS OF BORROWER: Peggy B. Gray 103 Dove Cove Lane Westminster, SC 29693		E. NAME AND ADDRESS OF SELLER: James S. Beik 1202 N. Main Street Anderson, SC 29621	
G. PROPERTY LOCATION: Lot 29 Waterford Seneca, SC 29678 Oconee County, South Carolina		F. NAME AND ADDRESS OF LENDER: First Savers Bank 935 South Main Street, Suite 300 Greenville, SC 29601	
H. SETTLEMENT AGENT: .57-0686435 James S. Beik PLACE OF SETTLEMENT 1202 N. Main Street Anderson, SC 29621		I. SETTLEMENT DATE: June 5, 2008	

J. SUMMARY OF BORROWER'S TRANSACTION 100. GROSS AMOUNT DUE FROM BORROWER: 101. Contract Sales Price 102. Personal Property 103. Settlement Charges to Borrower (Line 1400) 726.00 104. to Community First Bank/268573 186,512.31 105. <i>Adjustments For Items Paid By Seller in advance</i> 106. City/Town Taxes to 107. County Taxes to 108. Assessments to 109. 110. 111. 112. 120. GROSS AMOUNT DUE FROM BORROWER 187,238.31 200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER: 201. Deposit or earnest money 202. Principal Amount of New Loan(s) (360,000.00) 203. Existing loan(s) taken subject to 204. 205. 206. 207. Construction Draw 180,000.00 208. 209. <i>Adjustments For Items Unpaid By Seller</i> 210. City/Town Taxes to 211. County Taxes to 212. Assessments to 213. 214. 215. 216. 217. 218. 219. 220. TOTAL PAID BY/FOR BORROWER 180,000.00 300. CASH AT SETTLEMENT FROM/TO BORROWER: 301. Gross Amount Due From Borrower (Line 120) 187,238.31 302. Less Amount Paid By/FOR Borrower (Line 220) (180,000.00) 303. CASH (X FROM) (TO) BORROWER 7,238.31	K. SUMMARY OF SELLER'S TRANSACTION 400. GROSS AMOUNT DUE TO SELLER: 401. Contract Sales Price 402. Personal Property 403. 404. 405. <i>Adjustments For Items Paid By Seller in advance</i> 406. City/Town Taxes to 407. County Taxes to 408. Assessments to 409. 410. 411. 412. 420. GROSS AMOUNT DUE TO SELLER 500. REDUCTIONS IN AMOUNT DUE TO SELLER: 501. Excess Deposit (See Instructions) 502. Settlement Charges to Seller (Line 1400) 503. Existing loan(s) taken subject to 504. Payoff of first Mortgage 505. Payoff of second Mortgage 506. 507. 508. 509. <i>Adjustments For Items Unpaid By Seller</i> 510. City/Town Taxes to 511. County Taxes to 512. Assessments to 513. 514. 515. 516. 517. 518. 519. 520. TOTAL REDUCTION AMOUNT DUE SELLER 600. CASH AT SETTLEMENT TO/FROM SELLER: 601. Gross Amount Due To Seller (Line 420) 602. Less Reductions Due Seller (Line 520) 603. CASH (TO) (FROM) SELLER 0.00



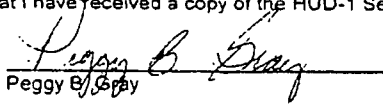
L. SETTLEMENT CHARGES				PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price \$ @ %					
Division of Commission (line 700) as Follows:					
701. \$	to				
702. \$	to				
703. Commission Paid at Settlement					
704.	to				
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801. Loan Origination Fee	% to				
802. Loan Discount	% to				
803. Appraisal Fee	to First Savers Bank	POC:B225.00			
804. Credit Report	to				
805. Lender's Inspection Fee	to				
806. Mortgage Ins. App. Fee	to				
807. Assumption Fee	to				
808. Flood Certification Fee					
809. Tax Service Fee					
810. Underwriting Fee					
811. Processing Fee					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901. Interest From 06/05/08 to 07/01/08 @ \$ /day (26 days %)					
902. Mortgage Insurance Premium for months to					
903. Hazard Insurance Premium for 1.0 years to					
904.					
905.					
1000. RESERVES DEPOSITED WITH LENDER					
1001. Hazard Insurance	months @ \$ per month				
1002. Mortgage Insurance	months @ \$ per month				
1003. City/Town Taxes	months @ \$ per month				
1004. County Taxes	months @ \$ per month				
1005. Assessments	months @ \$ per month				
1006.	months @ \$ per month				
1007.	months @ \$ per month				
1008.	months @ \$ per month				
1100. TITLE CHARGES					
1101. MORTGAGE SATISFACTION FEE	to James S. Belk		46.00		
1102. Abstract or Title Search	to Abstracting Associates		192.50		
1103. Package Prep Fee	to James S. Belk		125.00		
1104. Title Insurance Binder	to James S. Belk				
1105. Document Preparation	to				
1106. Notary Fees	to				
1107. Attorney's Fees	to James S. Belk		250.00		
(includes above item numbers:)					
1108. Title Insurance	to Commonwealth Land Title Insurance Company				
(includes above item numbers:)					
1109. Lender's Coverage	\$				
1110. Owner's Coverage	\$				
1111.					
1112.					
1113.					
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201. Recording Fees: Deed \$; Mortgage \$ 25.00; Releases \$			25.00		
1202. City/County Tax/Stamp: Deed ; Mortgage					
1203. State Tax/Stamp: Revenue Stamps ; Mortgage					
1204. Recording Sat. Mortgage	to Oconee County Register of Deeds		15.00		
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301. Survey	to				
1302. Pest Inspection	to				
1303.					
1304. Copies, Processing, Wire & UPS	to		72.50		
1305.					
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)				726.00	

Certified to be a true copy.

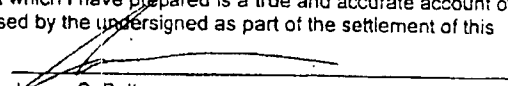
ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT STATEMENT

Borrower: Peggy B. Gray
Lender: First Savers Bank
Settlement Agent: James S. Belk
(864)224-8123
Place of Settlement: 1202 N. Main Street
Anderson, SC 29621
Settlement Date: June 5, 2008
Property Location: Lot 29 Waterford
Seneca, SC 29678
Oconee County, South Carolina

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.


Peggy B. Gray

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.


James S. Belk
Settlement Agent

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

(GRAY,PEGGY(REFILOT29WATE,PFD/GRAY,PEGGY(REFILOT29

THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD TO LIGHT TO VIEW

M16779 08118093

OFFICIAL CHECK

5000568072

ISSUING BRANCH 2019301-SENECA - MAIN

DATE JUNE 09, 2005 68-236/514

PAY TO THE ORDER OF JAMES S BELK \$ 7,563.31 ** \$7,563.31 **

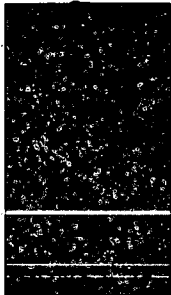
BB&T BB&T 7563 BROS & CO DOLLARS

AUTHORIZED SIGNATURE [Signature]

MEMO PURCHASER WATERFORD RIDGE

5000568072 9010097

DEPOSITION
EXHIBIT
7
P. 61-50-13
K8
PENGAD 800-631-6989



6/5/2008 001482472 053208118 Community South Bank

LOAN NUMBER	LOAN NAME		NOTE DATE	INITIALS
101	Peggy B Gray		07/09/09	SDS
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$175,000.00	Not Applicable	6.000%	07/09/10	Commercial
Creditor Use Only				

PROMISSORY NOTE
(Commercial - Single Advance)
RENEWAL NOTE

DATE AND PARTIES. The date of this Promissory Note (Note) is July 9, 2009. The parties and their addresses are:

LENDER:

PLANTATION FEDERAL BANK
AS SUCCESSOR TO FIRST SAVERS BANK
935 South Main Street, Suite 300
Greenville, SC 29601
Telephone: (864) 477-2560

BORROWER:

PEGGY B GRAY
103 Dove Cove Lane
Westminster, SC 29693

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together. "You" and "Your" refer to the Lender.
- B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. Percent. Rates and rate change limitations are expressed as annualized percentages.

2. RENEWAL. This Note is a renewal of the following described note:

Note Date	Note Number	Note Amount
June 5, 2008	# 8800024901 - 101	\$180,000.00

I have requested that the note listed in the table above be renewed. The remaining balance of the note listed in the table above is \$175,000.00.

3. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of \$175,000.00 (Principal) plus interest from July 9, 2009 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

4. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 6.000 percent (Interest Rate).

- A. Post-Maturity Interest. After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et. seq.
- D. Accrual. Interest accrues using an Actual/360 days counting method.

5. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

- A. Late Charge. If a payment is more than 15 days late, I will be charged 6.000 percent of the Amount of Payment. I will pay this late charge promptly but only once for each late payment.

6. PAYMENT. I agree to pay this Note in installments of accrued interest beginning August 9, 2009, and then on the 9th day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on July 9, 2010.

Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

7. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

Peggy B Gray
South Carolina Promissory Note
SC/4Xdbelley00105100006381009070809N

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8. **LOAN PURPOSE.** This is a business-purpose loan transaction.

9. **SECURITY.** The Loan is secured by previously executed, separate security instruments described as follows:

Description	Date
Mortgage	June 5, 2008

10. **DEFAULT.** I will be in default if any of the following occur:

- A. **Payments.** I fail to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.
- C. **Death or Incompetency.** I die or am declared legally incompetent.
- D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Note.
- E. **Other Documents.** A default occurs under the terms of any other Loan Document.
- F. **Other Agreements.** I am in default on any other debt or agreement I have with you.
- G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgment.** I fail to satisfy or appeal any judgment against me.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.
- K. **Property Transfer.** I transfer all or a substantial part of my money or property.
- L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.
- M. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

11. **DUE ON SALE OR ENCUMBRANCE.** You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

12. **WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers By Borrower.** In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

- (1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.
- (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
- (3) You may release, substitute or impair any Property securing this Note.
- (4) You, or any institution participating in this Note, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

13. **REMEDIES.** After I default, you may at your option do any one or more of the following.

- A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Note immediately due.
- B. **Sources.** You may use any and all remedies you have under state or federal law or in any Loan Document.
- C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.
- D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.
- E. **Set-Off.** You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

F. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

15. COMMISSIONS. I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

16. WARRANTIES AND REPRESENTATIONS. I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

17. APPLICABLE LAW. This Note is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

18. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

19. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, as a result, this Loan would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

20. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

21. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

22. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

23. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

24. AGREEMENT TO ARBITRATE. You or I may submit to binding arbitration any dispute, claim or other matter in question between or among you and me that arises out of or relates to this Transaction (Dispute), except as otherwise indicated in this section or as you and I agree to in writing. For purposes of this section, this Transaction includes this Note and the other Loan Documents, and proposed loans or extensions of credit that relate to this Note. You or I will not arbitrate any Dispute within any "core proceedings" under the United States bankruptcy laws.

You and I must consent to arbitrate any Dispute concerning a debt secured by real estate at the time of the proposed arbitration. You may foreclose or exercise any powers of sale against real property securing a debt underlying any Dispute before, during or after any arbitration. You may also enforce a debt secured by this real property and underlying the Dispute before, during or after any arbitration.

You or I may, whether or not any arbitration has begun, pursue any self-help or similar remedies, including taking property or exercising other rights under the law, seek attachment, garnishment, receivership or other provisional remedies from a court having jurisdiction to preserve the rights of or to prevent irreparable injury to you or me; or foreclose against any property by any method or take legal action to recover any property. Foreclosing or exercising a power of sale, beginning and continuing a judicial action or pursuing self-help remedies will not constitute a waiver of the right to compel arbitration.

The arbitrator will determine whether a Dispute is arbitrable. A single arbitrator will resolve any Dispute, whether individual or joint in nature, or whether based on contract, tort, or any other matter at law or in equity. The arbitrator may consolidate any Dispute with any related disputes, claims or other matters in question not arising out of this Transaction. Any court having jurisdiction may enter a judgment or decree on the arbitrator's award. The judgment or decree will be enforced as any other judgment or decree.

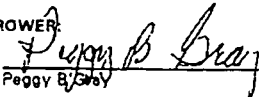
You and I acknowledge that the agreements, transactions or the relationships which result from the agreements or transactions between and among you and me involve interstate commerce. The United States Arbitration Act will govern the interpretation and enforcement of this section.

The American Arbitration Association's Commercial Arbitration Rules, in effect on the date of this Note, will govern the selection of the arbitrator and the arbitration process, unless otherwise agreed to in this Note or another writing.

25. WAIVER OF TRIAL FOR ARBITRATION. You and I understand that the parties have the right or opportunity to litigate any Dispute through a trial by judge or jury, but that the parties prefer to resolve Disputes through arbitration instead of litigation. If any Dispute is arbitrated, you and I voluntarily and knowingly waive the right to have a trial by jury or judge during the arbitration.

26. SIGNATURES. By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER:

 (Seal)
Peggy B. Gray
Individually

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

HON. ALEXANDER S. MACAULAY

APPELLATE CASE NO.: 2014-000220

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK ... RESPONDENT

VS

J. CHARLES GRAY ... APPELLANT

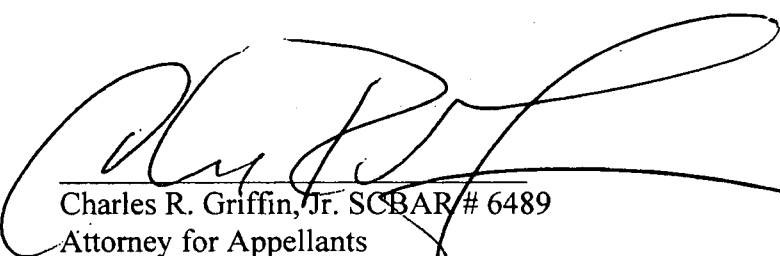
PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK ... RESPONDENT

VS

PEGGY B. GRAY ... APPELLANT

CERTIFICATION

Certificate of Counsel. I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Charles R. Griffin, Jr. SCBAR # 6489
Attorney for Appellants
210 N. McDuffie Street Ste 103
Anderson, SC 29621
864-231-8870

RECEIVED
JAN 30 2015
SC Court of Appeals

App. 000466

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
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PLANTATION FEDERAL BANK as successor in interest to
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VS

J. CHARLES GRAY and WATERFORD RIDGE
OWNERS ASSOCIATION, INC., DEFENDANTS,
Of whom J. CHARLES GRAY is an APPELLANT

PLANTATION FEDERAL BANK as successor in interest to
FIRST SAVERS BANK . . . RESPONDENT

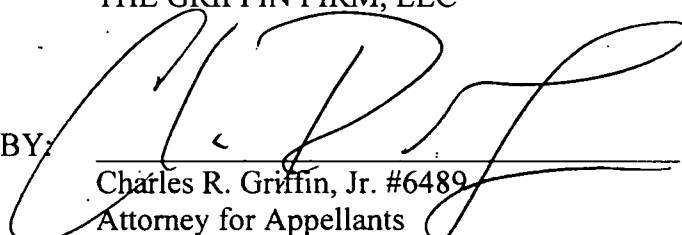
VS

PEGGY B. GRAY and WATERFORD RIDGE
OWNERS ASSOCIATION, INC., DEFENDANTS,
Of whom PEGGY B. GRAY is an APPELLANT

CERTIFICATE OF SERVICE – RECORD ON APPEAL

The undersigned does hereby certify that on January 6, 2015 he served the Appellants' Record on Appeal on the Respondent by depositing with the U.S. Mail with postage prepaid a copy of same addressed to the office Bradley Richardson, Esq. 133 Straight Drive Anderson, SC 29625

THE GRIFFIN FIRM, LLC

BY: 

Charles R. Griffin, Jr. #6489
Attorney for Appellants
210 N. McDuffie Street Ste 103
Anderson, SC 29621
864-231-8870
Fax 888-682-7317

Dated: January 6, 2015

RECEIVED

JAN 08 2015

App. 000467

Other Counsel of Record

Brad Richardson
Attorney for Respondent
133 Straight Drive
Anderson, SC 29625
864-222-0292