

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master In Equity

Case No. 2016-000971

RECEIVED
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SC Court of Appeals

Florida Citizens Bank, Appellant,

v.

Sustainable Building Solutions, Inc., John Porretto, Sr., Sue A. Porretto, The County of Charleston, and Island Preservation Partnership, Defendants

Of Whom John Porretto, Sr. and Sue Porretto are the Respondents.

RECORD ON APPEAL

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INDEX

Orders and Judgments

Order of Judgment and Foreclosure and Order of Judgment for Suit on Guaranty filed April 13, 2011	3
Order of Appraisal filed July 28, 2011	30
Notice of Filing of Foreign Judgment (October 28, 2014)	32
Order Granting Motion for Relief of Judgment filed March 30, 2016	66

Pleadings and Related Matters

Complaint filed April 30, 2010	73
Waiver of Deficiency Judgment filed April 26, 2011	120
Petition for Order of Appraisal filed July 27, 2011	123
Plaintiff's Designation of Appraiser and Motion for Attorney's Fees and Costs filed August 11, 2011	127
Notice of Motion for Relief from Judgment filed October 30, 2015 (with attachment Cancellation of Debt 1099-C)	138
Plaintiff's Memorandum in Opposition to Defendants John and Sue Porretto's Motion for Relief from Judgment dated January 19, 2016	141
Plaintiff Supplemental Memorandum in Opposition to Defendants John and Sue Porretto's Motion for Relief from Judgment (February 19, 2016)	199

Transcript

Transcript of hearing held January 19, 2016	374

Other Materials and Documents

Letter of Catherine Bryan to Clerk of Court dated June 21, 2011	401

Letter from C. Bryan to B. Bundy (August 3, 2011)	405
Email from B. Bundy to C. Bryan (August 3, 2011)	406

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
FLORIDA CITIZENS BANK,)
Plaintiff,)
vs.)
SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

FILED
2011 APR 13 PM 4:28
CLIFF J. ARMSTRONG
CLERK OF COURT

**ORDER OF JUDGMENT AND
FORECLOSURE
AND
ORDER OF JUDGMENT FOR
SUIT ON GUARANTY**

Pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure*, the above-captioned matter was referred to the undersigned Master in Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment, and to hear and determine any post-judgment proceedings. Any appeal from the decision of the Master in Equity shall be directly to the South Carolina Supreme Court.

Pursuant to the Order of Reference, a hearing was held on March 22, 2011 before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County. Catherine H. Bryan of Lyles & Lyles, LLC appeared for the Plaintiff. No appearance was made on behalf of the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto. Island Preservation Partnership has been dismissed from this action as evidenced by Plaintiff's Notice of Dismissal as to Island Preservation Partnership Only dated March 22, 2011.

At the hearing, the testimony was taken, which is reported herewith, and from the record in this case including the pleadings, admissions, testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Lis Pendens was filed on April 28, 2010.
2. The Summons and Complaint were filed on April 30, 2010.
3. Since this foreclosure action involves a commercial loan, the Home Affordable Modification Program is inapplicable.
4. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., Sue A. Porretto, and Island Preservation Partnership were served with the Lis Pendens; Summons; verified Complaint, including Exhibits A, B, C, and D; and Fair Debt Collection Notice via process server on May 14, 2010, as evidenced by the Affidavits of Service filed on May 19, 2010.
5. The Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto filed an answer on July 13, 2010, admitting the allegations of the Complaint.
6. The Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto, through their attorney of record, were notified of the time, date and place of the hearing in this matter on January 25, 2011, as indicated by the filed Notice of Hearing.
7. On or about March 6, 2006, Plaintiff made a loan to Sustainable Building Solutions, Inc. as evidenced by a note in the principal amount of One Million Four Hundred Twenty-Five Thousand and 00/100 Dollars (\$1,425,000.00) with interest as provided therein (the "March 2006 Note").
8. On or about June 15, 2006, Plaintiff made a loan to Sustainable Building Solutions as evidenced by the note in the principal amount of One Hundred Seventy-Five Thousand Six Hundred Twelve and 50/100 Dollars (\$175,612.50) with interest as provided therein (the "June 2006 Note").

9. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of One Million Six Hundred Thousand Six Hundred Twelve and 50/100s Dollars (\$1,600,612.50) with interest as provided therein (the "April 2007 Note"), as renewed by certain promissory notes dated April 15, 2008 (the "April 2008 Note") and April 15, 2009 (the "April 2009 Note"), and modified by the Debt Modification Agreement dated July 15, 2009 (the "July 2009 Modification"), together with certain fees and charges.

10. True copies of the March 2006 Note, June 2006 Note, April 2007 Note, April 2008 Note, April 2009 Note and July 2009 Modification (hereinafter collectively referred to as the "Note") are incorporated herein by reference.

11. On or about February 14, 2005, in order to secure the payment of the Note and indebtedness, Sustainable Building Solutions, Inc. made, executed and delivered to Plaintiff a mortgage covering real property located in Charleston County, South Carolina, which was recorded on February 22, 2005, in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage, dated March 6, 2006, and recorded on March 13, 2006 in the RMC Office for Charleston County in Book B-576 at Page 181. The mortgage and Modification of Mortgage are hereinafter collectively referred to as the "Mortgage."

12. The real property encumbered by the Mortgage (hereinafter referred to as the "Property") is more fully described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as **Lot 95** on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-'37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and

recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

13. A true copy of the Mortgage is incorporated herein by reference.
14. The Mortgage constitutes a first lien on the Property.
15. On or about April 15, 2009, John P. Porretto, Sr., individually, and Sue A. Porretto, individually, each executed and delivered to the Plaintiff a valid and enforceable Guaranty (hereinafter referred to as the "Guaranties"), guaranteeing payment to Plaintiff all sums owing under the Note, promising to pay the debt in the full amount as stated therein, and agreeing to all terms of the Note.

16. The Guaranties constitute valid and enforceable contracts.

17. By failing and refusing to make the required payments to Florida Citizens Bank, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have breached the terms of the unconditional guarantees without legal excuse and are personally liable under the terms of the Guaranties for the full amount of indebtedness to Florida Citizens Bank as set forth more fully herein.

18. According to the terms of the Note and Mortgage, if an event of default occurs or in the event of non-payment of the Note in full at maturity, the entire unpaid balance of the Note shall, at the option of Florida Citizens Bank, become immediately due and payable, without notice or demand.

19. Under the terms of the Mortgage, it was agreed that in the event the mortgagor failed to pay all taxes and assessments upon the Property when the same shall first become payable, then the mortgagee may cause the same to be paid, together with all penalties and costs incurred thereon, which amount, together with interest thereon, would be secured by the Property.

20. The payments due under the Note and Mortgage are in default and the conditions of the Note and Mortgage have been breached.

21. Pursuant to the terms of the Note and Mortgage, the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, were obligated to pay the Plaintiff the sums due and owing thereunder.

22. Despite demand, no payment has been made by the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, or Sue A. Porretto, individually, and Florida Citizens Bank filed this action to foreclose on the property.

23. The Mortgage provides that, in the event legal proceedings are instituted for the foreclosure of the Mortgage, or should the Note be placed in the hands of any attorney for collection, all costs and expenses incurred by Florida Citizens Bank, including a reasonable counsel fee of not less than ten percent (10%) of the amount involved, shall be added to the total debt secured by the Mortgage. Further, the Note provides that the Borrower will pay Lender the costs and expenses of collection, including Lender's reasonable attorneys' fees, Lender's legal expenses, and any court costs.

24. Counsel for the Plaintiff filed an Affidavit of Attorneys' Fees and Costs dated March 22, 2011, which was not contested, therefore, I find as fact herein the amounts due as stated therein. Having considered the nature, extent and difficulty of the services rendered, the fees customarily charged for such services, the time involved, the standing of counsel, and the beneficial results obtained by counsel for the Plaintiff, I find that the sum of \$16,334.50 is a reasonable attorneys' fee to allow under the Note and Mortgage for the services rendered and performed and anticipated to be performed until the final adjudication of this action. Further, I find costs of \$1,369.19 are due, as stated in the Affidavit of Attorneys' Fees and Costs.

25. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, is as follows:

(a)	Principal Balance as of March 22, 2011	\$1,574,188.52
	(Per Diem Rate of \$183.30)	
(b)	Interest (to 3/22/11)	\$ 83,851.66
(c)	Appraisal Fee	\$ 1,050.00
(d)	Costs of Collection	\$ 1,369.10

(e) Attorneys' Fees \$ 16,334.50

TOTAL DEBT due as of
March 22, 2011 secured by the
Note and Mortgage, including
interest to date shown \$1,676,793.78

26. Interest for the period from March 22, 2011 through the date of this judgment, at the stated rate of \$183.30 per diem, shall be added to the above stated "Total Debt" to comprise the amount of the Judgment debt to be entered herein. Interest after the date of Judgment at the rate allowed by law, shall be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

27. Florida Citizens Bank is seeking foreclosure of the Mortgage and specifically demands a deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, pursuant to S.C. Code Ann. Section 29-3-660 (1976) for any deficiency in this action remaining after the sale of the Property.

28. Defendants reserve any rights they have pursuant to Sections 29-3-680 through - 780 (1976).

29. The Plaintiff should have a judgment of foreclosure of its Mortgage; and the mortgaged Property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. AS TO THE FORECLOSURE

1. There is due to the Plaintiff on the Note and Mortgage the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78) representing the "Total Debt" due to Plaintiff as set out in Paragraph 25, *supra*, together with interest at the daily rate stated in Paragraph 26 from the date aforesaid to the date this Judgment is filed.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in the findings of fact, *supra*, and later accrued interest and costs) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the statutory rate.

3. The Defendants liable for the aforesaid debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney, the amount of the Plaintiff's total debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

4. That on default of payment at or before the time herein indicated, the Property described in the Complaint, as hereinafter described, together with any furniture, fixtures, equipment and other Collateral located thereon shall be sold by the undersigned Master-in-Equity, or his agent under the direction of the Master-in-Equity, at public auction at the Charleston County Courthouse, Charleston, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

- a. FOR CASH: The undersigned Master-in-Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) to be paid on the date of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within thirty (30) days, same to be forfeited without further hearing and applied to the costs and Plaintiff's debt.
- b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.5 percent (7.5%) per annum.
- c. The sale shall be subject to taxes, assessments, existing easements and restrictions, and easements and restrictions of record.
- d. This Mortgage constitutes the first lien on the Property.
- e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes.

5. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master-in-Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness. No deposit shall be due if Plaintiff is the successful bidder.

6. A deficiency judgment having been demanded, the sale shall reopen for additional bids on the 30th day after the date of sale; however, Plaintiff may waive any of its rights, including withdrawing its demand for a deficiency judgment prior to sale.

7. The undersigned Master-in-Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof, and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the undersigned Master-in-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured. To the extent that Notice of Sale is published prior to the entry of this order such publication is ratified nunc pro tunc.

8. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the Property shall not be sold, and in the event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

9. That the undersigned Master-in-Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under the Order of Court;

NEXT: To the payment of the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on same; and

NEXT: Any surplus will be held pending further Order of this Court.

10. IT IS FURTHER ORDERED, ADJUGED AND DECREED that Plaintiff have deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, pursuant to S.C. Code Ann. Section 29-3-660 (1976), should the proceeds of sale fail to pay the total debt owed to the Plaintiff, together with the costs and expenses of this action and the costs of sale, which judgment shall be entered without further notice or hearing.

11. IT IS FURTHER ORDERED, ADJUGED AND DECREED that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon (except the tangible collateral sold with the premises) and put the successful bidder or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

12. IT IS FURTHER ORDERED, ADJUGED AND DECREED that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the Property or have been ejected from the Property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said Property, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not

subject to the lien of Plaintiff's Mortgage, which personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

13. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendants named herein and all persons whosoever claiming under him, them, or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

14. IT IS FURTHER ORDERED that pursuant to S.C. Code Ann § 30-9-31, the deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the Property at the time of filing of the notice of pendency of the within action, and the name of the grantee(s), and the Register of Deeds is authorized to omit from the indices pertaining to such conveyances the names of all parties not contained in said Deed.

15. IT IS FURTHER ORDERED that the undersigned Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds.

16. Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject Property.

17. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Sustainable Building Solutions, Inc. on February 14, 2005, and recorded in Book M526 at Page 278 on February 22, 2005, in the Office of the RMC for Charleston County, as modified by the Modification of Mortgage executed by Sustainable Building Solutions, Inc. on March 6, 2006, and recorded in Book B576 at Page 181 on March 13, 2006 in the Office of the RMC for Charleston County.

18. The following is a description of the Premises herein ordered to be sold:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as **Lot 95** on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-'37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "**LOT 124**" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

B. AS TO THE SUIT ON THE GUARANTY

1. The Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, each executed a valid and enforceable unconditional guaranty guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens Bank, agreeing to all terms of the Note, and promising to pay the debt in the full amount stated therein.

2. Under the terms of the Guaranties, Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, are personally obliged to pay all debts, liabilities, and obligations owing from Sustainable Building Solutions, Inc. to Plaintiff.

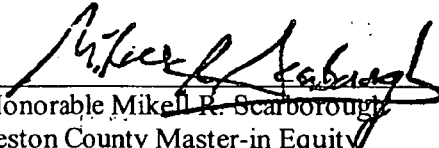
3. As stated above, there is due and owing to Plaintiff the amount of \$1,676,793.78.

4. By not paying the amounts due under the terms and conditions of these Guaranties, the Defendants John P. Porretto, Sr., and Sue A. Porretto have breached the terms and conditions thereof and are personally liable to Plaintiff, both jointly and severally, for the amounts stated herein.

5. As a direct and proximate result of the breach of the Guaranties, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have an unlimited liability to Plaintiff in the amount of \$1,676,793.78 and for which sums they are truly indebted to Plaintiff, and, therefore,

IT IS ORDERED that the Plaintiff Florida Citizens Bank be awarded a judgment against the individual Defendants John P. Porretto, Sr., and Sue A. Porretto, jointly and severally, the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78).

AND IT IS SO ORDERED!


The Honorable Mikel R. Scarborough
Charleston County Master-in-Equity

Charleston, South Carolina

4/11, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
FLORIDA CITIZENS BANK,)
Plaintiff,)
vs.)
SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
THE COUNTY OF CHARLESTON)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

FILED
2011 APR 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

AFFIDAVIT OF TESTIMONY

This case having been referred and heard on March 22, 2011, at the Charleston County Courthouse, Charleston, South Carolina, and which was attended by Catherine H. Bryan, attorney for the Plaintiff, and who is authorized to testify and makes part of this record the following:

1. I am an attorney employed by Lyles & Lyles, LLC, the firm which represents the Plaintiff in the above-captioned matter.
2. The Plaintiff Florida Citizens Bank (hereinafter the "Plaintiff" or "Florida Citizens") is a corporation organized under the laws of the State of Florida which does business in Charleston County, South Carolina, and is the lender on the loan that is the subject of this action.
3. This foreclosure action involves a commercial loan.
4. The Defendant Sustainable Building Solutions, Inc. is the owner of the Property described in paragraph 19 below, is the borrower on the loan that is the subject of this action, and is subject to the jurisdiction of this court.

5. The Defendant John P. Porretto, Sr. is a resident of the State of Texas who personally guaranteed a loan for real property located in Charleston County, South Carolina.
6. The Defendant Sue A. Porretto is a resident of Texas who personally guaranteed a loan for real property located in Charleston County, South Carolina.
7. Island Preservation Partnership was made a party to this action upon the belief that it may have some right or claim in the property identified in Paragraph 19 below as "Lot 124", by virtue of that certain mortgage recorded October 1, 2001 in the Charleston County RMC Office in Book T383 at Page 354. The mortgage has been satisfied and Island Preservation Partnership is no longer a party to this action, as evidenced by the Notice of Dismissal as to Island Preservation Partnership Only, dated March 22, 2011, which has been filed by the Plaintiff.
8. This is an action brought by the Plaintiff to foreclose on a mortgage on real property located in Charleston County, South Carolina, which is more specifically described in the Complaint and Lis Pendens filed in this case.
9. The Lis Pendens was filed on April 28, 2010.
10. The Summons and Complaint were filed on April 30, 2010.
11. Defendants above-named were served with the Lis Pendens; Summons; verified Complaint, including Exhibits A, B, C and D; and Fair Debt Collection Notice, via process server on May 14, 2010 as evidenced by the Affidavits of Service filed on May 19, 2010.
12. Counsel for Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto filed an Answer on behalf of same on July 13, 2010.
13. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto, through their attorney of record, were notified of the time, date and place of the hearing in this matter as demonstrated by the Notice of Hearing filed February 24, 2011.

14. At the time of the filing of this action, the Property was titled in the name of Sustainable Building Solutions, Inc.

15. On or about March 6, 2006, Defendant Sustainable Building Solutions, Inc., did execute and deliver to Plaintiff a promissory note (the "March 2006 Note") and promised to pay to Plaintiff the sum of One Million Four Hundred Twenty-Five Thousand and 00/100 Dollars, (\$1,425,000.00) together with interest as provided therein.

16. On or about June 15, 2006, Sustainable Building Solutions, Inc. did execute and deliver a promissory note (the "June 2006 Note") and promised to pay to Plaintiff the sum of One Hundred Seventy-Five Thousand Six Hundred Twelve and 50/100s Dollars (\$175,612.50), together with interest as provided therein.

17. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of One Million Six Hundred Thousand Six Hundred Twelve and 50/100s Dollars (\$1,600,612.50), with interest as provided therein, as renewed by certain promissory notes dated April 15, 2008 and April 15, 2009, and modified by the Debt Modification Agreement dated July 15, 2009, together with certain fees and charges. The above referenced notes and debt modification agreement are collectively referred to as the "Note," true copies of which are attached to the Complaint as Exhibit "A."

18. On or about February 14, 2005, in order to secure the payment of the Note and indebtedness, Sustainable Building Solutions, Inc. made, executed and delivered to Plaintiff a mortgage covering real property located in Charleston County, South Carolina, which was recorded on February 22, 2005, in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage which was recorded on March 13, 2006

in the RMC Office for Charleston County in Book B-576 at Page 181. The mortgage and Modification of Mortgage are hereinafter collectively referred to as the "Mortgage," true copies of which are attached to the Complaint as Exhibit "B."

19. The real property encumbered by the Mortgage (hereinafter referred to as the "Property") is more fully described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as **Lot 95** on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

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ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "**LOT 124**" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

20. The Mortgage constitutes a first priority lien on the Property.
21. The Defendant John P. Porretto, Sr., individually, is made a party to this action by virtue of the unconditional guarantee he signed on or about April 15, 2009, guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens. A true copy of the Guaranty is attached as Exhibit "C" to the Complaint filed in this action.
22. Defendant Sue A. Porretto, individually, is made a party to this action by virtue of the unconditional guarantee she signed on April 15, 2009, guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens. A true copy of the Guaranty is attached as Exhibit "D" to the Complaint filed in this action.
23. According to the terms and conditions of the Note and Mortgage, it is provided that if an event of default occurs, or in the event of non-payment of the Note in full at maturity, the entire unpaid balance of the Note shall, at the option of Florida Citizens, become immediately due and payable, without notice or demand.
24. Further, under the terms and conditions of the Mortgage, it was agreed that in the event the mortgagor failed to pay all taxes and assessments upon the Property when the same shall first become payable, then the mortgagee may cause the same to be paid, together with all penalties and costs incurred thereon, which amount, together with interest thereon, would be secured by the Property.
25. The payments due on the Note and Mortgage are in default and the conditions of the Note and Mortgage have been breached.

26. Pursuant to the terms of the Note, Mortgage, and Guaranties, Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto were obligated to pay to Florida Citizens the sums due and owing thereunder.

27. Despite demand, no payment has been made by the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., or Sue A. Porretto, and Florida Citizens filed this action to foreclose on the property.

28. The Plaintiff demands a deficiency judgment against Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto as demonstrated by the Complaint.

29. As demonstrated by the Complaint, with respect to the suit on the Guaranties, Plaintiff also seeks a judgment against Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, for the entire amount due to Plaintiff.

30. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, are delinquent in the amount due to the Plaintiff which, not including attorneys' fees and costs, is \$1,659,090.18, consisting of:

Principal Balance	\$ 1,574,188.52
Interest through 3/22/11	\$ 83,851.66
Appraisal Fee	\$ 1,050.00
Per Diem Rate	\$ 183.30

31. As provided in the Note, Mortgage and Guaranties, the attorneys' fees, legal expenses, and costs of this action will need to be added to the above referenced amounts for the total amount due in this action.

FURTHER AFFIANT SAYETH NOT.

LYLES & LYLES, LLC

Catherine H. Bryan

By: Catherine H. Bryan

SWORN to before me
this 22nd day of March, 2011

Brenda Rederman

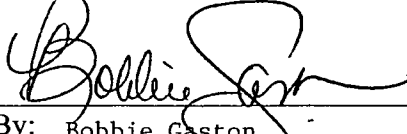
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 1-10-2015

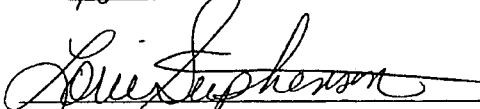
STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO. 2010-CP-10-3586
FLORIDA CITIZENS BANK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	AUTHORIZATION TO TESTIFY
SUSTAINABLE BUILDING	)	
SOLUTIONS, INC., JOHN P.	)	
PORRETTO, SR., SUE A. PORRETTO,	)	
THE COUNTY OF CHARLESTON	)	
AND ISLAND PRESERVATION	)	
PARTNERSHIP,	)	
	)	
Defendants.	)	

The undersigned, a duly authorized officer of Florida Citizens Bank, authorizes Robert T. Lyles, Jr., Catherine H. Bryan, and Lyles & Lyles, LLC, or its representative, to testify on behalf of Florida Citizens Bank in the above referenced foreclosure action.

FLORIDA CITIZENS BANK


 By: Bobbie Gaston
 Its: Loan Operations Officer

SWORN to before me
 this 18th day of March, 2011


 NOTARY PUBLIC FOR FLORIDA
 My Commission Expires:



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

FLORIDA CITIZENS BANK,)
)
Plaintiff,)
)
vs.)
)
SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
THE COUNTY OF CHARLESTON)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

AFFIDAVIT OF ROBERT T. LYLES, JR.

FILED
2011 APR 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME the undersigned, Robert T. Lyles, Jr., who,
being first duly sworn, deposes and says:

1. I am over the age of twenty-one years, and I make this Affidavit on my own personal knowledge.
2. I am an attorney with Lyles & Lyles, LLC, attorneys for the Plaintiff in the above referenced foreclosure action.
3. That as part of the above referenced suit on foreclosure, Plaintiff has placed the following documents in the hands of Lyles & Lyles, LLC:
 - a. Note dated March 6, 2006, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,425,000.00.
 - b. Note dated June 15, 2006, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$175,612.50.

- c. Note dated April 15, 2007, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,600,612.50.
 - d. Note dated April 15, 2008, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,600,612.50.
 - e. Note dated April 15, 2009, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, in the principal amount of \$1,540,612.50.
 - f. Debt Modification Agreement dated July 15, 2009, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc.
 - g. Mortgage in the amount of \$1,000,000.00 executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, filed February 22, 2005, in Book M526 at Page 278.
 - h. Modification of Mortgage executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the amount of \$1,425,000.00, filed March 13, 2006 in Book B576 at Page 181.
 - i. Guaranty executed by Defendant John P. Porretto for the benefit of Plaintiff dated April 15, 2009.
 - j. Guaranty executed by Defendant Sue A. Porretto for the benefit of Plaintiff dated April 15, 2009.
4. Plaintiff's attorneys' fees, legal expenses and court costs are recoverable under the terms of the notes, guaranties, and mortgage securing the notes (referenced above).
5. The Defendants are in default under the terms of said note, mortgage and guaranties, and Plaintiff is entitled to reimbursement for the reasonable attorneys' fees, costs and expenses incurred in the prosecution of this action.
6. There are six factors to consider in determining the reasonableness of an award of attorneys fees as set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 SE2d 659 (1993):
- a. Nature, extent and difficulty of the legal services rendered. In this instance, a Note in the amount of \$1,540,612.50 which is in default and was secured by a parcel of property

located in Charleston County is being foreclosed. The principal, interest, late charges, and other expenses, upon information and belief, total \$1,659,090.18. Services provided by Lyles & Lyles, LLC included the review of relevant loan documents; review of public records, specifically Charleston County RMC lien searches; preparation of pleadings and motions necessary to complete the lawsuit on the promissory notes; preparation for, attendance at, and other actions pursuant to the foreclosure proceedings, including the Motion and Order of Reference, hearing notices and hearing for final judgment.

In addition to the foreclosure action, there were services rendered in connection with potential compromise resolution of this action, including communicating with counsel for the Porretto Defendants and Defendant Sustainable Building Solutions, Inc. and communicating with Plaintiff.

Additional services will be rendered and costs incurred in connection with preparation for and attendance at the hearing for final Order and Judgment on March 22, 2011, and in connection with matters following the final hearing and sale, including preparation of documents in connection with same. Moreover, depending upon the interest shown by the Defendants, third parties, or counsel for Defendants and the inherent negotiations required thereby, other time will likely be committed to the completion of this case.

b. Time and Labor Devoted to Case. The time and labor devoted in this matter is outlined in the following summary of billable hours and rates as of March 21, 2011:

Litigation Attorney/ Legal Staff	Hours	Rate/Hour	Billed Amount
R. Lyles, Jr., Esq.	20.3	\$250.00	5,075.00
C. Bryan, Esq.	53.3	\$175.00	9,327.50
D. Welzig	5.4	\$80.00	432.00
		Total	14,834.50

Fees for Professional Services (incurred through 3/21/11)	\$ 14,834.50
Disbursements (incurred through 3/21/11) (Costs which include postage, copies, long distance telephone Calls, research, filing fees, non-legal professional services, courier, and service of documents)	\$ 1,219.19
Total Billing as of 03/21/11	\$ 16,053.69
Estimated fees from 3/21/11 to conclusion of action	\$ 1,500.00
Estimated Disbursements from 3/21/11 to conclusion of action	\$ 150.00
TOTAL BILLING including estimated billing to conclusion of action	\$ 17,703.69

c. Professional Standing of Counsel and Staff. I graduated from the University of South Carolina School of Law, was admitted to practice in the State of South Carolina in 1987 and have remained in good standing since that time. I am licensed to practice in the State Courts of South Carolina, the United States District Court of South Carolina, the Fourth Circuit Court of Appeals, and the Supreme Court of the United States of America. Catherine H. Bryan is an associate of Lyles & Lyles, LLC. She graduated from the University of South Carolina School of Law in 2007, was admitted to practice in the State of South Carolina in 2007, and has remained in good standing since that time. She has been an associate with Lyles & Lyles, LLC since February of 2008. She is licensed to practice in the State Courts of South Carolina and the United States District Court of South Carolina. Danelle A. Welzig is a litigation paralegal and has provided assistance in the preparation of pleadings, tax and lien research, and follow up scheduling for the final hearing. She has been a paralegal with Lyles & Lyles, LLC since June of 2002. She is a graduate of the College of Charleston and an ABA accredited Paralegal Certification program. The attorneys and other professionals involved in handling this matter have the requisite experience and professional standing in the community to provide the services rendered in this matter.

d. Contingency of Compensation. The compensation was to be paid on an hourly basis, which is the normal method of payment for mortgage foreclosures.

e. Fees Customarily Charged in the Locality for Similar Services. Upon information and belief, the hourly rates charged by the attorneys working on the matter are customary for those involved in providing similar services in this community.

f. Beneficial Results Obtained. The results have yet to be determined as a hearing on the merits and damages hearing has been set for March 22, 2011.

6. The Mortgage provides that all costs and expenses incurred by the mortgagee, including a reasonable counsel fee of not less than ten percent (10%) of the amount due, shall be added to the total debt secured by the mortgage. The total amount due is \$1,659,090.18. The total billing (including estimated billing to conclusion of this action) as set forth in Paragraph 6(b), above is \$16,334.50. Therefore, I believe that attorneys fees of \$16,334.50 are reasonable and should be added, along with the costs and expenses which are \$1,369.19, to the debt secured by the mortgage.

FURTHER AFFIANT SAYETH NOT.

Lyles & Lyles, LLC

By: Robert T. Lyles, Jr.

SWORN to before me
this 22 day of March, 2011

Brenda Godeman
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1-10-2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-10-3586

Florida Citizens Bank,
Plaintiff,

v.

Sustainable Building Solutions, Inc., John P.
Porretto, Sr., Sue A. Porretto, The County of
Charleston, and Island Preservation
Partnership,
Defendants.

ORDER OF APPRAISAL

BY _____

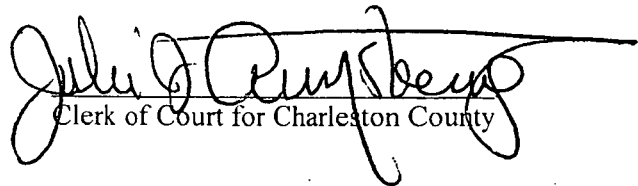
JUL 28 2011
CLERK OF COURT

2011 JUL 28 PM 12:39

FILED

It appearing that on the 27th day of July, 2011, the Petitioners, Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto, through their attorneys filed a petition for an appraisal in the matter above named pursuant to Section 29-3-680 et. seq. of the South Carolina Code of Laws (1976), and appointing Thomas Hartnett as one of the appraisers.

IT IS HEREBY ORDERED that the property be appraised at its true value as of the date of sale by three disinterested freeholders of the County of Charleston; that a copy of this order be served upon the Judgment creditor, or his attorney of record and he shall have ten (10) days thereafter to designate to the undersigned his appraiser.


Clerk of Court for Charleston County

Charleston, South Carolina
7/28, 2011

000030

SMITH, BUNDY, BYBEE & BARNETT, P.C.

ATTORNEYS AT LAW
1037 CHUCK DAWLEY BOULEVARD
SUITE 100, BUILDING F
POST OFFICE BOX 1542
MOUNT PLEASANT, SC 29465
(843) 881-1623
FAX (843) 881-4406
FED ID # 57-0988087

ELLISON D. SMITH, IV
W.H. BUNDY, JR.
RICHARD D. BYBEE
STAN BARNETT

W.H. BUNDY, JR.
whbesq@s3blaw.com
Direct Line (843) 513-1032

M. BRENT MCDONALD

July 27, 2011

The Honorable Julie J. Armstrong
Charleston County Judicial Center
100 Broad Street
Charleston, SC 29401

RE: Florida Citizens Bank, vs. Sustainable Building Solutions, Inc., John P. Porretto, Sr.,
Sue A. Porretto, The County of Charleston, and Island Preservation Partnership
C/A No. 2010-CP-10-3586

Dear Ms. Armstrong:

Please find enclosed the original and one copy of the Civil Motion Coversheet, Petition for Order of Appraisal and proposed Order of Appraisal regarding the above captioned matter.

Please review the proposed Order and if it meets with your approval, sign the same, filing the originals and return the file stamped copy to me in the self addressed envelope enclosed for your convenience.

Also enclosed is our check in the amount of \$25.00 for the filing fee and my client's check in the amount of \$100.00 representing the appraiser fee.

By copy of this letter I am serving these pleadings on all counsel of record as shown by the Certificate of Service attached.

Thank you for your kind attention to this matter. Should you have any questions or concerns please do not hesitate to contact me.

With kindest regards I remain

Very truly yours,



W.H. Bundy, Jr., Esquire

WHB:sfr

Enclosure

cc: Robert T. Lyles, Jr., Esquire

000031

Cause No. 2014-63525

FLORIDA CITIZENS BANK,

Plaintiff,

VS.

JOHN P. PORRETTO, SR., and
SUE A. PORRETTO,

Defendants.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

129th JUDICIAL DISTRICT

OF HARRIS COUNTY, TEXAS

NOTICE OF FILING OF FOREIGN JUDGMENT

To: Defendant/Judgment Debtor JOHN P. PORRETTO, SR. is located at 2640 Arbuckle Street, Houston, TX 77006.

Defendant/Judgment Debtor SUE A. PORRETTO is located at 2640 Arbuckle Street, Houston, TX 77006.

1. You are hereby notified that on this 28th day of October, 2014 Plaintiff/Judgment-Creditor FLORIDA CITIZENS BANK, by and through its attorney of record, James F. Kovach, filed with the Court and under the case style shown above an authenticated and exemplified copy of a foreign judgment for domestication pursuant to Chapter 35 of the Texas Civil Practices and Remedies Code. The filing was made under the provisions of the Uniform Enforcement of Foreign Judgments Act.

2 The names and addresses of the Defendants/Judgment-Debtors are as follows:

Defendant/Judgment Debtor JOHN P. PORRETTO, SR. is located at 2640 Arbuckle Street, Houston, TX 77006.

Defendant/Judgment Debtor SUE A. PORRETTO is located at 2640 Arbuckle Street, Houston, TX 77006.

000032

3. The name and address of Plaintiff/Judgment-Creditor is as follows:

Florida Citizens Bank

c/o Mr. James F. Kovach
McELVANEY & KOVACH, LLP
170 Westcott St.
Houston, TX 77007
(713) 877-1881
(713) 877-8833 Fax

4. Attached hereto as Exhibit "1" is an affidavit showing the last known post office address of the Defendants/Judgment-debtors and the Plaintiff/Judgment Creditor.

5. Attached hereto as Exhibit "2" is an authenticated and exemplified copy of the foreign state judgment, which is summarized as follows:

The judgment was rendered on April 11, 2011, in the case styled *FLORIDA CITIZENS BANK vs. SUSTAINABLE BUILDING SOLUTIONS, INC., JOHN P. PORRETTO, SR., SUE A. PORRETTO, and ISLAND PRESERVATION PARTNERSHIP*, filed as Docket No. 2010-CP-10-3586, in the Court of Common Pleas, Ninth Judicial Circuit, County of Charleston, in the State of South Carolina and awarded Plaintiff the amount of \$1,676,793.78 jointly and severally against Defendants. Credits in the amount of \$90,000.00 dated July 8, 2011 and \$1,067,026.25 dated July 12, 2011 are applied to the Judgment as of this date.

- (A) The Judgment was rendered on April 11, 2011;
- (B) The Judgment was rendered In the Court of Common Please, Ninth Judicial District Court of Charleston County, South Carolina; Before: Judge Mikell R. Scarborough;
- (C) The rendered Judgment is for the following amounts:

ORDERED Judgment is entered in favor of Plaintiff FLORIDA CITIZENS BANK and against Defendants/Judgment debtors *JOHN P. PORRETTO, SR., and SUE A. PORRETTO, jointly and severally* in the amount of \$1,676,793.78. Further, the Judgment Ordered Defendants to pay interest and states that Plaintiff is to recover from Defendants, jointly and severally "[i]nterest after the date of Judgment at the rate allowable by law shall be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed." The Judgment is incorporated herein as if set forth verbatim.

(D) Credits to the Judgment should be applied as follows:

Credit 1: July 8, 2011, Credit in the amount of \$90,000.00; and
Credit 1: July 12, 2011, Credit in the amount of \$1,067,026.25.

Total Credits to Date: \$1,157,026.25

(E) Summary of Remaining Judgment Debt:

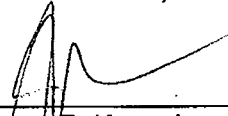
Total Judgment Amount: \$1,676,793.78

Less Credits to Date: <\$1,157,026.25>

Total Outstanding Judgment: \$519,767.53 plus interest and costs

Respectfully submitted,

McELVANEY & KOVACH, L.L.P.

By: 

James F. Kovach

Jim@MKLawyers.net

State Bar No. 11694585

Houston, Texas 77007

(713) 877-1881

(713) 877-8833 (FAX)

Attorneys for Plaintiff/Judgment-Creditor

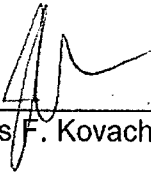
Florida Citizens Bank

CERTIFICATE OF LAST KNOWN ADDRESSES

I hereby certify that the last known addresses of Defendants/Judgment-Debtors are as follows:

Defendant/Judgment Debtor JOHN P. PORRETTO, SR. is located at 2640 Arbuckle Street, Houston, TX 77006.

Defendant/Judgment Debtor SUE A. PORRETTO is located at 2640 Arbuckle Street, Houston, TX 77006.



James F. Kovach

PROOF OF MAILING

I hereby certify that the above and foregoing NOTICE OF FILING OF FOREIGN JUDGMENT has been mailed to the Defendants/Judgment-Debtors at the address shown herein by certified mail, by depositing it, postage paid, in an official depository under the care and custody of the United States Postal Service on October 28, 2014, enclosed in an envelope properly addressed to Defendant/Judgment-Debtors with Certified Mail No. return receipt requested as follows:

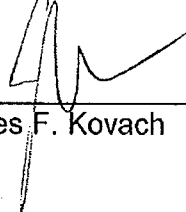
Current addresses:

Certified No. 70073020000084845822

Defendant/Judgment Debtor JOHN P. PORRETTO, SR. is located at 2640 Arbuckle Street, Houston, TX 77006.

Certified No. 70073020000084845839

Defendant/Judgment Debtor SUE A. PORRETTO is located at 2640 Arbuckle Street, Houston, TX 77006.



James F. Kovach

00902/NoticeofFiling.ForeignJmt.doc

AFFIDAVIT

THE STATE OF TEXAS

§

COUNTY OF HARRIS

§

§

BEFORE ME, the undersigned authority, on this day personally appeared James F. Kovach, who, upon being by me first duly sworn, stated as follows:

"My name is James F. Kovach and I am one of the attorneys of record for Plaintiff and Judgment-Debtor. I am over twenty-one years of age and have never been convicted of a felony or a crime involving moral turpitude, nor have I ever been adjudged incompetent. I am of sound mind, duly competent, and capable and qualified in all respects to make this Affidavit from my own personal knowledge. I am personally acquainted with the facts herein stated.

I AM THE ATTORNEY FOR PLAINTIFF/JUDGMENT-CREDITOR AND I THEREBY CERTIFY THAT Notice of Filing of Foreign Judgment HAS BEEN MAILED TO THE DEFENDANTS/JUDGMENT-DEBTORS AT THE ADDRESSES AS SHOWN IN THE NOTICE BY CERTIFIED MAIL, BY DEPOSITING IT, POSTAGE PAID, IN AN OFFICIAL DEPOSITORY UNDER THE CARE AND CUSTODY OF THE UNITED STATES POSTAL SERVICE ON OCTOBER 28, 2014, ENCLOSED IN AN ENVELOPE PROPERLY ADDRESSED TO DEFENDANTS/JUDGMENT-DEBTORS WITH CERTIFIED MAIL NOS. 7007 3020 0000 8484 5822 AND 7007 3020 0000 8484 5839, RETURN RECEIPT REQUESTED AT THE FOLLOWING ADDRESSES:

Certified No. 7007 3020 0000 8484 5822

John P. Porretto, Sr.
2640 Arbuckle St.
Houston, TX 77006

Certified No. 7007 3020 0000 8484 5839

Sue A. Porretto
2640 Arbuckle St.
Houston, TX 77006

EXHIBIT 11

000036

The address of Plaintiff/Judgment Creditor is

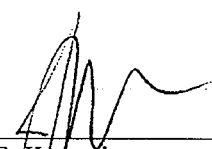
FLORIDA CITIZENS BANK
c/o McElvaney & Kovach, LLP
170 Westcott St.
Houston, TX 77007

Plaintiff's direct office mailing address is

Florida Citizens Bank
c/o Mr. Carl Walls, President
3919 W. Newberry Rd.
Gainesville, FL 32607

Each and every fact, matter, and opinion stated herein is true and correct within my own personal knowledge."

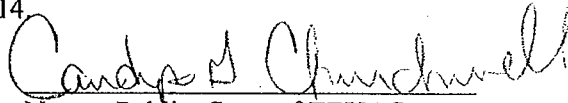
FURTHER AFFIANT SAYETH NAUGHT:



James F. Kovach

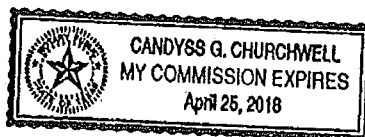
SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority,

on this 28th day of October, 2014



Notary Public, State of TEXAS

JFK:
00902\aff.address.jfk.doc



000037

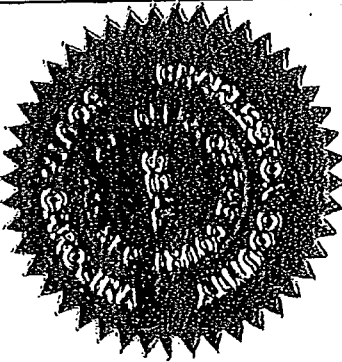
STATE OF SOUTH CAROLINA
OFFICE OF THE CLERK OF COURT
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY

EXEMPLIFICATION

I, Julie J. Armstrong as Clerk of Court for Common Pleas and General Sessions in and for the County of Charleston, South Carolina, legal custodian of the records, documents, and papers of, or appertain to, the Court, and on file or of record in the office of said Court, certify that the attached copies of the documents described below are true and accurate reproductions of the originals now on file in this office.

Docket or Judgment Roll Number 2010-CP-10-3586

Florida Citizens Bank VS. John P Porretto Sr and Sue A Porretto



Date:

9/26/14

Signature:

Julie J. Armstrong
Julie J. Armstrong

As a Presiding Judge of said court, I certify that the signature appearing above is that of the Clerk of Court for Charleston County, who is duly sworn. I further certify that the seal affixed to the certificate appears to be the seal of this court and that it has been used here in good form by the proper officer.

Date:

9/26/2014

Signature of Judge:

R. M. [Signature]

As Clerk of Court for Charleston, South Carolina, I certify that the signature appearing above is that of the sworn judge of said court, duly commissioned and qualified.



Date:

9/26/14

Signature:

Julie J. Armstrong
Julie J. Armstrong

EXHIBIT "2"

000038

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
FLORIDA CITIZENS BANK,)
)
Plaintiff,)
)
vs.)
)
SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-103586

ORDER OF JUDGMENT AND
FORECLOSURE
AND
ORDER OF JUDGMENT FOR
SUIT ON GUARANTY

FILED
2011 APR 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

Pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure*, the above-captioned matter was referred to the undersigned Master in Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment, and to hear and determine any post-judgment proceedings. Any appeal from the decision of the Master in Equity shall be directly to the South Carolina Supreme Court.

Pursuant to the Order of Reference, a hearing was held on March 22, 2011 before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County. Catherine H. Bryan of Lyles & Lyles, LLC appeared for the Plaintiff. No appearance was made on behalf of the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto. Island Preservation Partnership has been dismissed from this action as evidenced by Plaintiff's Notice of Dismissal as to Island Preservation Partnership Only dated March 22, 2011.

At the hearing, the testimony was taken, which is reported herewith, and from the record in this case including the pleadings, admissions, testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Lis Pendens was filed on April 28, 2010.
2. The Summons and Complaint were filed on April 30, 2010.
3. Since this foreclosure action involves a commercial loan, the Home Affordable Modification Program is inapplicable.
4. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., Sue A. Porretto, and Island Preservation Partnership were served with the Lis Pendens; Summons; verified Complaint, including Exhibits A, B, C, and D; and Fair Debt Collection Notice via process server on May 14, 2010, as evidenced by the Affidavits of Service filed on May 19, 2010.
5. The Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto filed an answer on July 13, 2010, admitting the allegations of the Complaint.
6. The Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto, through their attorney of record, were notified of the time, date and place of the hearing in this matter on January 25, 2011, as indicated by the filed Notice of Hearing.
7. On or about March 6, 2006, Plaintiff made a loan to Sustainable Building Solutions, Inc. as evidenced by a note in the principal amount of One Million Four Hundred Twenty-Five Thousand and 00/100 Dollars (\$1,425,000.00) with interest as provided therein (the "March 2006 Note").
8. On or about June 15, 2006, Plaintiff made a loan to Sustainable Building Solutions as evidenced by the note in the principal amount of One Hundred Seventy-Five Thousand Six Hundred Twelve and 50/100 Dollars (\$175,612.50) with interest as provided therein (the "June 2006 Note").

9. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of One Million Six Hundred Thousand Six Hundred Twelve and 50/100s Dollars (\$1,600,612.50) with interest as provided therein (the "April 2007 Note"), as renewed by certain promissory notes dated April 15, 2008 (the "April 2008 Note") and April 15, 2009 (the "April 2009 Note"), and modified by the Debt Modification Agreement dated July 15, 2009 (the "July 2009 Modification"), together with certain fees and charges.

10. True copies of the March 2006 Note, June 2006 Note, April 2007 Note, April 2008 Note, April 2009 Note and July 2009 Modification (hereinafter collectively referred to as the "Note") are incorporated herein by reference.

11. On or about February 14, 2005, in order to secure the payment of the Note and indebtedness, Sustainable Building Solutions, Inc. made, executed and delivered to Plaintiff a mortgage covering real property located in Charleston County, South Carolina, which was recorded on February 22, 2005, in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage, dated March 6, 2006, and recorded on March 13, 2006 in the RMC Office for Charleston County in Book B-576 at Page 181. The mortgage and Modification of Mortgage are hereinafter collectively referred to as the "Mortgage."

12. The real property encumbered by the Mortgage (hereinafter referred to as the "Property") is more fully described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and

recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

13. A true copy of the Mortgage is incorporated herein by reference.
14. The Mortgage constitutes a first lien on the Property.
15. On or about April 15, 2009, John P. Porretto, Sr., individually, and Sue A. Porretto, individually, each executed and delivered to the Plaintiff a valid and enforceable Guaranty (hereinafter referred to as the "Guaranties"), guaranteeing payment to Plaintiff all sums owing under the Note, promising to pay the debt in the full amount as stated therein, and agreeing to all terms of the Note.

16. The Guaranties constitute valid and enforceable contracts.

17. By failing and refusing to make the required payments to Florida Citizens Bank, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have breached the terms of the unconditional guarantees without legal excuse and are personally liable under the terms of the Guaranties for the full amount of indebtedness to Florida Citizens Bank as set forth more fully herein.

18. According to the terms of the Note and Mortgage, if an event of default occurs or in the event of non-payment of the Note in full at maturity, the entire unpaid balance of the Note shall, at the option of Florida Citizens Bank, become immediately due and payable, without notice or demand.

19. Under the terms of the Mortgage, it was agreed that in the event the mortgagor failed to pay all taxes and assessments upon the Property when the same shall first become payable, then the mortgagee may cause the same to be paid, together with all penalties and costs incurred thereon, which amount, together with interest thereon, would be secured by the Property.

20. The payments due under the Note and Mortgage are in default and the conditions of the Note and Mortgage have been breached.

21. Pursuant to the terms of the Note and Mortgage, the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, were obligated to pay the Plaintiff the sums due and owing thereunder.

22. Despite demand, no payment has been made by the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, or Sue A. Porretto, individually, and Florida Citizens Bank filed this action to foreclose on the property.

23. The Mortgage provides that, in the event legal proceedings are instituted for the foreclosure of the Mortgage, or should the Note be placed in the hands of any attorney for collection, all costs and expenses incurred by Florida Citizens Bank, including a reasonable counsel fee of not less than ten percent (10%) of the amount involved, shall be added to the total debt secured by the Mortgage. Further, the Note provides that the Borrower will pay Lender the costs and expenses of collection, including Lender's reasonable attorneys' fees, Lender's legal expenses, and any court costs.

24. Counsel for the Plaintiff filed an Affidavit of Attorneys' Fees and Costs dated March 22, 2011, which was not contested, therefore, I find as fact herein the amounts due as stated therein. Having considered the nature, extent and difficulty of the services rendered, the fees customarily charged for such services, the time involved, the standing of counsel, and the beneficial results obtained by counsel for the Plaintiff, I find that the sum of \$16,334.50 is a reasonable attorneys' fee to allow under the Note and Mortgage for the services rendered and performed and anticipated to be performed until the final adjudication of this action. Further, I find costs of \$1,369.19 are due, as stated in the Affidavit of Attorneys' Fees and Costs.

25. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, is as follows:

(a)	Prinoipal Balance as of March 22, 2011	\$1,574,188.52
	(Per Diem Rate of \$183.30)	
(b)	Interest (to 3/22/11)	\$ 83,851.66
(c)	Appraisal Fee	\$ 1,050.00
(d)	Costs of Collection	\$ 1,369.10

(e) Attorneys' Fees

\$ 16,334.50

TOTAL DEBT due as of
March 22, 2011 secured by the
Note and Mortgage, including
interest to date shown

\$1,676,793.78

26. Interest for the period from March 22, 2011 through the date of this judgment, at the stated rate of \$183.30 per diem, shall be added to the above stated "Total Debt" to comprise the amount of the Judgment debt to be entered herein. Interest after the date of Judgment at the rate allowed by law, shall be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

27. Florida Citizens Bank is seeking foreclosure of the Mortgage and specifically demands a deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, pursuant to S.C. Code Ann. Section 29-3-660 (1976) for any deficiency in this action remaining after the sale of the Property.

28. Defendants reserve any rights they have pursuant to Sections 29-3-680 through - 780 (1976).

29. The Plaintiff should have a judgment of foreclosure of its Mortgage; and the mortgaged Property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. AS TO THE FORECLOSURE

1. There is due to the Plaintiff on the Note and Mortgage the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78) representing the "Total Debt" due to Plaintiff as set out in Paragraph 25, *supra*, together with interest at the daily rate stated in Paragraph 26 from the date aforesaid to the date this Judgment is filed.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in the findings of fact, *supra*, and later accrued interest and costs) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the statutory rate.

3. The Defendants liable for the aforesaid debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney, the amount of the Plaintiff's total debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

4. That on default of payment at or before the time herein indicated, the Property described in the Complaint, as hereinafter described, together with any furniture, fixtures, equipment and other Collateral located thereon shall be sold by the undersigned Master-in-Equity, or his agent under the direction of the Master-in-Equity, at public auction at the Charleston County Courthouse, Charleston, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

- a. FOR CASH: The undersigned Master-in-Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) to be paid on the date of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within thirty (30) days, same to be forfeited without further hearing and applied to the costs and Plaintiff's debt.
- b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.5 percent (7.5%) per annum.
- c. The sale shall be subject to taxes, assessments, existing easements and restrictions, and easements and restrictions of record.
- d. This Mortgage constitutes the first lien on the Property.
- e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes.

5. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master-in-Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness. No deposit shall be due if Plaintiff is the successful bidder.

6. A deficiency judgment having been demanded, the sale shall reopen for additional bids on the 30th day after the date of sale; however, Plaintiff may waive any of its rights, including withdrawing its demand for a deficiency judgment prior to sale.

7. The undersigned Master-in-Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the undersigned Master-in-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured. To the extent that Notice of Sale is published prior to the entry of this order such publication is ratified nunc pro tunc.

8. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the Property shall not be sold, and in the event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

9. That the undersigned Master-in-Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under the Order of Court;

NEXT: To the payment of the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on same; and

NEXT: Any surplus will be held pending further Order of this Court.

10. IT IS FURTHER ORDERED, ADJUGED AND DECREED that Plaintiff have deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, pursuant to S.C. Code Ann. Section 29-3-660 (1976), should the proceeds of sale fail to pay the total debt owed to the Plaintiff, together with the costs and expenses of this action and the costs of sale, which judgment shall be entered without further notice or hearing.

11. IT IS FURTHER ORDERED, ADJUGED AND DECREED that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon (except the tangible collateral sold with the premises) and put the successful bidder or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

12. IT IS FURTHER ORDERED, ADJUGED AND DECREED that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the Property or have been ejected from the Property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said Property, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not

subject to the lien of Plaintiff's Mortgage, which personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

13. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendants named herein and all persons whosoever claiming under him, them, or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

14. IT IS FURTHER ORDERED that pursuant to S.C. Code Ann § 30-9-31, the deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the Property at the time of filing of the notice of pendency of the within action, and the name of the grantee(s), and the Register of Deeds is authorized to omit from the indices pertaining to such conveyances the names of all parties not contained in said Deed.

15. IT IS FURTHER ORDERED that the undersigned Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds.

16. Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject Property.

17. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Sustainable Building Solutions, Inc. on February 14, 2005, and recorded in Book M526 at Page 278 on February 22, 2005, in the Office of the RMC for Charleston County, as modified by the Modification of Mortgage executed by Sustainable Building Solutions, Inc. on March 6, 2006, and recorded in Book B576 at Page 181 on March 13, 2006 in the Office of the RMC for Charleston County.

18. The following is a description of the Premises herein ordered to be sold:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-'37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

B. AS TO THE SUIT ON THE GUARANTY

1. The Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, each executed a valid and enforceable unconditional guaranty guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens Bank, agreeing to all terms of the Note, and promising to pay the debt in the full amount stated therein.

2. Under the terms of the Guaranties, Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, are personally obliged to pay all debts, liabilities, and obligations owing from Sustainable Building Solutions, Inc. to Plaintiff.

3. As stated above, there is due and owing to Plaintiff the amount of \$1,676,793.78.

4. By not paying the amounts due under the terms and conditions of these Guaranties, the Defendants John P. Porretto, Sr., and Sue A. Porretto have breached the terms and conditions thereof and are personally liable to Plaintiff, both jointly and severally, for the amounts stated herein.

5. As a direct and proximate result of the breach of the Guaranties, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have an unlimited liability to Plaintiff in the amount of \$1,676,793.78 and for which sums they are truly indebted to Plaintiff, and, therefore,

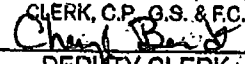
IT IS ORDERED that the Plaintiff Florida Citizens Bank be awarded a judgment against the individual Defendants John P. Porretto, Sr., and Sue A. Porretto, jointly and severally, the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78).

AND IT IS SO ORDERED!


The Honorable Mikell R. Scarborough
Charleston County Master-in Equity

Charleston, South Carolina

4/11, 2011

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., O.S. & F.C.
By 
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

FLORIDA CITIZENS BANK,)
)
Plaintiff,)
)
vs.)
)
SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
THE COUNTY OF CHARLESTON)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

FILED
2011 APR 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

AFFIDAVIT OF TESTIMONY

This case having been referred and heard on March 22, 2011, at the Charleston County Courthouse, Charleston, South Carolina, and which was attended by Catherine H. Bryan, attorney for the Plaintiff, and who is authorized to testify and makes part of this record the following:

1. I am an attorney employed by Lyles & Lyles, LLC, the firm which represents the Plaintiff in the above-captioned matter.
2. The Plaintiff Florida Citizens Bank (hereinafter the "Plaintiff" or "Florida Citizens") is a corporation organized under the laws of the State of Florida which does business in Charleston County, South Carolina, and is the lender on the loan that is the subject of this action.
3. This foreclosure action involves a commercial loan.
4. The Defendant Sustainable Building Solutions, Inc. is the owner of the Property described in paragraph 19 below, is the borrower on the loan that is the subject of this action, and is subject to the jurisdiction of this court.

5. The Defendant John P. Porretto, Sr. is a resident of the State of Texas who personally guaranteed a loan for real property located in Charleston County, South Carolina.
6. The Defendant Sue A. Porretto is a resident of Texas who personally guaranteed a loan for real property located in Charleston County, South Carolina.
7. Island Preservation Partnership was made a party to this action upon the belief that it may have some right or claim in the property identified in Paragraph 19 below as "Lot 124", by virtue of that certain mortgage recorded October 1, 2001 in the Charleston County RMC Office in Book T383 at Page 354. The mortgage has been satisfied and Island Preservation Partnership is no longer a party to this action, as evidenced by the Notice of Dismissal as to Island Preservation Partnership Only, dated March 22, 2011, which has been filed by the Plaintiff.
8. This is an action brought by the Plaintiff to foreclose on a mortgage on real property located in Charleston County, South Carolina, which is more specifically described in the Complaint and Lis Pendens filed in this case.
9. The Lis Pendens was filed on April 28, 2010.
10. The Summons and Complaint were filed on April 30, 2010.
11. Defendants above-named were served with the Lis Pendens; Summons; verified Complaint, including Exhibits A, B, C and D; and Fair Debt Collection Notice, via process server on May 14, 2010 as evidenced by the Affidavits of Service filed on May 19, 2010.
12. Counsel for Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto filed an Answer on behalf of same on July 13, 2010.
13. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto, through their attorney of record, were notified of the time, date and place of the hearing in this matter as demonstrated by the Notice of Hearing filed February 24, 2011.

14. At the time of the filing of this action, the Property was titled in the name of Sustainable Building Solutions, Inc.

15. On or about March 6, 2006, Defendant Sustainable Building Solutions, Inc., did execute and deliver to Plaintiff a promissory note (the "March 2006 Note") and promised to pay to Plaintiff the sum of One Million Four Hundred Twenty-Five Thousand and 00/100 Dollars, (\$1,425,000.00) together with interest as provided therein.

16. On or about June 15, 2006, Sustainable Building Solutions, Inc. did execute and deliver a promissory note (the "June 2006 Note") and promised to pay to Plaintiff the sum of One Hundred Seventy-Five Thousand Six Hundred Twelve and 50/100s Dollars (\$175,612.50), together with interest as provided therein.

17. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of One Million Six Hundred Thousand Six Hundred Twelve and 50/100s Dollars (\$1,600,612.50), with interest as provided therein, as renewed by certain promissory notes dated April 15, 2008 and April 15, 2009, and modified by the Debt Modification Agreement dated July 15, 2009, together with certain fees and charges. The above referenced notes and debt modification agreement are collectively referred to as the "Note," true copies of which are attached to the Complaint as Exhibit "A."

18. On or about February 14, 2005, in order to secure the payment of the Note and indebtedness, Sustainable Building Solutions, Inc. made, executed and delivered to Plaintiff a mortgage covering real property located in Charleston County, South Carolina, which was recorded on February 22, 2005, in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage which was recorded on March 13, 2006

in the RMC Office for Charleston County in Book B-576 at Page 181. The mortgage and Modification of Mortgage are hereinafter collectively referred to as the "Mortgage," true copies of which are attached to the Complaint as Exhibit "B."

19. The real property encumbered by the Mortgage (hereinafter referred to as the "Property") is more fully described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-'37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

20. The Mortgage constitutes a first priority lien on the Property.
21. The Defendant John P. Porretto, Sr., individually, is made a party to this action by virtue of the unconditional guarantee he signed on or about April 15, 2009, guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens. A true copy of the Guaranty is attached as Exhibit "C" to the Complaint filed in this action.
22. Defendant Sue A. Porretto, individually, is made a party to this action by virtue of the unconditional guarantee she signed on April 15, 2009, guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens. A true copy of the Guaranty is attached as Exhibit "D" to the Complaint filed in this action.
23. According to the terms and conditions of the Note and Mortgage, it is provided that if an event of default occurs, or in the event of non-payment of the Note in full at maturity, the entire unpaid balance of the Note shall, at the option of Florida Citizens, become immediately due and payable, without notice or demand.
24. Further, under the terms and conditions of the Mortgage, it was agreed that in the event the mortgagor failed to pay all taxes and assessments upon the Property when the same shall first become payable, then the mortgagee may cause the same to be paid, together with all penalties and costs incurred thereon, which amount, together with interest thereon, would be secured by the Property.
25. The payments due on the Note and Mortgage are in default and the conditions of the Note and Mortgage have been breached.

26. Pursuant to the terms of the Note, Mortgage, and Guaranties, Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto were obligated to pay to Florida Citizens the sums due and owing thereunder.

27. Despite demand, no payment has been made by the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., or Sue A. Porretto, and Florida Citizens filed this action to foreclose on the property.

28. The Plaintiff demands a deficiency judgment against Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto as demonstrated by the Complaint.

29. As demonstrated by the Complaint, with respect to the suit on the Guaranties, Plaintiff also seeks a judgment against Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, for the entire amount due to Plaintiff.

30. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, are delinquent in the amount due to the Plaintiff which, not including attorneys' fees and costs, is \$1,659,090.18, consisting of:

Principal Balance	\$ 1,574,188.52
Interest through 3/22/11	\$ 83,851.66
Appraisal Fee	\$ 1,050.00
Per Diem Rate	\$ 183.30

31. As provided in the Note, Mortgage and Guaranties, the attorneys' fees, legal expenses, and costs of this action will need to be added to the above referenced amounts for the total amount due in this action.

FURTHER AFFIANT SAYETH NOT.

LYLES & LYLES, LLC

Catherine H. Bryan

By: Catherine H. Bryan

SWORN to before me
this 22nd day of March, 2011

Brenda Rederman

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 1-10-2015

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

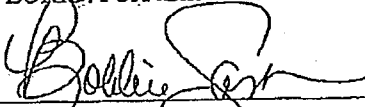
Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

AUTHORIZATION TO TESTIFY

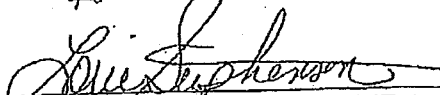
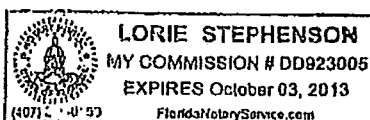
The undersigned, a duly authorized officer of Florida Citizens Bank, authorizes Robert T. Lyles, Jr., Catherine H. Bryan, and Lyles & Lyles, LLC, or its representative, to testify on behalf of Florida Citizens Bank in the above referenced foreclosure action.

FLORIDA CITIZENS BANK



By: Bobbie Gaston
Its: Loan Operations Officer

SWORN to before me
this 18th day of March, 2011


NOTARY PUBLIC FOR FLORIDA
My Commission Expires:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

AFFIDAVIT OF ROBERT T. LYLES, JR.

FILED
2011 APR 13 PM 4:28
JULIE J. CHRISTOPHER
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME the undersigned, Robert T. Lyles, Jr., who,
being first duly sworn, deposes and says:

1. I am over the age of twenty-one years, and I make this Affidavit on my own personal knowledge.
2. I am an attorney with Lyles & Lyles, LLC, attorneys for the Plaintiff in the above referenced foreclosure action.
3. That as part of the above referenced suit on foreclosure, Plaintiff has placed the following documents in the hands of Lyles & Lyles, LLC:
 - a. Note dated March 6, 2006, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,425,000.00.
 - b. Note dated June 15, 2006, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$175,612.50.

- c. Note dated April 15, 2007, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,600,612.50.
 - d. Note dated April 15, 2008, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,600,612.50.
 - e. Note dated April 15, 2009, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, in the principal amount of \$1,540,612.50.
 - f. Debt Modification Agreement dated July 15, 2009, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc.
 - g. Mortgage in the amount of \$1,000,000.00 executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, filed February 22, 2005, in Book M526 at Page 278.
 - h. Modification of Mortgage executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the amount of \$1,425,000.00, filed March 13, 2006 in Book B576 at Page 181.
 - i. Guaranty executed by Defendant John P. Porretto for the benefit of Plaintiff dated April 15, 2009.
 - j. Guaranty executed by Defendant Sue A. Porretto for the benefit of Plaintiff dated April 15, 2009.
4. Plaintiff's attorneys' fees, legal expenses and court costs are recoverable under the terms of the notes, guaranties, and mortgage securing the notes (referenced above).
5. The Defendants are in default under the terms of said note, mortgage and guaranties, and Plaintiff is entitled to reimbursement for the reasonable attorneys' fees, costs and expenses incurred in the prosecution of this action.
6. There are six factors to consider in determining the reasonableness of an award of attorneys fees as set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 SE2d 659 (1993):
- a. Nature, extent and difficulty of the legal services rendered. In this instance, a Note in the amount of \$1,540,612.50 which is in default and was secured by a parcel of property

located in Charleston County is being foreclosed. The principal, interest, late charges, and other expenses, upon information and belief, total \$1,659,090.18. Services provided by Lyles & Lyles, LLC included the review of relevant loan documents; review of public records, specifically Charleston County RMC lien searches; preparation of pleadings and motions necessary to complete the lawsuit on the promissory notes; preparation for, attendance at, and other actions pursuant to the foreclosure proceedings, including the Motion and Order of Reference, hearing notices and hearing for final judgment.

In addition to the foreclosure action, there were services rendered in connection with potential compromise resolution of this action, including communicating with counsel for the Porretto Defendants and Defendant Sustainable Building Solutions, Inc. and communicating with Plaintiff.

Additional services will be rendered and costs incurred in connection with preparation for and attendance at the hearing for final Order and Judgment on March 22, 2011, and in connection with matters following the final hearing and sale, including preparation of documents in connection with same. Moreover, depending upon the interest shown by the Defendants, third parties, or counsel for Defendants and the inherent negotiations required thereby, other time will likely be committed to the completion of this case.

b. Time and Labor Devoted to Case. The time and labor devoted in this matter is outlined in the following summary of billable hours and rates as of March 21, 2011:

Litigation Attorney/ Legal Staff	Hours	Rate/Hour	Billed Amount
R. Lyles, Jr., Esq.	20.3	\$250.00	5,075.00
C. Bryan, Esq.	53.3	\$175.00	9,327.50
D. Welzig	5.4	\$80.00	432.00
		Total	14,834.50

Fees for Professional Services (incurred through 3/21/11)	\$ 14,834.50
Disbursements (incurred through 3/21/11) (Costs which include postage, copies, long distance telephone Calls, research, filing fees, non-legal professional services, courier, and service of documents)	\$ 1,219.19
Total Billing as of 03/21/11	\$ 16,053.69
Estimated fees from 3/21/11 to conclusion of action	\$ 1,500.00
Estimated Disbursements from 3/21/11 to conclusion of action	\$ 150.00
TOTAL BILLING including estimated billing to conclusion of action	\$ 17,703.69

c. Professional Standing of Counsel and Staff. I graduated from the University of South Carolina School of Law, was admitted to practice in the State of South Carolina in 1987 and have remained in good standing since that time. I am licensed to practice in the State Courts of South Carolina, the United States District Court of South Carolina, the Fourth Circuit Court of Appeals, and the Supreme Court of the United States of America. Catherine H. Bryan is an associate of Lyles & Lyles, LLC. She graduated from the University of South Carolina School of Law in 2007, was admitted to practice in the State of South Carolina in 2007, and has remained in good standing since that time. She has been an associate with Lyles & Lyles, LLC since February of 2008. She is licensed to practice in the State Courts of South Carolina and the United States District Court of South Carolina. Danelle A. Welzig is a litigation paralegal and has provided assistance in the preparation of pleadings, tax and lien research, and follow up scheduling for the final hearing. She has been a paralegal with Lyles & Lyles, LLC since June of 2002. She is a graduate of the College of Charleston and an ABA accredited Paralegal Certification program. The attorneys and other professionals involved in handling this matter have the requisite experience and professional standing in the community to provide the services rendered in this matter.

d. Contingency of Compensation. The compensation was to be paid on an hourly basis, which is the normal method of payment for mortgage foreclosures.

e. Fees Customarily Charged in the Locality for Similar Services. Upon information and belief, the hourly rates charged by the attorneys working on the matter are customary for those involved in providing similar services in this community.

f. Beneficial Results Obtained. The results have yet to be determined as a hearing on the merits and damages hearing has been set for March 22, 2011.

6. The Mortgage provides that all costs and expenses incurred by the mortgagee, including a reasonable counsel fee of not less than ten percent (10%) of the amount due, shall be added to the total debt secured by the mortgage. The total amount due is \$1,659,090.18. The total billing (including estimated billing to conclusion of this action) as set forth in Paragraph 6(b), above is \$16,334.50. Therefore, I believe that attorneys fees of \$16,334.50 are reasonable and should be added, along with the costs and expenses which are \$1,369.19, to the debt secured by the mortgage.

FURTHER AFFIANT SAYETH NOT.

Lyles & Lyles, LLC

By: Robert T. Lyles, Jr.

SWORN to before me
this 22 day of March, 2011

Brenda Pederman
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1-10-2015

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-3586

Florida Citizens Bank

Sustainable Building Solutions

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Master in Equity

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Defendant's Motion for Relief from Judgment is GRANTED. No Deficiency Judgment was entered as Plaintiff waived its right to any deficiency judgment in this action. Accordingly, no deficiency sale occurred and none entered. See Attached Waiver of Deficiency Judgment entered April 26, 2011. Formal Order to Follow.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

3/25/2016

Date

SCRPC Form 4C (10/2011)

Page 1 of 2
000066

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2010-CP-10-3586

WAIVER OF DEFICIENCY JUDGMENT

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiff hereby waives its right to any deficiency judgment in this action.

LYLES & LYLES, LLC

By: Catherine Bryan
Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

Attorney for Plaintiff
Florida Citizens Bank

Charleston, South Carolina

April 26, 2011

000067

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2010-CP-10-3586

Plaintiff,

versus

**SUSTAINABLE BUILDING SOLUTIONS,
INC., JOHN PORRETTO, SR., SUE A.
PORRETTO, THE COUNTY OF
CHARLESTON, AND ISLAND
PRESERVATION PARTNERSHIP**

Defendants.

**ORDER GRANTING MOTION
FOR RELIEF FROM JUDGMENT**

2016 MAR 30 PM 4:00
JUDGE: ARSTRONG
CLERK OF COURT
MOTION
JUDGMENT
BY

FILED

Defendants John Porretto, Sr., and Sue A. Porretto filed a motion dated October 30, 2015, seeking clarification of the Court's prior order dated April 11, 2011 and relief from judgment pursuant to Rule 60(b)(5) of the South Carolina Rules of Civil Procedure. The need for this motion is that the Plaintiff has domesticated this Court's prior order in the State of Texas and seeks to collect an alleged balance on the loan from Defendants, the guarantors of the loan. The legal question raised by the motion is whether Plaintiff has waived its right to a deficiency judgment against the guarantors, Defendants John and Sue Porretto.

This Court issued an order dated April 11, 2011, finding that Sustainable Building Solutions Inc., John Porretto and Sue Porretto were all liable for the debt to Florida

da

A handwritten signature, possibly reading 'AL', is written in black ink. It is enclosed within a hand-drawn oval border. The signature is located in the upper right quadrant of the page.

000068

Citizens Bank. Legal title to the real estate collateral belonged to the corporate entity. Mr. and Mrs. Porretto were liable as guarantors. The order found that the Plaintiff may waive rights including demand for deficiency. The order found at paragraph 28 "Defendants reserve any rights they have pursuant to 29-3-680 through 780 (1976)." These sections refer to the rights of appraisal.

On April 26, 2011, Plaintiff filed a waiver of deficiency judgment. It reads simply: "Plaintiff hereby waives its right to *any* deficiency judgment in this action." [emphasis added]. Subsequently the notice of Master's Sale filed in June 2011 referred to the fact that the Complaint contained no waiver of deficiency judgment and accordingly scheduled the sale to be reopened in August 2011. However, on June 21, 2011, Attorney Catherine Bryan, representing Plaintiff, wrote to the Clerk of Court informing the clerk: "While the Master's Sale notice correctly notes that the Plaintiff did not waive its right in the deficiency judgment in the Complaint, Plaintiff expressly waived its right to any deficiency in the Waiver of Deficiency judgment filed April 26, 2011. *Accordingly, I would ask that the sale not be reopened on August 4.*" [emphasis added].

The Master's Sale took place on July 8, 2011. One improved parcel was purchased by Duncan and Brooks for consideration of \$1,075,000.00. The undeveloped lot was acquired by the Plaintiff Florida Citizens bank for \$90,000. The bank has since transferred title to that property on October 11, 2012 for \$70,000.

Perhaps because of the confusion created by the notice of Master's Sale, Attorney Bill Bundy, representing the Porrettos, filed a petition for appraisal rights on July 27, 2011. Attorney Catherine Bryan, representing Plaintiff, subsequently wrote to Mr. Bundy on August 3, 2011, requesting that he withdraw the petition for appraisal. Mr. Bundy replied

to Ms. Bryan on the same date informing her that he would not withdraw the petition for appraisal unless the Plaintiff waived the deficiency judgment against the Porrettos. The parties both designated appraisers. However, the Court did not designate a third appraiser. Also, the bidding was not reopened in accordance with section 15-39-730 governing circumstances where deficiency judgment is sought. The appraisal process did not proceed. Thus Defendants effectively withdrew their petition as requested by Plaintiff. The Court did not issue a specific deficiency judgment, as is done in cases where a deficiency judgment is sought. On August 15, 2011, Plaintiff issued a 1099-C to Sustainable Building Solutions, Inc. The 1099-C referred to a cancellation of debt in the amount of \$412,320.00.

Under all the circumstances of this case, it must be concluded that the Plaintiff waived its deficiency judgment against not only Sustainable Building Solutions, Inc., but also against John and Sue Porretto, as guarantors. Otherwise, the Plaintiff would have clarified in its filed waiver that it was waiving a deficiency judgment only as to Sustainable Building Solutions, Inc. instead of waiving *any* deficiency judgment. Otherwise, the sale would have been reopened on August 4, 2011. Plaintiff's memorandum argues that a creditor may sue on a foreclosure and independently make a claim against the guarantor. There is no doubt that this is correct. However, in this case the Plaintiff sued both on the foreclosure and the guarantors in one suit. The Court issued one order in which it held that Defendants had appraisal rights. That order was not appealed. When Plaintiff expressly waived its right to deficiency judgment and the appraisal rights were not ultimately pursued to conclusion, this effectively discharged the deficiency judgment as to the guarantors as well as the mortgagor.

The statute governing deficiency judgments is 29-3-660, which provides:

In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage and *if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor the plaintiff may make such person a party to the action and the court may adjudge payment of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises against such other person and may enforce such judgment as in other cases.*

[emphasis added]. The statute gives the creditor the option of adding the guarantors as parties to the foreclosure proceeding. When the creditor does so, the guarantors have the same rights of appraisal that the mortgagor has. And the mortgagee may waive the right to seek a deficiency. Here the Plaintiff elected to join John and Sue Porretto as parties rather than bring a separate lawsuit to collect the debt in Texas, where the Porrettos reside. The Plaintiff expressly waived any deficiency judgment twice: in its April 26, 2011 filing and in its counsel's letter to the Clerk of Court on June 21, 2011.

Rule 60 (b)(5) permits the court to relieve a party from a judgment if "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Plaintiff's memorandum in opposition to the motion argues that the "equitable leg" of Rule 60(b)(5) does not apply to money judgments. However, Defendants are not relying on the last clause or "equitable leg" of Rule 60(b)(5). Instead they are asking for an order under Rule 60(b)(5) clarifying that the judgment against Defendants has been *released or discharged* by virtue of Plaintiff's express waiver.

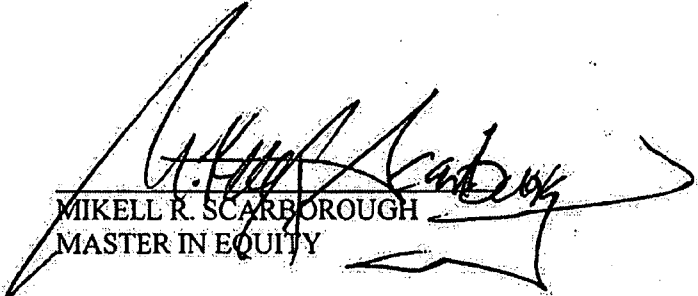
The case of *American General Financial Services, Inc., v. Brown*, 376 S.C. 580, 658 S.E.2d 99 (2008), deals with a deficiency judgment in a foreclosure action. There the Supreme Court held that the Master-in-Equity did not have the discretion to deny a



deficiency judgment *unless it was expressly waived*. In this case, since the Plaintiff expressly waived the deficiency judgment, there is no legal mechanism to reinstate it. Accordingly, Defendants are entitled to an order pursuant to Rule 60(b)(5) clarifying that the judgment against them has been released or discharged. It is therefore

ORDERED that the judgment dated April 11, 2011, against Defendants John Porretto, Sr. and Sue A. Porretto is hereby released and/or discharged.

IT IS SO ORDERED!


MIKELL R. SCARBOROUGH
MASTER IN EQUITY

At Charleston, South Carolina

This 29 day of March 2016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10- 3580

FLORIDA CITIZENS BANK,
Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP

Defendants.

**SUMMONS
NON-JURY
FORECLOSURE OF REAL ESTATE
(Deficiency Judgment Demanded)**

FILED
2010 APR 30 PM 2:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE ABOVE NAMED DEFENDANTS:

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 said Complaint on the attorney for the aforesaid Plaintiff within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Catherine H. Bryan

Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
LYLES & LYLES, LLC
342 East Bay Street (29401)
P.O. Box 773
Charleston, South Carolina 29402
Rtl@lylesfirm.com / chb@lylesfirm.com
ATTORNEYS FOR PLAINTIFF

April 28, 2010
Charleston, South Carolina

000073

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10- 3586

FLORIDA CITIZENS BANK,)
)
Plaintiff,)

vs.)

SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO)
AND ISLAND PRESERVATION)
PARTNERSHIP)
)
Defendants.)

**COMPLAINT
NON-JURY
FORECLOSURE OF REAL ESTATE
(Deficiency Judgment Demanded)**

20 APR 30 PM 2:22
WILLIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: THE ABOVE NAMED DEFENDANTS:

Plaintiff, Florida Citizens Bank, ("Plaintiff"), complaining of Defendants Sustainable Building Solutions, Inc. ("Sustainable"), John P. Porretto, Sr. ("J. Porretto"), and Sue A. Porretto (S. Porretto") would show unto this Honorable Court:

1. Plaintiff is a corporation organized under the laws of the State of Florida which does business in Charleston County, South Carolina, and is the lender on the loan that is the subject of this action.

2. Upon information and belief, Sustainable is a corporation organized under the laws of the State of South Carolina which conducts business in Charleston County, South Carolina.

3. Sustainable is the owner of the property described in Paragraph 18 below, is the borrower on the loan which the subject of this action, and is subject to the jurisdiction of this court.

4. Upon information and belief, J. Porretto is a resident of the State of Texas, is the President of Sustainable, is a guarantor of the loan that is the subject of this action, and is subject to the jurisdiction of this court.

5. Upon information and belief, S. Porretto is a resident of the State of Texas, is a guarantor of the loan which is the subject of this action, and is subject to the jurisdiction of this court. (Hereinafter, J. Porretto and S. Porretto shall be collectively referred to as "Guarantors".)

6. Upon information and belief, Island Preservation Partnership is a South Carolina General Partnership.

7. The property which is the subject of this action, described in Paragraph 18 below, is situated on Dewees Island, in Charleston County, South Carolina.

8. This court has jurisdiction over the subject matter and parties of this action.

9. The subject mortgage is not owned, securitized or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).

10. The subject loan is a commercial loan and is therefore, not subject to the Home Affordable Modification Program.

**FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mortgage as to Defendant Sustainable Building Solutions, Inc.)**

11. Plaintiff reasserts and realleges the allegations contained above as if fully set forth herein verbatim.

12. On or about March 6, 2006, Defendant J. Porretto, as President of Defendant Sustainable, executed and delivered to Plaintiff a promissory note in the principal amount of ONE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND 00/100

DOLLARS (\$1,425,000.00) with interest as provided therein, bearing loan number 200600002972 (the "March 2006 Note").

13. On or about June 15, 2006, Defendant J. Porretto, as President of Defendant Sustainable, executed and delivered to Plaintiff a promissory note in the principal amount of ONE HUNDRED SEVENTY-FIVE THOUSAND SIX HUNDRED TWELVE DOLLARS AND FIFTY CENTS (\$175,612.50) with interest as provided therein, bearing loan number 200700003946 (the "June 2006 Note").

14. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of ONE MILLION SIX HUNDRED THOUSAND SIX HUNDRED TWELVE DOLLARS AND FIFTY CENTS (\$1,600,612.50) with interest as provided therein (the "April 2007 Note"), as renewed by certain promissory notes dated April 15, 2008 (the "April 2008 Note") and April 15, 2009 (the "April 2009 Note"), and modified by the Debt Modification Agreement dated July 15, 2009 (the "July 2009 Modification"), together with certain fees and charges, payable in the following manner:

A copy of the March 2006 Note, the June 2006 Note, April 2007 Note, April 2008 Note, April 2009 Note, and July 2009 Modification, collectively referred to as the "Note", are attached hereto as Exhibit "A" and the terms thereof are incorporated herein by reference.

15. The Note and the debt represented thereby is secured by a mortgage executed and delivered by the Defendant J. Porretto, as President of Defendant Sustainable, to the Plaintiff, dated February 14, 2005 (the "2005 Mortgage"), and recorded in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage dated March 6, 2006 (the "Modification to Mortgage"), and recorded in the RMC Office for Charleston County in Book B-576 at Page 181. The 2005 Mortgage and the Modification to Mortgage,

collectively referred to herein as the "Mortgage", are attached hereto as Exhibit "B" and the terms thereof are incorporated herein by reference.

16. The Note and the debt represented thereby is further secured by a guaranty executed and delivered by Defendant J. Porretto to the Plaintiff dated April 15, 2009 (the "J. Porretto Guaranty"). A copy of the J. Porretto Guaranty is attached hereto as Exhibit "C" and the terms thereof are incorporated herein by reference.

17. The Note and the debt represented thereby is further secured by a guaranty executed and delivered by Defendant S. Porretto to the Plaintiff dated April 15, 2009 (the "S. Porretto Guaranty"). A copy of the S. Porretto Guaranty is attached hereto as Exhibit D and the terms thereof are incorporated herein by reference.

18. The real property which is covered by the Mortgage is more fully described as follows (hereinafter referred to as the "Property"):

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as **Lot 95** on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-117[sic]¹

ALSO

¹ The TMS# shown in the mortgage filed with the RMC described above is 608-11-00-117. However, the correct TMS# for the property described in the mortgage and described above is 608-11-00-017.

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

19. The Note and Mortgage provide that upon failure by Defendant Sustainable to make payments thereunder when due, the entire outstanding balance under the Note and Mortgage shall, at the option of the holder, become immediately due and payable.

20. Defendant Sustainable is in default under the Note and Mortgage by failing to make payments when due, despite demand by Plaintiff.

21. Plaintiff, as the holder of the Note and Mortgage, has and does hereby elect to declare the total unpaid balance of principal and interest on the Note and Mortgage due and payable and does hereby elect to foreclose its Mortgage on the Property; reserving, however, any and all other rights and remedies Plaintiff may have under the Note and Mortgage including the right to a deficiency judgment.

22. There is currently due and owing on the Note, as of April 26, 2010, the following amounts:

Principal balance on Note	\$1,547,125.12
Interest through 4/26/2010	\$ 23,663.26
Late Charges	\$ 529.60

Total Due as of 4/26/2010

\$1,571,317.98

Interest accrues at the rate provided in the Note from April 27, 2010, to the date of payment, at the per diem rate of \$180.1447

23. In accordance with the terms of the Mortgage, the Plaintiff shall also seek payment of all expenses of foreclosure, including, but not limited to the costs of this action, including reasonable attorney's fees, all of which are additional sums secured by the Mortgage.

24. Plaintiff does not waive, but specifically demands judgment against Defendant Sustainable for the full amount found to be due to Plaintiff on the Note and Mortgage, with the right to enter a deficiency judgment against Defendant Sustainable for any deficiency in this action remaining after the sale of the Property.

25. Plaintiff specifically demands judgment of foreclosure against Defendant Sustainable.

26. Upon information and belief, said information having been obtained from the records of Charleston County, South Carolina, the Defendant Island Preservation Partnership has or may claim to have some interest in or lien upon that portion of the Property described in paragraph 18 above identified specifically as Lot 124, TMS# 608-09-00-012, by virtue of that certain mortgage recorded in the RMC Office for Charleston County on October 1, 2001, in Book T-383, at Page 354.

FOR A SECOND CAUSE OF ACTION

(Breach of Guaranty as to Defendants John P. Porretto and Sue A. Porretto)

27. Plaintiff reasserts and realleges the allegations contained above as if fully set forth herein verbatim.

28. As set forth above in Paragraphs 16 and 17, Guarantors executed guarantees for the Note. The J. Porretto and S. Porretto guarantees are collectively referred to as the "Guarantees".

29. The Guarantees provide, inter alia, for payment to Plaintiff by Guarantors of all principal, accrued interest, attorneys' fees and collection costs that may become due from Sustainable to the Plaintiff. (See Exhibits "C" and "D", the terms of which have been incorporated herein by reference.)

30. The Guarantees further provide that, should Sustainable default on the Note, Guarantors shall be in default of their obligations under the Guarantees, and in the event of such a default, Guarantors agree to pay all expenses of collection, enforcement or protection of Plaintiff's rights and remedies under the Guarantees or Note, including reasonable attorney's fees.

31. Sustainable failed to pay the amounts owed to Plaintiff under the Note and is in default.

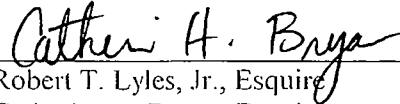
32. Despite demand, Guarantors have failed to fulfill their obligations to timely pay the amounts due to Plaintiff as set forth in the paragraphs above, and are in default under the terms of the Guarantees.

33. Plaintiff has placed this matter with the undersigned attorneys for collection and has expended reasonable attorney's fees and costs attempting to collect the amount due and owing and is entitled to judgment against the Guarantors in the total amount of \$1,571,317.98, together with prejudgment interest thereon and the costs of this action including reasonable attorneys fees.

WEREFORE, Plaintiff prays that judgment be entered against Defendant as follows:

- a. For actual damages in the amount listed above;
- b. Foreclosure of the real estate secured by the Note and Mortgage;
- c. For reasonable attorney's fees pursuant to the Note, Mortgage and Guarantees;
- d. For the costs of this action;

- e. For a personal or deficiency judgment; and
- f. For such other and further relief as may be just and proper.



Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
LYLES & LYLES, LLC
342 East Bay Street (29401)
P.O. Box 773
Charleston, South Carolina 29402
Rtl@lylesfirm.com / chb@lylesfirm.com
ATTORNEYS FOR PLAINTIFF

April 28, 2010
Charleston, South Carolina

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT
15 U.S.C. Section 1692g, As Amended**

1. The total amount of the debt (including interest) as of April 26, 2010 is \$1,571,317.98.
2. Florida Citizens 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 the 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 Lyles & Lyles, LLC, Post Office Box 773, Charleston, South Carolina 29402.
7. This notice should not be construed as a thirty (30) 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.**

STATE OF FLORIDA
COUNTY OF ALACHUA

VERIFICATION

I, Carl H. Miller, who acts in official capacity for Florida Citizens Bank, being duly sworn, say that I am the Petitioner herein and have read the foregoing Complaint and know the contents thereof, except as matters therein stated to be alleged on information and belief; and to those matters I believe them to be true.

Carl H. Miller
Carl H. Miller, Petitioner

Sworn to before me this 26 day
of April, 2010.

Kath M. Rowe
NOTARY PUBLIC FOR FLORIDA
My Commission Expires: Aug 30, 2010

KATHLEEN M. ROWE
Notary Public, State of Florida
My comm. exp. Aug. 30, 2010
Comm. No. DD 589257

FILED
2010 APR 30 PM 2: 22
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Exhibit “A”



PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$1,425,000.00	03-06-2006	03-06-2007	200600002972			TJAJ	

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.

Borrower: Sustainable Building Solutions, Inc.
247 Old House Lane
Dewees Island, SC 29451-9408

Lender: Florida Citizens Bank
Newberry Road
3919 West Newberry Road
Gainesville, FL 32607

LOAN BY RENEWAL OF
CONSOLIDATION to
loan # 2006-3509
dtd 4/18/07

Principal Amount: \$1,425,000.00 Initial Rate: 7.500%

Date of Note: March 6, 2006

PROMISE TO PAY. Sustainable Building Solutions, Inc. ("Borrower") promises to pay to Florida Citizens Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million Four Hundred Twenty-five Thousand & 00/100 Dollars (\$1,425,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance. The interest rate will not increase above 18.000%.

PAYMENT. Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on March 6, 2007. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning April 6, 2006, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the annual interest rate over the number of days in a year (366 during leap years), multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the Wall Street Journal Prime as published in the "Money Section" of the Wall Street Journal (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notice to Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 7.500% per annum. The interest rate to be applied to the unpaid principal balance of this Note will be at a rate equal to the Index, adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 7.500% per annum. Notwithstanding the foregoing, the variable interest rate or rates provided for in this Note will be subject to the following minimum and maximum rates. **NOTICE:** Under no circumstances will the effective rate of interest on this Note be less than 5.000% per annum or more than (except for any higher default rate shown below) the lesser of 18.000% per annum or the maximum rate allowed by applicable law.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Florida Citizens Bank, Newberry Road, 3919 West Newberry Road, Gainesville, FL 32607.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note to 18.000% per annum, if and to the extent that the increase does not cause the interest rate to exceed the maximum rate permitted by applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Change in Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender the amount of these costs and expenses, which includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Alachua County, Florida.

000085

**PROMISSORY NOTE
(Continued)**

Loan No: 200600002972

Page 2

State of Florida.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$25.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instruments listed herein:

(A) a Mortgage dated March 6, 2006, to Lender on real property located in Charleston County, State of South Carolina.

(B) an Assignment of All Rents to Lender on real property located in Charleston County, State of South Carolina.

LINE OF CREDIT. This Note evidences a revolving line of credit. Advances under this Note may be requested either orally or in writing by Borrower or as provided in this paragraph. All oral requests shall be confirmed in writing on the day of the request, on forms acceptable to Lender. All communications, instructions, or directions by telephone or otherwise to Lender are to be directed to Lender's office shown above. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs. Lender will have no obligation to advance funds under this Note if: (A) Borrower or any guarantor is in default under the terms of this Note or any agreement that Borrower or any guarantor has with Lender, including any agreement made in connection with the signing of this Note; (B) Borrower or any guarantor ceases doing business or is insolvent; (C) any guarantor seeks, claims or otherwise attempts to limit, modify or revoke such guarantor's guarantee of this Note or any other loan with Lender; (D) Borrower has applied funds provided pursuant to this Note for purposes other than those authorized by Lender; or (E) Lender in good faith believes itself insecure.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Borrower does not agree or intend to pay, and Lender does not agree or intend to contract for, charge, collect, take, reserve or receive (collectively referred to herein as "charge or collect"), any amount in the nature of interest or in the nature of a fee for this loan, which would in any way or event (including demand, prepayment, or acceleration) cause Lender to charge or collect more for this loan than the maximum Lender would be permitted to charge or collect by federal law or the law of the State of Florida (as applicable). Any such excess interest or unauthorized fee shall, instead of anything stated to the contrary, be applied first to reduce the principal balance of this loan, and when the principal has been paid in full, be refunded to Borrower. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

SUSTAINABLE BUILDING SOLUTIONS, INC.

By: 
John P. Porretto Sr., President of Sustainable
Building Solutions, Inc.

000086



PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$175,612.50	06-15-2006	06-15-2007	200700003946		753088992	JAJ	
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing ***** has been omitted due to text length limitations.							

Borrower: Sustainable Building Solutions, Inc.
247 Old House Lane
Dewees Island, SC 29451-9408

Lender:

Florida Citizens Bank
Newberry Road
3919 West Newberry Road
Gainesville, FL 32607

PAID BY RENEWAL OF
CONSOLIDATION to
loan # 200700003946
by JAJ

Principal Amount: \$175,612.50

Date of Note: June 15, 2006

PROMISE TO PAY. Sustainable Building Solutions, Inc. ("Borrower") promises to pay to Florida Citizens Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Hundred Seventy-five Thousand Six Hundred Twelve & 50/100 Dollars (\$175,612.50) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on June 15, 2007. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning July 15, 2006, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the annual interest rate over the number of days in a year (366 during leap years), multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the Wall Street Journal Prime as published in the "Money Section" of the Wall Street Journal [the "Index"]. The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The interest rate to be applied to the unpaid principal balance during this Note will be at a rate of 1.000 percentage point over the Index. **NOTICE:** Under no circumstances will the effective rate of interest on this Note be less than 6.000% per annum or more than the maximum rate allowed by applicable law.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Florida Citizens Bank, Newberry Road, 3919 West Newberry Road, Gainesville, FL 32607.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased to 18.000% per annum. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan, including a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Change in Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender the amount of these costs and expenses, which includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Alachua County, State of Florida.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$25.00 if Borrower makes a payment on Borrower's loan and the check or

000087

**PROMISSORY NOTE
(Continued)**

preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the debt against any and all such accounts.

COLLATERAL. This loan is unsecured.

LINE OF CREDIT. This Note evidences a straight line of credit. Once the total amount of principal has been advanced, Borrower is not entitled to further loan advances. Advances under this Note, as well as directions for payment from Borrower's accounts, may be requested orally or in writing by Borrower or by an authorized person. Lender may, but need not, require that all oral requests be confirmed in writing. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs. Lender will have no obligation to advance funds under this Note if: (A) Borrower or any guarantor is in default under the terms of this Note or any agreement that Borrower or any guarantor has with Lender, including any agreement made in connection with the signing of this Note; (B) Borrower or any guarantor ceases doing business or is insolvent; (C) any guarantor seeks, claims or otherwise attempts to limit, modify or revoke such guarantor's guarantee of this Note or any other loan with Lender; (D) Borrower has applied funds provided pursuant to this Note for purposes other than those authorized by Lender; or (E) Lender in good faith believes itself insecure.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

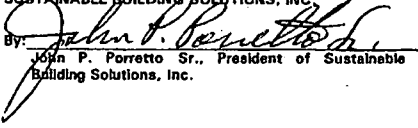
GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Borrower does not agree or intend to pay, and Lender does not agree or intend to contract for, charge, collect, take, reserve or receive (collectively referred to herein as "charge or collect"), any amount in the nature of interest or in the nature of a fee for this loan, which would in any way or event (including demand, prepayment, or acceleration) cause Lender to charge or collect more for this loan than the maximum Lender would be permitted to charge or collect by federal law or the law of the State of Florida (as applicable). Any such excess interest or unauthorized fee shall, instead of anything stated to the contrary, be applied first to reduce the principal balance of this loan, and when the principal has been paid in full, be refunded to Borrower. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

SUSTAINABLE BUILDING SOLUTIONS, INC.

By: 

John P. Porretto Sr., President of Sustainable Building Solutions, Inc.

Florida Documentary Stamp Tax

Florida documentary stamp tax required by law in the amount of \$612.50 has been paid or will be paid directly to the Department of Revenue.

000088

PAID BY RENEWAL or
CONSOLIDATION to
loan # 2006-3509
dtd 4/15/8 by CHM



PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	Call / Coll	Account	Officer	Initials
\$1,600,612.50	04-15-2007	04-15-2008	200600003509			JAJ	
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							

Borrower: Sustainable Building Solutions, Inc.
247 Old House Lane
Dewees Island, SC 29451-9408

Lender: Florida Citizens Bank
Newberry Road
3919 West Newberry Road
Gainesville, FL 32607

Principal Amount: \$1,600,612.50

Initial Rate: 9.250%

Date of Note: April 15, 2007

PROMISE TO PAY. Sustainable Building Solutions, Inc. ("Borrower") promises to pay to Florida Citizens Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million Six Hundred Thousand Six Hundred Twelve & 50/100 Dollars (\$1,600,612.50) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on April 15, 2008. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning May 15, 2007, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the annual interest rate over the number of days in a year (366 during leap years), multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the Wall Street Journal Prime as published in the "Money Section" of the Wall Street Journal (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 8.250% per annum. The interest rate to be applied to the unpaid principal balance during this Note will be at a rate of 1.000 percentage point over the Index, adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 9.250% per annum. **NOTICE:** Under no circumstances will the effective rate of interest on this Note be less than 5.000% per annum or more than (except for any higher default rate shown below) the lesser of 18.000% per annum or the maximum rate allowed by applicable law.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Florida Citizens Bank, Newberry Road, 3919 West Newberry Road, Gainesville, FL 32607.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased to 18.000% per annum. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note

Payment Default. Borrower fails to make any payment when due under this Note

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Change In Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within thirty (30) days, or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender the amount of these costs and expenses, which includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Alachua County State of Florida

000089

**PROMISSORY NOTE
(Continued)**

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$25.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instruments listed herein:

(A) a Mortgage dated April 15, 2007, to Lender on real property located in Charleston County, State of South Carolina.

(B) an Assignment of All Rents to Lender on real property located in Charleston County, State of South Carolina.

LINE OF CREDIT. This Note evidences a revolving line of credit. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

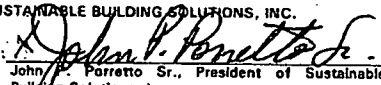
GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Borrower does not agree or intend to pay, and Lender does not agree or intend to contract for, charge, collect, take, reserve or receive (collectively referred to herein as "charge or collect"), any amount in the nature of interest or in the nature of a fee for this loan, which would in any way or event (including demand, prepayment, or acceleration) cause Lender to charge or collect more for this loan than the maximum Lender would be permitted to charge or collect by federal law or the law of the State of Florida (as applicable). Any such excess interest or unauthorized fee shall, instead of anything stated to the contrary, be applied first to reduce the principal balance of this loan, and when the principal has been paid in full, be refunded to Borrower. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

SUSTAINABLE BUILDING SOLUTIONS, INC.

By: 

John P. Porretto Sr., President of Sustainable Building Solutions, Inc.



PAID BY RENEWAL or
CONSOLIDATION in

loan # 2006-3509

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$1,600,612.50	04-15-2008	04-15-2009	200600003509		753088992	CHM	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.

Borrower: Sustainable Building Solutions, Inc.
PO Box 31
Isle of Palms, SC 29451

Lender: Florida Citizens Bank
Newberry Road
3919 West Newberry Road
Gainesville, FL 32607

Principal Amount: \$1,600,612.50

Initial Rate: 6.250%

Date of Note: April 15, 2008

PROMISE TO PAY. Sustainable Building Solutions, Inc. ("Borrower") promises to pay to Florida Citizens Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million Six Hundred Thousand Six Hundred Twelve & 50/100 Dollars (\$1,600,612.50), together with interest on the unpaid principal balance from April 15, 2008, until paid in full.

PAYMENT. Subject to any payment changes resulting from changes in the Index, Borrower will pay this loan in 11 principal payments of \$5,000.00 each and one final principal and interest payment of \$1,553,816.95. Borrower's first principal payment is due May 15, 2008, and all subsequent principal payments are due on the same day of each month after that. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning May 15, 2008, with all subsequent interest payments to be due on the same day of each month after that. Borrower's final payment due April 15, 2009, will be for all principal and all accrued interest not yet paid. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the annual interest rate over the number of days in a year (366 during leap years), multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the Wall Street Journal Prime as published in the "Money Section" of the Wall Street Journal (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 5.250% per annum. The interest rate to be applied to the unpaid principal balance during this Note will be at a rate of 1.000 percentage point over the Index, adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 6.250% per annum. **NOTICE:** Under no circumstances will the effective rate of interest on this Note be less than 2.000% per annum or more than (except for any higher default rate shown below) the lesser of 18.000% per annum or the maximum rate allowed by applicable law. Unless waived by Lender, any increase in the interest rate will increase the amounts of Borrower's interest payments.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Florida Citizens Bank, 3919 West Newberry Road Gainesville, FL 32607

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5 000% of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased to 18.000% per annum. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Change In Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender the amount of these costs and expenses, which includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

000091

**PROMISSORY NOTE
(Continued)**

Loan No: 200600003509

Page 2

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Alachua County, State of Florida.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$25.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instrument listed herein: a Mortgage dated 02/14/2005, to Lender on real property located in Charleston County, State of South Carolina.

PRINCIPAL REDUCTION. Borrower agrees to reduce the principal balance by 25% at maturity.

PRIOR NOTE. Renewal of existing loan 200600003509.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Borrower does not agree or intend to pay, and Lender does not agree or intend to contract for, charge, collect, take, reserve or receive (collectively referred to herein as "charge or collect"), any amount in the nature of interest or in the nature of a fee for this loan, which would in any way or event (including demand, prepayment, or acceleration) cause Lender to charge or collect more for this loan than the maximum Lender would be permitted to charge or collect by federal law or the law of the State of Florida (as applicable). Any such excess interest or unauthorized fee shall, instead of anything stated to the contrary, be applied first to reduce the principal balance of this loan, and when the principal has been paid in full, be refunded to Borrower. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

SUSTAINABLE BUILDING SOLUTIONS, INC.

By: 
John P. Porretto, Sr., President of Sustainable
Building Solutions, Inc.

Florida Documentary Stamp Tax

Florida documentary stamp tax in the amount required by law has been paid with respect to this Note on the Mortgage securing this Note.

LASER PRO Lending, Ver. 5.24 10-001 Copy: Mortgages Promissory Notes, Inc. 1997 2006 All Rights Reserved FL D-CPRLP/MDLD FC TR 2443 PR 12

000092

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	E DATE	INITIALS
200600003509	Sustainable Building Solutions, Inc		04/15/09	
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$1,540,612.50	Wall Street Journal Prime plus 1.000%	4.250%	07/15/09	Commercial

Creditor Use Only

PROMISSORY NOTE

(Commercial - Single Advance)

RENEWAL NOTE

This Note is a renewal and is exempt from taxation pursuant to Fla. Stat. 201.09.

DATE AND PARTIES. The date of this Promissory Note (Note) is April 15, 2009. The parties and their addresses are.

LENDER:

FLORIDA CITIZENS BANK
3919 W. Newberry Road
Gainesville, Florida 32607
Telephone 352-332-4727

BORROWER:

SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

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
April 15, 2008	# 200600003509	\$1,600,612.00

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 \$1,540,612.50.

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 \$1,540,612.50 (Principal) plus interest from April 15, 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 4.250 percent (Interest Rate) until April 16, 2009, 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 18.000 percent 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 Florida usury laws under Fla. Stat. § 687.

D. **Accrual.** Interest accrues using an Actual/365 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 April 16, 2009 and daily thereafter.

(3) **Calculation Of Change.** On each Change Date you will calculate the Interest Rate, which will be the Current Index plus 1.000 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) **Limitations.** The Interest Rate changes are subject to the following limitations:

(a) **Lifetime.** The Interest Rate will never be greater than 18.000 percent, or less than 2.000 percent.

(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.

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.

000093

A. **Late Charge.** If a payment is more than 10 days late, I will be charged 5.000 percent of the Amount of Payment or \$5 00, whichever is greater. However, this charge will not be greater than \$1,000 00. I will pay this late charge promptly but only once for each late payment.

B. **Returned Check Charge.** I agree to pay a fee not to exceed \$25.00 for each check, negotiable order of withdrawal or draft I issue in connection with the Loan that is returned because it has been dishonored.

C. **Extension Fee.** A(n) Extension Fee equal to \$25 00

6. **GOVERNING AGREEMENT.** This Note is further governed by the Commercial Loan Agreement executed between you and me as a part of this Loan, as modified, amended or supplemented. The Commercial Loan Agreement states the terms and conditions of this Note, including the terms and conditions under which the maturity of this Note may be accelerated. When I sign this Note, I represent to you that I have reviewed and am in compliance with the terms contained in the Commercial Loan Agreement.

7. **PAYMENT.** I agree to pay this Note on demand, but if no demand is made, I agree to pay this Note in installments of accrued interest beginning May 15, 2009, and then on the 15th day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on July 15, 2009.

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 finance charges. 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.

8. **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.

9. **LOAN PURPOSE.** The purpose of this Loan is renewal - originally to build an investment property..

10. **SECURITY.** The Loan is secured by previously executed, separate security instruments, including the following. Promissory note dated 04/15/2008, Modification of Mortgage dated 03/06/2006 and recorded on 03/13/2006 in BK B, PG 181 in the Public Records of Charleston County South Carolina.

11. **DUE ON SALE.** 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 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.

(7) I agree that you may inform any party who guarantees this Loan of any Loan accommodations, renewals, extensions, modifications, substitutions or future advances.

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. **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.

14. **APPLICABLE LAW.** This Note is governed by the laws of Florida, 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.

15. **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.

16. **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.

17. **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.

18. **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 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.

19. **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.

20. **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.

21. **SIGNATURES.** By signing, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER:

Sustainable Building Solutions, Inc.

By John P. Corsetto, Jr. ^{Attorney}
~~John P. Corsetto, Jr.~~

(Attest) _____ Date _____

Original

000095

PRIOR OBLIGATION INFORMATION	LOAN NUMBER	ACCT. NUMBER	NOTE DATE	NOTE AMOUNT	MATURITY DATE
	200600003509	200600003509	04/15/09	\$1,540,612.50	07/15/09
AMENDED OBLIGATION INFORMATION	LOAN NUMBER	ACCT. NUMBER	MODIFICATION DATE	NOTE AMOUNT	
	200600003509		07/15/09	\$1,547,125.12	
	MATURITY DATE	INDEX (w/margin)	INTEREST RATE	INITIALS	
	10/15/09	Wall Street Journal U.S. Prime Rate plus 1.000%	4.250%		
	Creditor Use Only				

DEBT MODIFICATION AGREEMENT

This Modification is a renewal and is exempt from taxation pursuant to Fla. Stat. 201.09.

DATE AND PARTIES. The date of this Debt Modification Agreement (Modification) is July 15, 2009. The parties and their addresses are:

LENDER:

FLORIDA CITIZENS BANK
3919 W. Newberry Road
Gainesville, FL 32607
Telephone: (352) 332-4727

BORROWER:

SUSTAINABLE BUILDING SOLUTIONS, INC.
a 500(c)(3) Carolina Corporation
P.O. Box 272423
Houston, TX 77277

Texas Corporation

1. DEFINITIONS. In this Modification, these terms have the following meanings:

- A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Modification, individually and together with their heirs, executors, administrators, successors, and assigns. "You" and "your" refer to the Lender, with its participants or syndicators, successors and assigns, or any person or entity that acquires an interest in the Modification or the Prior Obligation.
- B. Amended Obligation. Amended Obligation is the resulting agreement that is created when the Modification amends the Prior Obligation. It is described above in the AMENDED OBLIGATION INFORMATION section.
- C. Loan. Loan refers to this transaction generally. It includes the obligations and duties arising from the terms of all documents prepared or submitted in association with the Prior Obligation and this modification, such as applications, security agreements, disclosures, notes, agreements, and this Modification.
- D. Modification. Modification refers to this Debt Modification Agreement.
- E. Prior Obligation. Prior Obligation refers to my original agreement described above in the PRIOR OBLIGATION INFORMATION section, and any subsequent extensions, renewals, modifications or substitutions of it.

2. BACKGROUND. You and I have previously entered into a Prior Obligation. As of the date of this Modification, the outstanding, unpaid balance of the Prior Obligation is \$1,547,125.12. Conditions have changed since the execution of the Prior Obligation instruments. In response, and for value received, you and I agree to modify the terms of the Prior Obligation, as provided for in this Modification.

A. Previous Modifications. extension

3. TERMS. The Prior Obligation is modified as follows:

A. Maturity and Payments. The maturity and payment provisions are modified to read:

(1) PAYMENT. I agree to pay the Loan on demand, but if no demand is made, I agree to pay the Loan in installments of accrued interest beginning August 15, 2009, and then on the 15th day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on October 15, 2009.

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.

B. Fees and Charges. As additional consideration for your consent to enter into this Modification, I agree to pay, or have paid these additional fees and charges:

(1) Late Charge. If a payment is more than 10 days late, I will be charged 5.000 percent of the Amount of Payment or \$5.00, whichever is greater. However, this charge will not be greater than \$1,000.00; I will pay this late charge promptly but only once for each late payment.

Sustainable Building Solutions, Inc.
Debt Modification Agreement
FL/4LSTEP:EN00300000000212009082509N

Walters Kluwer Financial Services ©1998, 2009 Bankers Systems™

Page 1

000096

C. Insurance. I understand and agree that any insurance premiums paid to insurance companies as part of this Amended Obligation will involve money retained or paid to you as commissions or other remuneration.

(1) Flood Insurance. Flood insurance is not required at this time. It may be required in the future should the property be included in an updated flood plain map. If required in the future, I may obtain flood insurance from anyone I want that is reasonably acceptable to you.

4. CONTINUATION OF TERMS. Except as specifically amended by this Modification, all of the terms of the Prior Obligation shall remain in full force and effect.

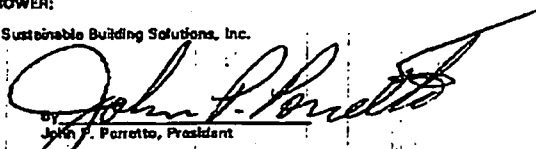
5. WAIVER. I waive all claims, defenses, setoffs, or counterclaims relating to the Prior Obligation, or any document securing the Prior Obligation, that I may have. Any party to the Prior Obligation that does not sign this Modification, shall remain liable under the terms of the Prior Obligation unless released in writing by you.

6. REASONS FOR MODIFICATION. extension

7. SIGNATURES. By signing, I agree to the terms contained in this Modification. I also acknowledge receipt of a copy of this Modification.

BORROWER:

Sustainable Building Solutions, Inc.

by 
John P. Porretto, President

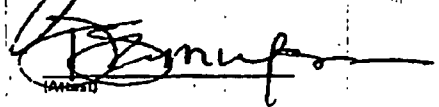

(Agent)

Exhibit “B”

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MORTGAGE
OF REAL ESTATE

TO ALL WHOM THESE PRESENTS MAY CONCERN:

IN THE STATE AFORESAID - SEND GREETING:

WHEREAS, SUSTAINABLE BUILDING SOLUTIONS, INC. (Hereinafter also styled the mortgagor) in and by her certain Note or obligation bearing even date herewith, stand firmly held and bound unto FLORIDA CITIZENS BANK * (Hereinafter also styled the mortgagee) in the sum of -One Million and 00/100 (\$1,000,000.00) Dollars, as evidenced by and according to the terms and conditions of a Promissory Note of even date herewith, as in and by the said Note and Conditions(s) thereof, reference being hereunto had, will more fully appear. *, 3919 W. Newberry Rd.

Borrower has the right to prepay in whole or in part without penalty.

There shall be a five (5%) percent late penalty of the amount of interest due for any payment not received within fifteen (15) days of the due date.

NOW, KNOW ALL MEN, that the said SUSTAINABLE BUILDING SOLUTIONS, INC. in consideration of the said debt, and for the better securing the payment thereof, according to the conditions of the said Note; which with all its provisions is hereby made a part hereof; and also in consideration of Three Dollars to the said mortgagor in hand well and truly paid, by the said Mortgagee, at and before the sealing and delivery of these Presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these Presents do grant, bargain, sell and release unto the said FLORIDA CITIZENS BANK, its successors and assigns, the following described property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said Premises unto

000099

the said Mortgagee, its successors and assigns, forever.

AND Mortgagors do hereby bind Mortgagors' heirs, executors, and administrators, to procure or execute any further necessary assurances of title to the said premises, the title to which is unencumbered, and also to warrant and forever defend all and singular the said Premises unto the Mortgagee and Mortgagee's successors and assigns, from and against Mortgagors and Mortgagors' heirs, executors and administrators and all persons lawfully claiming, or to claim the same or any part thereof.

AND IT IS AGREED, by and between the parties hereto, that the said mortgagors, mortgagors' heirs, executors or administrators, shall keep the buildings erected, or to be erected on said premises, insured against loss or damage by fire, for the benefit of the said Mortgagee, for an amount not less than the value of the buildings in such company as shall be approved by the said mortgagee, and shall deliver the policy to the said mortgagee, and in default thereof, the said mortgagee, mortgagee's successors or assigns, may effect such insurance and reimburse themselves under this mortgage for the expense thereof, with interest thereon, from the date of its payment. And it is further agreed, in the event of other insurance and contribution between the insurers, that the said mortgagee, mortgagee's successors or assigns, shall be entitled to receive from the aggregate of the insurance moneys to be paid, a sum equal to the amount of the debt secured by this mortgage.

AND IT IS AGREED, by and between the said parties, that if the said mortgagors, mortgagors' heirs, executors, administrators or assigns, shall fail to pay all taxes and assessments upon the said premises when the same shall first become payable, then the said mortgagee, mortgagee's successors or assigns, may cause the same to be paid, together with all penalties and costs incurred thereon, and reimburse themselves under this mortgage for the sums so paid, with interest thereon, from the dates of such payments.

AND IT IS AGREED, by and between the said parties that upon any default being made in the payment of the interest on the said Note, or of the insurance premiums, or of the taxes, or of the assessments hereinabove mentioned, when the same shall severally first become payable, or in any other of the provisions of this mortgage, then the entire amount of the debt secured, or intended to be secured hereby, shall forthwith become due, at the option of the said mortgagee, mortgagee's successors or assigns, although the period for the payment of the said debt may not then have expired.

AND IT IS AGREED, That if the holder of the Note secured hereby is compelled to pay any taxes upon the debt represented by

BK M 526PG278

STATE OF SOUTH CAROLINA)

)

MORTGAGE

OF REAL ESTATE

COUNTY OF CHARLESTON)

)

TO ALL WHOM THESE PRESENTS MAY CONCERN:

IN THE STATE AFORESAID - SEND GREETING:

WHEREAS, SUSTAINABLE BUILDING SOLUTIONS, INC. (Hereinafter also styled the mortgagor) in and by her certain Note or obligation bearing even date herewith, stand firmly held and bound unto FLORIDA CITIZENS BANK * (Hereinafter also styled the mortgagee) in the sum of -One Million and 00/100 (\$1,000,000.00) Dollars, as evidenced by and according to the terms and conditions of a Promissory Note of even date herewith, as in and by the said Note and Conditions(s) thereof, reference being hereunto had, will more fully appear.

*, 3919 W. Newberry Rd.
Gainesville, FL 32607,

Borrower has the right to prepay in whole or in part without penalty.

There shall be a five (5%) percent late penalty of the amount of interest due for any payment not received within fifteen (15) days of the due date.

NOW, KNOW ALL MEN, that the said SUSTAINABLE BUILDING SOLUTIONS, INC. in consideration of the said debt, and for the better securing the payment thereof, according to the conditions of the said Note; which with all its provisions is hereby made a part hereof; and also in consideration of Three Dollars to the said mortgagor in hand well and truly paid, by the said Mortgagee, at and before the sealing and delivery of these Presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these Presents do grant, bargain, sell and release unto the said FLORIDA CITIZENS BANK, its successors and assigns, the following described property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said Premises unto

000101 --

the said Mortgagee, its successors and assigns, forever.

AND Mortgagors do hereby bind Mortgagors' heirs, executors, and administrators, to procure or execute any further necessary assurances of title to the said premises, the title to which is unencumbered, and also to warrant and forever defend all and singular the said Premises unto the Mortgagee and Mortgagee's successors and assigns, from and against Mortgagors and Mortgagors' heirs, executors and administrators and all persons lawfully claiming, or to claim the same or any part thereof.

AND IT IS AGREED, by and between the parties hereto, that the said mortgagors, mortgagors' heirs, executors or administrators, shall keep the buildings erected, or to be erected on said premises, insured against loss or damage by fire, for the benefit of the said Mortgagee, for an amount not less than the value of the buildings in such company as shall be approved by the said mortgagee, and shall deliver the policy to the said mortgagee, and in default thereof, the said mortgagee, mortgagee's successors or assigns, may effect such insurance and reimburse themselves under this mortgage for the expense thereof, with interest thereon, from the date of its payment. And it is further agreed, in the event of other insurance and contribution between the insurers, that the said mortgagee, mortgagee's successors or assigns, shall be entitled to receive from the aggregate of the insurance moneys to be paid, a sum equal to the amount of the debt secured by this mortgage.

AND IT IS AGREED, by and between the said parties, that if the said mortgagors, mortgagors' heirs, executors, administrators or assigns, shall fail to pay all taxes and assessments upon the said premises when the same shall first become payable, then the said mortgagee, mortgagee's successors or assigns, may cause the same to be paid, together with all penalties and costs incurred thereon, and reimburse themselves under this mortgage for the sums so paid, with interest thereon, from the dates of such payments.

AND IT IS AGREED, by and between the said parties that upon any default being made in the payment of the interest on the said Note, or of the insurance premiums, or of the taxes, or of the assessments hereinabove mentioned, when the same shall severally first become payable, or in any other of the provisions of this mortgage, then the entire amount of the debt secured, or intended to be secured hereby, shall forthwith become due, at the option of the said mortgagee, mortgagee's successors or assigns, although the period for the payment of the said debt may not then have expired.

AND IT IS AGREED, That if the holder of the Note secured hereby is compelled to pay any taxes upon the debt represented by

said Note, or by this Mortgage, then, and in that event, unless the said taxes are paid by some party other than the said holder, that then the entire amount of the debt secured, or intended to be

secured, shall forthwith become due at the option of the said mortgagee, mortgagee's successors or assigns, although the period for its payment may not then have expired.

AND IT IS AGREED, by and between the said parties, that, should legal proceedings be instituted for the collection of the debt secured hereby, then and in that event, the said mortgagee, mortgagee's successors or assigns, shall have the right to have a Receiver appointed of the rents and profits of the above described premises, with power to forthwith lease out the said premises anew if he should so elect, who, after deducting all charges and expenses attending such proceedings, and the execution of the said trust as Receiver, shall apply the residue of the said rents and profits towards the payment of the debts secured hereby.

AND IT IS FURTHER AGREED, by and between the said parties, that should legal proceedings be instituted for the foreclosure of this mortgage, or for any purpose involving this mortgage, or should the debt hereby secured be placed in the hands of an attorney at law for collection, by suit or otherwise, that all costs and expenses incurred by the mortgagees, mortgagees' successors or assigns, including a reasonable counsel fee (of not less than ten (10%) percent of the amount involved) shall thereupon become due and payable as a part of the debt secured hereby, and may be recovered and collected hereunder.

PROVIDED, ALWAYS, and it is the true intent and meaning of the parties to these Presents, that when the said mortgagors, mortgagors' heirs, executors or administrators shall pay, or cause to be paid unto the said mortgagee, mortgagee's certain attorneys, heirs or assigns, the said debt, with the interest thereon, if any shall be due, and also all sums of money paid by the said mortgagee, mortgagee's successors or assigns, according to the conditions and agreements of the said Note, and of this Mortgage and shall perform all the obligations according to the true intent and meaning of the said Note and Mortgage, and the conditions thereunder written, then this Deed of Bargain and Sale shall cease, determine and be void, otherwise it shall remain in full force and virtue.

AND IT IS LASTLY AGREED, by and between the said parties, that the said mortgagors are to hold and enjoy the said premises until default of payment shall be made.

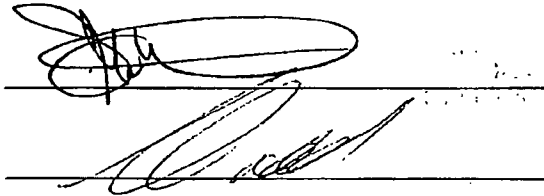


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WITNESS Mortgagor's Hand and Seal, this 14 day of February, 2005.

Signed, Sealed and delivered
in the presence

SUSTAINABLE BUILDING SOLUTIONS,
INC.




By: John P. Porretto, Sr., Pres.

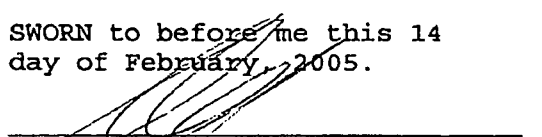
STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF CHARLESTON

The foregoing instrument was acknowledged before me this 14 day of February, 2005 by John P. Porretto, Sr., its President, on behalf of Sustainable Building Solutions, Inc.

SWORN to before me this 14
day of February, 2005.


Notary Public for South Carolina
My Commission Expires: 01/19/06

000104

EXHIBIT "A"

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as LOT 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-118 & 133-137, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E. M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166 and 167.

Said lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS# 608-11-00-117

ALSO

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-128, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E. M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS# 608-09-00-012



BK M 526PG283

Handwritten: Dadds & Hennessy

FILED

M526-278

2005 FEB 22 AM 10:43

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

Handwritten: 1109
B

000106

BK M 526PG283

Dodds & Hennessy

Feb 2

FILED

M526-278

2005 FEB 22 AM 10:43

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

*1100
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BKB - 576PG181

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

MODIFICATION OF MORTGAGE

WHEREAS, **SUSTAINABLE BUILDING SOLUTIONS, INC.** executed and delivered a mortgage to the **FLORIDA CITIZENS BANK** dated February 14, 2005 and recorded February 22, 2005 in the RMC Office for Charleston County in Book M526 at Page 278; and

WHEREAS, the mortgage was for the purposes of securing the repayment of a Promissory Note from **SUSTAINABLE BUILDING SOLUTIONS, INC.** to the **FLORIDA CITIZENS BANK** of even date in the amount of \$1,000,000.00; and

WHEREAS, the **FLORIDA CITIZENS BANK** is mindful to extend credit in the amount of \$1,425,000.00 to the **SUSTAINABLE BUILDING SOLUTIONS, INC.** upon the execution of a new Promissory Note in the amount of \$1,425,000.00 and the modification of the above referenced Mortgage securing said Note.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the Mortgage from **SUSTAINABLE BUILDING SOLUTIONS, INC.** to **FLORIDA CITIZENS BANK** dated February 14, 2005 and recorded February 22, 2005 in the RMC Office for Charleston County in Book M526 at Page 278 is hereby modified as follows:

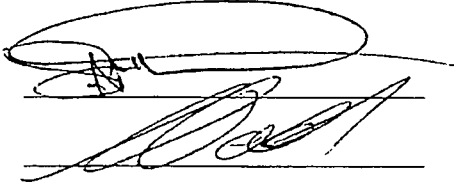
1. The Mortgagor in and by its certain Promissory Note dated March 6, 2006 stands firmly held and bound unto the **FLORIDA CITIZENS BANK** in the sum of \$1,425,000.00, as evidenced by and according to the terms and conditions of the said Promissory Note dated March 6, 2006, as in and by the said Note and Conditions thereof, reference being hereunto had, will fully appear.
2. **SUSTAINABLE BUILDING SOLUTIONS, INC.** in consideration of the said debt, and for the better securing the payment thereof, according to the conditions of said Note; which with all its provisions is hereby made a part hereof, does hereby modify the above referenced Mortgage to secure the debt of said Promissory Note dated March 6, 2006, and increases the amount of the Mortgage to \$1,425,000.00.
3. ALL other terms and conditions of the original Mortgage Of Real Estate hereinabove mentioned, not inconsistent herewith, shall remain in full force and effect.

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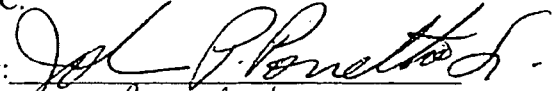
BKB 576PG182

IN WITNESS WHEREOF, the Mortgagor has set its Hand and Seal this 6 day of March, 2006.

WITNESSES:



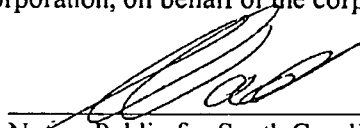
SUSTAINABLE BUILDING SOLUTIONS,
INC.

By: 
Its: President

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 6 day of March, 2006,
by John P. Porretto Sr., duly authorized Officer of SUSTAINABLE BUILDING
SOLUTIONS, INC., a Texas corporation, on behalf of the corporation.


Notary Public for South Carolina

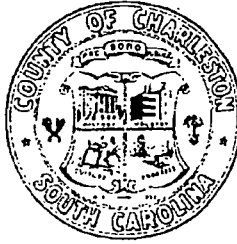
My Commission Expires: 12-9-15

000109

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RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



SHI
TSA
Filed By:

Dodds & Hennessy, L.L.P.
Attorneys at Law
973 Houston Northcutt Blvd.
Mt. Pleasant SC 29464

A handwritten signature, possibly "J. Dodds", is written over the bottom right corner of the "Filed By" box.

FILED

March 13, 2006

3:02:04 PM

BKB

576PG181

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION	AMOUNT
mtg/mod	\$ 7.00
Postage	

TOTAL	\$ 7.00

DRAWER:

	A - bmm

DO NOT STAMP BELOW THIS LINE

Exhibit “C”

GUARANTY
(Continuing Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is April 15, 2009. The parties and their addresses are:

LENDER:
FLORIDA CITIZENS BANK
3919 W. Newberry Road
Gainesville, Florida 32607
Telephone: 352-332-4727

BORROWER:
SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

GUARANTOR:
JOHN P. PORRETTO
P.O. Box 272423
Houston, TX 77277

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.
- B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
- C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce your forbearance with respect to any Debt, or to induce you to extend and/or maintain credit, or grant any other financial accommodation, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 200800003509, dated April 15, 2009, from Sustainable Building Solutions, Inc. (Borrower) to you, in the amount of \$1,540,612.50.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guarantees, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

8. 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, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.
- 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 Guaranty.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
- 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.

John P. Porretto
Florida Guaranty
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Page 1

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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. **Insolvency.** 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 Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

9. **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.** In addition, to the extent permitted by law, I 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 the Debt or this Guaranty.

(1) You may renew or extend payments on the Debt, 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.

(4) You, or any institution participating in the Debt, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guarantying or relating to the Debt.

(7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.

(8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.

(9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

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 the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. **REMEDIES.** After the Borrower or 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 Guaranty immediately due.

B. **Sources.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.

D. **Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.

E. **Attachment.** You may attach or garnish my wages or earnings.

F. **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 Guaranty 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 Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty 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 the Debt, 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.

G. **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.

11. **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 Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. 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.

12. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. **RELiance.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and that I have signed this Guaranty to induce you to forbear from exercising your remedies against the Borrower, extend credit to the Borrower, maintain the Borrower's credit, or grant any other financial accommodation. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from the continued existence of the Debt guaranteed hereby, and from any loan and/or financial accommodations resulting in the creation of other Debt guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. **APPLICABLE LAW.** This Guaranty is governed by the laws of Florida, 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.

15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. **ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **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 Guaranty.

18. **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 Guarantor will be deemed to be notice to all Guarantors. 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

John P. Porretto
Florida Guaranty
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Page 2

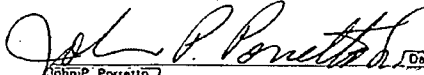
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file any additional documents or certifications that you may consider necessary to perfect, continue, and serve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. SIGNATURES. By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:



John P. Porretto Date
Individually

000114

Exhibit ‘D’

GUARANTY
(Continuing Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is April 15, 2009. The parties and their addresses are:

LENDER:

FLORIDA CITIZENS BANK
3919 W. Newberry Road
Gainesville, Florida 32607
Telephone: 352-332-4727

BORROWER:

SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

GUARANTOR:

SUE A. PORRETTO
P.O. Box 272423
Houston, TX 77277

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

A. **Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.

B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.

C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce your forbearance with respect to any Debt, or to induce you to extend and/or maintain credit, or grant any other financial accommodation, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 200600003509, dated April 15, 2009, from Sustainable Building Solutions, Inc. (Borrower) to you, in the amount of \$1,540,612.50.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guaranties, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

8. 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, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.

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 Guaranty.

E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.

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.

Sue A. Porretto
Florida Guaranty
FL4LSTPHEN0000000000111051082209N

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Page 1

000116

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 Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

9. **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.** In addition, to the extent permitted by law, I 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 the Debt or this Guaranty.

(1) You may renew or extend payments on the Debt, 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.

(4) You, or any institution participating in the Debt, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guarantying or relating to the Debt.

(7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.

(8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way effects or impairs my liability.

(9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way effect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

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 the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. **REMEDIES.** After the Borrower or 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 Guaranty immediately due.

B. **Sources.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.

D. **Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.

E. **Attachment.** You may attach or garnish my wages or earnings.

F. **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 Guaranty 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 Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty 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 the Debt, 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.

G. **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.

11. **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 Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. 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.

12. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. **RELiance.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and that I have signed this Guaranty to induce you to forbear from exercising your remedies against the Borrower, extend credit to the Borrower, maintain the Borrower's credit, or grant any other financial accommodation. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from the continued existence of the Debt guaranteed hereby, and from any loan and/or financial accommodations resulting in the creation of other Debt guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. **APPLICABLE LAW.** This Guaranty is governed by the laws of Florida, 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.

15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. **ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **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 Guaranty.

18. **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 Guarantor will be deemed to be notice to all Guarantors. 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

Sue A. Porretto
Florida Guaranty
FL/4LSTEPHEN000000000000111051062209N

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Page 2

000117

file any additional documents or certifications that you may consider necessary to perfect, continue, and , serve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. SIGNATURES. By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:

Sue A. Porretto _____
(Sue A. Porretto) _____
Individually

000118

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Catherine H. Bryan
Associate

Direct: (843) 735-5563
E-mail: chb@lylesfirm.com

April 28, 2010

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*

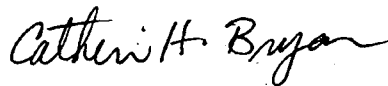
Dear Ms. Armstrong:

Enclosed please find the original and two copies of the ***Civil Action Cover Sheet, Summons and Complaint*** in the above referenced matter along with this firms check for \$150.00. I would appreciate your filing the original and returning the file-stamped copies to me in the envelope provided for your convenience.

Thank you in advance for your assistance, and with kindest regards, I am

Very truly yours,

LYLES & LYLES, LLC



Catherine H. Bryan

CHB/daw
Enclosures
cc: Carl H. Miller

000119

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

WAIVER OF DEFICIENCY JUDGMENT

Plaintiff hereby waives its right to any deficiency judgment in this action.

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

LYLES & LYLES, LLC

By: Catherine H. Bryan
Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

Attorney for Plaintiff
Florida Citizens Bank

Charleston, South Carolina

April 26, 2011

000120

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Waiver of Deficiency Judgment** in the above-referenced matter has been served on the following named persons by placing a copy of the same in the United States mail with proper postage affixed thereto or via electronic mail on this 26th day of April, 2011:

Via U.S. Mail & Electronic Mail:

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464
***Attorneys for Sustainable Building
Solutions, Inc., John P. Porretto, Sr., and
Sue A. Porretto***

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

LYLES & LYLES, LLC



Charleston, South Carolina

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

April 26, 2011
VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

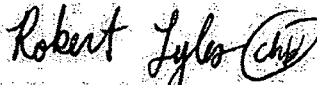
Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of the Waiver of Deficiency Judgment. Please file the original and return the file stamped copy in the envelope provided for you. Thank you in advance for your professional assistance.

By copy of this correspondence and as indicated on the Certificate of Service, I am hereby serving all parties and/or counsel with a copy of the enclosed notice. With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC


Robert T. Lyles, Jr.

RTL/daw

Enclosures

cc: Carl Walls
W. H. Bundy, Jr., Esquire

000122

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Florida Citizens Bank

☐ Plaintiff

v.

Sustainable Building Solutions, Inc., Et. Al

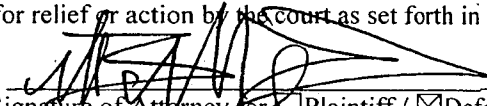
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-10-3586

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Robert T. Lyles, Jr, Bar No. Address: PO Box 773 Charleston, SC 29402 phone: 843-577-7730 fax: 843-577-7172 e-mail: rtl@lylesfirm.com other:		Defendant's Attorney: W. H. Bundy, Jr., Bar No. 1012 Address: PO BOX 1542, Mt. Pleasant, SC 29402 phone: 881-1623 fax: 881-4406 e-mail: whbesq@s3blaw.com 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: Petition for Order of Appraisal 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 Date submitted: <u>July 27, 2011</u>			
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ 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, SCRPC) ☐ 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 CHARLESTON

Florida Citizens Bank,

Plaintiff,

v.

Sustainable Building Solutions, Inc., John P.
Porretto, Sr., Sue A. Porretto, The County of
Charleston, and Island Preservation
Partnership,

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-10-3586

PETITION FOR ORDER OF APPRAISAL

FILED
2011 JUL 27 PM 3:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE CLERK OF COURT OF THE COURT OF COMMON PLEAS OF
CHARLESTON COUNTY:

The Petitioner would respectfully show:

1. That the above entitled action was a real estate foreclosure proceeding in which the Petitioners, Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto, were found to be liable for Plaintiffs debt.
2. That fewer than thirty (30) days have elapsed since the sale of the mortgaged property.
3. That the final sale of the property resulted in a deficiency judgment being entered against the said Defendants, Petitioners herein, and Petitioners are informed and believe that by virtue of Section 29-3-680 et. seq. Code of Laws of South Carolina, 1976, they are entitled to have an appraisal made of the subject real estate by a board of three appraisers and that if said appraisers determine that the property has a value greater than that for which it was sold at auction, then the deficiency shall be reduced accordingly.
4. That the Petitioners hereby designate, Thomas Hartnett, a disinterest freeholder of Charleston County, as their appraiser. Said appraiser is neither connected in business

000124

with, nor related by blood or marriage, to any party.

WHEREFORE, Petitioners pray that an Order for Appraisal be issued; that a board of appraisers be constituted and an appraisal had of the subject property pursuant to Section 29-3-680 et. seq., Code of Laws of South Carolina, 1976; that the judgment be extinguished or abated as provided by Section 29-3-740, Code of Laws of South Carolina, 1976.



W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
SMITH, BUNDY, BYBEE & BARNETT, P.C.
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
*Attorney for Sustainable Building Solutions, Inc.,
John P. Porretto, Sr. and Sue A. Porretto,*

STATE OF TEXAS)
COUNTY OF Harris) VERIFICATION

PERSONALLY appeared before me, John P. Poretto and Sue A. Poretto, who, being sworn, depose and say: that they are the Petitioners in the foregoing action; that the foregoing Petition has been read by them and that the allegations therein are true of their own knowledge.

John P. Poretto AKA John P. Poretto
John P. Poretto

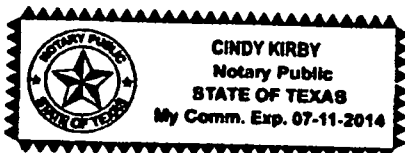
Sue A. Poretto AKA Sue Poretto
Sue A. Poretto

John P. Poretto AKA John P. Poretto
John P. Poretto for Sustainable Building Solutions, Inc.

Subscribed and Sworn to before me this 26 day of July, 2011.

Cindy Kirby
Notary Public for the State of Texas

My Commission Expires: 7-11-14



FILED
2011 JUL 27 PM 3:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

000126

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE ☐ COURT OF COMMON PLEAS
☐ FAMILY COURT

FLORIDA CITIZENS BANK

☐ Plaintiff

CASE NO. 2010-CP-10-3586

v.

SUSTAINABLE BUILDING SOLUTIONS, INC.,

**MOTION INFORMATION FORM
AND COVER SHEET**

☐ Defendant

check box above indicating submitting party

name, SC Bar no. and address of plaintiff's attorney

Robert T. Lyles, Jr. (SC Bar #10299)

Lyles & Lyles

P.O. Box 773

Charleston, SC 29402

telephone: 577-7730

fax: 577-7172

e-mail: rtl@lylesfirm.com

other:

name, SC Bar no. and address of defendant's attorney

W. H. Bundy, Jr., Esquire

Smith, Bundy, Bybee & Barnett, P.C.

Post Office Box 1542

Mt. Pleasant, S.C. 29465

telephone: 881-1623

fax: 881-4406

e-mail: whbesq@s3blaw.com

other:

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

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

SECTION I: Hearing Information

Nature of Motion: Motion for Attorneys Fees

Estimated Time

Court Reporter Needed: YES / NO

SECTION II: Motion Type

☐ Written motion attached

☐ Form Motion --

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

Signature of Attorney for Plaintiff/Defendant

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check one) ☐ 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, SCRPC)

☐ 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

DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (1/2003)

000127

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

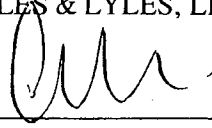
**PLAINTIFF'S DESIGNATION OF
APPRAISER AND MOTION FOR
ATTORNEYS FEES AND COSTS**

FILED
2011 AUG 11 PM 1:25
JILLIE J. ARMSTRONG
CLERK OF COURT

Plaintiff hereby designates Thomas K. Happel, IV or Atlantic Appraisals as its appraiser pursuant to S.C. Code Ann. §29-3-710.

Plaintiff will further move this Honorable Court for costs, expenses and attorneys fees incurred by Plaintiff in connection with defending its interests under the appraisal statutes pursuant to guaranties signed by Defendants John P. Porretto, Sr. and Sue A. Porretto (attached hereto as Exhibit "A").

LYLES & LYLES, LLC

By: 

 Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

**Attorney for Plaintiff
Florida Citizens Bank**

Charleston, South Carolina

8/11, 2011

000129

GUARANTY
(Continuing Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is April 15, 2009. The parties and their addresses are:

LENDER:
FLORIDA CITIZENS BANK
3819 W. Newberry Road
Gainesville, Florida 32607
Telephone: 352-332-4727

BORROWER:
SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

GUARANTOR:
JOHN P. PORRETTO
P.O. Box 272423
Houston, TX 77277

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.
B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce your forbearance with respect to any Debt, or to induce you to extend and/or maintain credit, or grant any other financial accommodation, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 200600003509, dated April 15, 2009, from Sustainable Building Solutions, Inc. (Borrower) to you, in the amount of \$1,540,612.50.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guarantees, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

8. 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, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.
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 Guaranty.
E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
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.

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Page 1

EX. A
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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. **Insolvency.** 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 Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

9. **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.** In addition, to the extent permitted by law, I 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 the Debt or this Guaranty.

(1) You may renew or extend payments on the Debt, 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.

(4) You, or any institution participating in the Debt, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guarantying or relating to the Debt.

(7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.

(8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.

(9) I agree to waive reliance on any oral-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

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 the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. **REMEDIES.** After the Borrower or 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 Guaranty immediately due.

B. **Sources.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.

D. **Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.

E. **Attachment.** You may attach or garnish my wages or earnings.

F. **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 Guaranty 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 Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty 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 the Debt, 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.

G. **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.

11. **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 Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. 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.

12. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. **RELiance.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and that I have signed this Guaranty to induce you to forbear from exercising your remedies against the Borrower, extend credit to the Borrower, maintain the Borrower's credit, or grant any other financial accommodation. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from the continued existence of the Debt guaranteed hereby, and from any loan and/or financial accommodations resulting in the creation of other Debt guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. **APPLICABLE LAW.** This Guaranty is governed by the laws of Florida, 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.

15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. **ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **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 Guaranty.

18. **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 Guarantor will be deemed to be notice to all Guarantors. 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

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Florida Guaranty
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Page 2

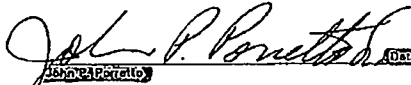
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file any additional documents or certifications that you may consider necessary to perfect, continue, and serve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. SIGNATURES. By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:



John P. Porretto
Individually

GUARANTY
(Contracting Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is April 15, 2009. The parties and their addresses are:

LENDER:

FLORIDA CITIZENS BANK
3919 W. Newberry Road
Gainesville, Florida 32607
Telephone: 352-932-4727

BORROWER:

SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

GUARANTOR:

SUE A. PORNETTO
P.O. Box 272423
Houston, TX 77277

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

A. **Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.

B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.

C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce your forbearance with respect to any Debt, or to induce you to extend and/or maintain credit, or grant any other financial accommodation, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 200800003809, dated April 15, 2009, from Sustainable Building Solutions, Inc. (Borrower) to you, in the amount of \$1,540,812.60.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guarantees, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

8. 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, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.

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 Guaranty.

E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.

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.

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Page 1

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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 Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

9. **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.** In addition, to the extent permitted by law, I 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 the Debt or this Guaranty.

(1) You may renew or extend payments on the Debt, 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.

(4) You, or any institution participating in the Debt, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guarantying or relating to the Debt.

(7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.

(8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.

(9) I agree to waive recourse on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

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 the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. **REMEDIES.** After the Borrower or 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 Guaranty immediately due.

B. **Source.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.

D. **Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.

E. **Attachment.** You may attach or garnish my wages or earnings.

F. **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 Guaranty 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 Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty 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 the Debt, 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.

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11. **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 Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. 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.

12. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. **RELiance.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and that I have signed this Guaranty to induce you to forbear from exercising your remedies against the Borrower, extend credit to the Borrower, maintain the Borrower's credit, or grant any other financial accommodation. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from the continued existence of the Debt guaranteed hereby, and from any loan and/or financial accommodations resulting in the creation of other Debt guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty. If at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty, you may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. **APPLICABLE LAW.** This Guaranty is governed by the laws of Florida, 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.

15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. **ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **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 Guaranty.

18. **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 Guarantor will be deemed to be notice to all Guarantors. 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

Sue A. Ponetto
Florida Guaranty
FL451STEPHEN0000000000111051082209N

©1996 Bankers Systems, Inc., St. Cloud, MN **Bankers**

Page 2

000134

file any additional documents or certifications that you may consider necessary to perfect, continue, and ~~serve~~ my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. SIGNATURES. By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:

Sue A. Porretto
Sue A. Porretto
Individually

000135

CERTIFICATE OF SERVICE

10-CR-10-3586

I hereby certify that a copy of the foregoing **Designation of Appraiser & Motion for**

Attorneys Fees in the above-referenced matter has been served on the following named persons by placing a copy of the same in the United States mail with proper postage affixed thereto or via electronic mail on this 11th day of August, 2011:

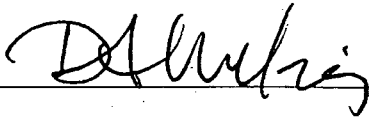
Via U.S. Mail & Electronic Mail:

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464

***Attorneys for Sustainable Building
Solutions, Inc., John P. Porretto, Sr., and
Sue A. Porretto***

FILED
2011 AUG 11 PM 1:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

LYLES & LYLES, LLC.



Charleston, South Carolina

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

August 11, 2011

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

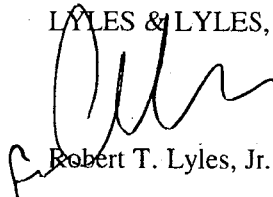
Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of the Designation of Appraiser & Motion for Attorneys Fees. Please file the original and return the file stamped copy to me via courier. Thank you in advance for your professional assistance.

By copy of this correspondence and as indicated on the Certificate of Service, I am hereby serving all parties and/or counsel with a copy of the enclosed notice. With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC



Robert T. Lyles, Jr.

RTL/daw
Enclosures

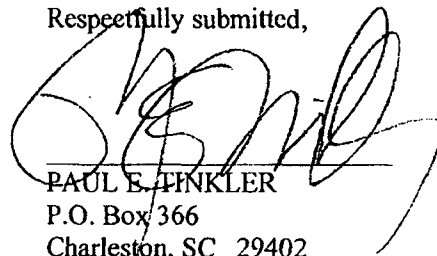
cc: Carl Walls
W. H. Bundy, Jr., Esquire

000137

October 11, 2012. Plaintiff issued a form 1099-C for the tax year 2011 (copy attached hereto) indicating a cancellation of debt as of August 15, 2011. Defendants have paid taxes on the cancellation. Plaintiff, through counsel in Florida and Texas, has now domesticated the judgment in Texas and is pursuing collection efforts against Defendants John and Sue Porretto.

Wherefore, Defendants are informed and believe that they are entitled to an order pursuant to Rule 60(b)(5) declaring the prior deficiency judgment to be satisfied, released or discharged and that it is no longer equitable that the judgment have prospective application.

Respectfully submitted,



PAUL E. TINKLER
P.O. Box 366
Charleston, SC 29402
(843) 853-5203 office
(843) 853-4206 fax
paultinkler@tinklerlaw.com

At Charleston, South Carolina

This 30th day of October 2015

Fax

Florida Citizens Bank
3919 West Newberry Road
Gainesville, FL 32607-2355
Bank Phone: 352-332-4727

Sustainable Building Solutions, Inc.
Sue Porretto
PO Box 272423
Houston TX 77277

Creditor's
Fed I.D. No.
59-3543636

OMB No. 1545-1424
Cancellation of Debt
Form 1099-C
Copy B
For Debtor
For year **2011**

Debtor's
Tax I.D. No.
75-3088992 - **SAS**

Account Information (see instructions)

200600003509

BOX 1 Date Cancelled:	8/15/11
BOX 2 Amount of debt cancelled:	412,320.27
BOX 3 Interest if included in Box 2:	.00
BOX 4 Debt description:	

BOX 5 Check here if the debtor was personally
liable for repayment of the debt:
BOX 6 Check for Bankruptcy:

X
NO

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.

(Keep for your records.)

2

943.853.4206

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

FLORIDA CITIZENS BANK,)
)
Plaintiff,)

vs.)

SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
THE COUNTY OF CHARLESTON)
AND ISLAND PRESERVATION)
PARTNERSHIP,)

Defendants.)

**PLAINTIFF'S MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANTS JOHN PORRETTO
AND SUE PORRETTO'S MOTION
FOR RELIEF FROM JUDGMENT**

FILED
2016 JAN 19 PM 1:34
JULIE J. ARMSTRONG
CLERK OF COURT

Florida Citizens Bank, Plaintiff ("FCB") submits the following Memorandum of Law in opposition to Defendants John Porretto and Sue Porretto's Motion for Relief from Judgment.

RELEVANT FACTS

In March 2006, defendant John P. Porretto, Sr. executed a modified mortgage as President of defendant Sustainable Building Solutions, Inc. ("Sustainable Building") in favor of FCB, encumbering Lot 95 and Lot 124 on Dewees Island in Charleston County. Sustainable Building Solutions, executed two notes for the lots, which were consolidated into one loan, and modified four times (the "Note"). On April 15, 2009, John P. Porretto, Sr., individually and Sue Poretto, individually (together herein referred to the "Guarantors"), each executed and delivered to FCB a Guaranty (the "Guarantees") guaranteeing payment to the Plaintiff all sums owing under the Note.

After default under the Note, on April 28, 2010, the FCB filed an action for foreclosure as to defendant Sustainable Building Solutions, Inc. and for breach of guaranty as to defendants

John P. Porretto, Sr., Sue A. Porretto. A hearing was held on March 22, 2011, and no appearance was made on behalf of the defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto. The Court issued an Order of Judgment and Foreclosure and Order of Judgment for Suit on Guaranty on April 13, 2011 (attached hereto as Exhibit A), which included the following language:

IT IS FURTHER ORDERED, ADJUGED AND DECREED that Plaintiff have deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, pursuant to S.C. Code Ann. Section 29-3-660 (1976), should the proceeds of sale fail to pay the total debt owed to the Plaintiff, together with the costs and expenses of this action and the costs of sale, which judgment shall be entered without further notice or hearing.

...
As a direct and proximate result of the breach of the Guaranties, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have an unlimited liability to the Plaintiff in the amount of \$1,676,793.78 and for which sums they are truly indebted to Plaintiff, and therefore,

IT IS ORDERED that the Plaintiff Florida Citizens Bank be awarded a judgment against the individual Defendants John P. Porretto, Sr., and Sue A. Porretto, jointly and severally, the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78).

The property was sold at a foreclosure sale on April 13, 2011 (attached hereto as Exhibit B). FCB filed a Waiver of Deficiency Judgment on April 26, 2011 (attached hereto as Exhibit C).

Subsequently, recognizing a guarantor's right to an appraisal, on July 27, 2011, defendants John P. Porretto, Sr. and Sue A. Porretto filed a Petition for Order of Appraisal (attached hereto as Exhibit D), and an Order of Appraisal was issued on July 28, 2011 (attached hereto as Exhibit E). In response, on August 11, 2011, Plaintiff filed Plaintiff's Designation of Appraiser and Motion for Attorneys' Fees and Costs (attached hereto as Exhibit F), indicating it intended to defend its interests and pursue the recovery of all costs and fees associated with the

appraisal against the Guarantors pursuant to the terms of the Guarantees. Despite initiating the appraisal process more than four years ago, there is nothing on the record that indicates that the Poretos took any further action until the filing of the current motion seeking for relief from the Judgment.

ARGUMENT

I. Rule 60(b)(5) cannot be utilized to equitably adjust or relieve a party from a money judgment.

The Poretos have asked the Court to relieve them from the FCB judgment based upon Rule 60(b)(5) which states as follows:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.
On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.

There is no evidence that the judgment against the Poretos as Guarantors has been satisfied or released. In fact that is precisely what the Poretos ask the Court to do now. Nor is there any evidence that the prior judgment was reversed or vacated (no appeal was taken and no action was filed seeking to vacate the judgment). Therefore, those provisions of Rule 60(b)(5) simply do not apply.

The Poretos also expressly asked the court to invoke the equitable leg of Rule 60(b)(5) to relieve them from the money judgment obtained by FCB. In a case of striking similarity to the one before the Court, the Eighth Circuit Court of Appeals has held that, "Rule 60(b)(5)'s equitable leg cannot be used to relieve a party from a money judgment."

II. The judgment against the Guarantors is separate and distinct from the foreclosure judgment, and therefore the waiver of deficiency is immaterial as to judgment on the guarantees.

As a threshold matter, the judgment against the Porrettos is clearly separate and distinct from the foreclosure judgment against Sustainable Building.

The Guarantees themselves contemplate that the obligations imposed would survive the foreclosure of the property or the release of the borrower:

I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the debt or against any Property...**I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.** [Emphasis added.]

In addition, to the extent permitted by law, I 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 the Debt or this Guaranty...**You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer...You may release, substitute or impair any Property.** [Emphasis added.]

“A guaranty of payment is an absolute or unconditional promise to pay a particular debt if it is not paid by the debtor at maturity.” *Bank of Camden v. Hooker*, No. 8:14-CV-01050-JMC, 2014 WL 4129579, at *2 (D.S.C. Aug. 19, 2014) (quoting *AMA Management Corp. v. Strasburger*, 309 S.C. 213, 420 S.E.2d 868, 872 (S.C.Ct.App.1992) (internal quotation marks omitted). Thus, “[u]nder an absolute guaranty of payment, the creditor may maintain an action against the guarantor immediately upon default of the debtor.” *Id.* (citing *Peoples Federal Sav. and Loan Ass’n v. Myrtle Beach Retirement Group, Inc.*, 300 S.C. 277, 281, 387 S.E.2d 672 (1989)). Therefore, Florida Citizens Bank would have been well within its rights to forego foreclosure and proceed only on the guarantees, if it had so chosen.

“The general rule in South Carolina...is that a guaranty of payment is an obligation separate and distinct from the original note.” *Citizens and Southern Nat. Bank of South Carolina v. Lanford*, 443 S.E.2d 549, 544 (S.C. 1994): The *Lanford* Court held that a guarantor could not avail himself of the defense of impairment of collateral, as he was not a party to the note. *Id.* Likewise here, the Guarantors are not parties to the note and mortgage. The waiver of the deficiency only operates to protect against a deficiency judgment and not a judgment on a guarantee.

Also, in *U.S. Bank Nat. Ass’n. v. Zarrabi*, 560 Fed. Appx. 181, 182-183 (4th Cir. 2014), the Court applied Virginia law, holding that a certificate of satisfaction was a release of the encumbrance as to which such payment or satisfaction is entered, and could operate as a reconveyance of the property. It did not, however, extinguish the guarantors’ liability. *Id.* at 183. The Court specifically noted that the guarantees provided that the release of any property connected to the debt is not a release of the guarantors’ obligations. *Id.* Similarly, as discussed above, the Guarantees provide that the obligations imposed will survive the foreclosure of the property or the release of the borrower.

Other cases from South Carolina reinforce the idea that a guarantor’s liability is not extinguished by a waiver of deficiency judgment. In *AMA Mgmt. Corp. v. Strasburger*, 420 S.E.2d 868, 872 (S.C. Ct. App. 1992), the court noted that if the debtor files a petition for bankruptcy, the guarantor is not discharged and does not receive the benefit of the automatic stay, thereby allowing the creditor to bring a separate state court action against the guarantors, even though a bankruptcy petition had been filed by the debtor. *Id.* In *Branch Banking & Trust Co. v. Brown*, 3:12-CV-1059-JFA, 2013 WL 2099488, at *3 (D.S.C. 2013), the court held that the parties in the federal action on the guaranties were not litigating substantially the same issues

that were being litigated by the parties in a concurrent state court foreclosure action. Finally, in *In re Southco, Inc.*, 168 B.R. 95, 101 (Bankr. D.S.C. 1994), the court stated that “the contract of guaranty is a separate undertaking and if the terms and conditions of the contract so state, a guarantor may assume a greater liability than that of the principal.”

The Court’s Order of April 11, 2011, makes it clear that a judgment was rendered on the foreclosure action and against the Porrettos for their liability under the Guarantees. There is nothing to suggest and no law to support a contention that waiver of a deficiency with respect to the foreclosure action precludes the judgment against the Porrettos on the Guarantees.

III. The Porrettos were entitled to the appraisal process but elected not to pursue the process to completion.

While the law is clear that a guarantors’ obligations are independent from the obligations of the mortgage debtor, the law in South Carolina is also clear that a guarantor does have rights to relief under the appraisal statute. *Anderson Brothers Bank v. Adams*, 305 S.C. 25, 406 S.C.2nd 173 (1991). In their motion, the Poretos improperly confuse the sequence of events in the procedural history of the case in an effort to make it appear as though they gave up their appraisal rights upon FCB’s decision to waive the deficiency in the foreclosure action, or repeated above, the sequence of events was not as the Poretos portray them. In fact, the Poretos exercised their rights to an appraisal well after FCB waived its rights to a deficiency judgment against Sustainable Building Solutions and then inexplicably ended that process.

Well after FCB waived its right to a deficiency judgment on the foreclosure action on April 26, 2011 (Exhibit C), the Poretos filed a Petition for Order of Appraisal and designated Thomas Hartnett as their appraiser on July 27, 2011 (Exhibit D). The Clerk of Court entered an Order of Appraisal the next day on July 28, 2011 (Exhibit E). Even though FCB responding in a timely fashion on August 11, 2011 (Exhibit F), the record does not indicate that the Poretos

exerted any other efforts with respect to their appraisal rights and the appraisal process to which they were entitled simply ended.

The Poretos clearly recognized both their separate judgment liability to FCB as Guarantors and their rights to the appraisal process in order to modify the amount of that liability through the appraisal process. For reasons that are unknown to FCB, the Poretos did not pursue those rights and which are now stale.

IV. FCB's issuance of a 1099 to Sustainable Building Solutions, Inc. is irrelevant to the proceedings and does not provide a basis for legal or equitable relief.

The Poretos also seem to argue that that since the debt relief realized by Sustainable Building, as a result of the waiver of deficiency, was reported to the IRS, there is an equitable or legal basis for providing them with the requested relief. This fails for two reasons. First, the Poretos have not cited any statutory or common law to suggest that issuing a 1099 to one entity or person discharges a legal obligation much less a legal obligation of another party. Second, the 1099 was sent to Sustainable Building, and while it may or may not have affected the tax liability of Sustainable Building, other than a bold assertion that "Defendants have paid taxes on the cancellation," the Poretos have failed to establish that it affected their tax liability or that any taxes were paid or by whom.

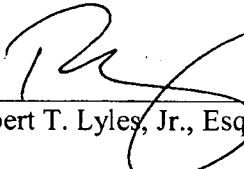
Even if the Poretos incurred personal tax liability as the result of the debt relief, that is a matter between the Poretos and the IRS and is entirely unrelated to the valid debt the Poretos owe to FCB. The Poretos are free to deal with the IRS in any way they see fit upon the payment of the judgment debt they still owe to FCB.

In sum, the 1099 is irrelevant and provides no legal or equitable basis for the relief requested by the Poretos.

CONCLUSION

For these reasons, Plaintiff respectfully requests that defendants John Porretto and Sue Porretto's Motion for Relief from Judgment be denied.

LYLES & LYLES, LLC

By: 
Robert T. Lyles, Jr., Esquire

342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

**Attorney for Plaintiff
Florida Citizens Bank**

Charleston, South Carolina
1/19, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
FLORIDA CITIZENS BANK,)
)
Plaintiff,)
)
vs.)
)
SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

**ORDER OF JUDGMENT AND
FORECLOSURE
AND
ORDER OF JUDGMENT FOR
SUIT ON GUARANTY**

FILED
2011 APR 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

Pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure*, the above-captioned matter was referred to the undersigned Master in Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment, and to hear and determine any post-judgment proceedings. Any appeal from the decision of the Master in Equity shall be directly to the South Carolina Supreme Court.

Pursuant to the Order of Reference, a hearing was held on March 22, 2011 before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County. Catherine H. Bryan of Lyles & Lyles, LLC appeared for the Plaintiff. No appearance was made on behalf of the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto. Island Preservation Partnership has been dismissed from this action as evidenced by Plaintiff's Notice of Dismissal as to Island Preservation Partnership Only dated March 22, 2011.

At the hearing, the testimony was taken, which is reported herewith, and from the record in this case including the pleadings, admissions, testimony and evidence, I find and conclude as follows:

A

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Lis Pendens was filed on April 28, 2010.
2. The Summons and Complaint were filed on April 30, 2010.
3. Since this foreclosure action involves a commercial loan, the Home Affordable Modification Program is inapplicable.
4. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., Sue A. Porretto, and Island Preservation Partnership were served with the Lis Pendens; Summons; verified Complaint, including Exhibits A, B, C, and D; and Fair Debt Collection Notice via process server on May 14, 2010, as evidenced by the Affidavits of Service filed on May 19, 2010.
5. The Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto filed an answer on July 13, 2010, admitting the allegations of the Complaint.
6. The Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto, through their attorney of record, were notified of the time, date and place of the hearing in this matter on January 25, 2011, as indicated by the filed Notice of Hearing.
7. On or about March 6, 2006, Plaintiff made a loan to Sustainable Building Solutions, Inc. as evidenced by a note in the principal amount of One Million Four Hundred Twenty-Five Thousand and 00/100 Dollars (\$1,425,000.00) with interest as provided therein (the "March 2006 Note").
8. On or about June 15, 2006, Plaintiff made a loan to Sustainable Building Solutions as evidenced by the note in the principal amount of One Hundred Seventy-Five Thousand Six Hundred Twelve and 50/100 Dollars (\$175,612.50) with interest as provided therein (the "June 2006 Note").

9. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of One Million Six Hundred Thousand Six Hundred Twelve and 50/100s Dollars (\$1,600,612.50) with interest as provided therein (the "April 2007 Note"), as renewed by certain promissory notes dated April 15, 2008 (the "April 2008 Note") and April 15, 2009 (the "April 2009 Note"), and modified by the Debt Modification Agreement dated July 15, 2009 (the "July 2009 Modification"), together with certain fees and charges.

10. True copies of the March 2006 Note, June 2006 Note, April 2007 Note, April 2008 Note, April 2009 Note and July 2009 Modification (hereinafter collectively referred to as the "Note") are incorporated herein by reference.

11. On or about February 14, 2005, in order to secure the payment of the Note and indebtedness, Sustainable Building Solutions, Inc. made, executed and delivered to Plaintiff a mortgage covering real property located in Charleston County, South Carolina, which was recorded on February 22, 2005, in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage, dated March 6, 2006, and recorded on March 13, 2006 in the RMC Office for Charleston County in Book B-576 at Page 181. The mortgage and Modification of Mortgage are hereinafter collectively referred to as the "Mortgage."

12. The real property encumbered by the Mortgage (hereinafter referred to as the "Property") is more fully described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-'37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and

recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

13. A true copy of the Mortgage is incorporated herein by reference.
14. The Mortgage constitutes a first lien on the Property.
15. On or about April 15, 2009, John P. Porretto, Sr., individually, and Sue A. Porretto, individually, each executed and delivered to the Plaintiff a valid and enforceable Guaranty (hereinafter referred to as the "Guaranties"), guaranteeing payment to Plaintiff all sums owing under the Note, promising to pay the debt in the full amount as stated therein, and agreeing to all terms of the Note.

16. The Guaranties constitute valid and enforceable contracts.
17. By failing and refusing to make the required payments to Florida Citizens Bank, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have breached the terms of the unconditional guarantees without legal excuse and are personally liable under the terms of the Guaranties for the full amount of indebtedness to Florida Citizens Bank as set forth more fully herein.
18. According to the terms of the Note and Mortgage, if an event of default occurs or in the event of non-payment of the Note in full at maturity, the entire unpaid balance of the Note shall, at the option of Florida Citizens Bank, become immediately due and payable, without notice or demand.
19. Under the terms of the Mortgage, it was agreed that in the event the mortgagor failed to pay all taxes and assessments upon the Property when the same shall first become payable, then the mortgagee may cause the same to be paid, together with all penalties and costs incurred thereon, which amount, together with interest thereon, would be secured by the Property.
20. The payments due under the Note and Mortgage are in default and the conditions of the Note and Mortgage have been breached.
21. Pursuant to the terms of the Note and Mortgage, the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, were obligated to pay the Plaintiff the sums due and owing thereunder.
22. Despite demand, no payment has been made by the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, or Sue A. Porretto, individually, and Florida Citizens Bank filed this action to foreclose on the property.

23. The Mortgage provides that, in the event legal proceedings are instituted for the foreclosure of the Mortgage, or should the Note be placed in the hands of any attorney for collection, all costs and expenses incurred by Florida Citizens Bank, including a reasonable counsel fee of not less than ten percent (10%) of the amount involved, shall be added to the total debt secured by the Mortgage. Further, the Note provides that the Borrower will pay Lender the costs and expenses of collection, including Lender's reasonable attorneys' fees, Lender's legal expenses, and any court costs.

24. Counsel for the Plaintiff filed an Affidavit of Attorneys' Fees and Costs dated March 22, 2011, which was not contested, therefore, I find as fact herein the amounts due as stated therein. Having considered the nature, extent and difficulty of the services rendered, the fees customarily charged for such services, the time involved, the standing of counsel, and the beneficial results obtained by counsel for the Plaintiff, I find that the sum of \$16,334.50 is a reasonable attorneys' fee to allow under the Note and Mortgage for the services rendered and performed and anticipated to be performed until the final adjudication of this action. Further, I find costs of \$1,369.19 are due, as stated in the Affidavit of Attorneys' Fees and Costs.

25. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, is as follows:

(a)	Principal Balance as of March 22, 2011	\$1,574,188.52
	(Per Diem Rate of \$183.30)	
(b)	Interest (to 3/22/11)	\$ 83,851.66
(c)	Appraisal Fee	\$ 1,050.00
(d)	Costs of Collection	\$ 1,369.10

(e) Attorneys' Fees \$ 16,334.50

TOTAL DEBT due as of
March 22, 2011 secured by the
Note and Mortgage, including
interest to date shown \$1,676,793.78

26. Interest for the period from March 22, 2011 through the date of this judgment, at the stated rate of \$183.30 per diem, shall be added to the above stated "Total Debt" to comprise the amount of the Judgment debt to be entered herein. Interest after the date of Judgment at the rate allowed by law, shall be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

27. Florida Citizens Bank is seeking foreclosure of the Mortgage and specifically demands a deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, pursuant to S.C. Code Ann. Section 29-3-660 (1976) for any deficiency in this action remaining after the sale of the Property.

28. Defendants reserve any rights they have pursuant to Sections 29-3-680 through - 780 (1976).

29. The Plaintiff should have a judgment of foreclosure of its Mortgage; and the mortgaged Property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. AS TO THE FORECLOSURE

1. There is due to the Plaintiff on the Note and Mortgage the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78) representing the "Total Debt" due to Plaintiff as set out in Paragraph 25, *supra*, together with interest at the daily rate stated in Paragraph 26 from the date aforesaid to the date this Judgment is filed.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in the findings of fact, *supra*, and later accrued interest and costs) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the statutory rate.

3. The Defendants liable for the aforesaid debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney, the amount of the Plaintiff's total debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

4. That on default of payment at or before the time herein indicated, the Property described in the Complaint, as hereinafter described, together with any furniture, fixtures, equipment and other Collateral located thereon shall be sold by the undersigned Master-in-Equity, or his agent under the direction of the Master-in-Equity, at public auction at the Charleston County Courthouse, Charleston, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

- a. FOR CASH: The undersigned Master-in-Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) to be paid on the date of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within thirty (30) days, same to be forfeited without further hearing and applied to the costs and Plaintiff's debt.
- b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.5 percent (7.5%) per annum.
- c. The sale shall be subject to taxes, assessments, existing easements and restrictions, and easements and restrictions of record.
- d. This Mortgage constitutes the first lien on the Property.
- e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes.

5. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master-in-Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness. No deposit shall be due if Plaintiff is the successful bidder.

6. A deficiency judgment having been demanded, the sale shall reopen for additional bids on the 30th day after the date of sale; however, Plaintiff may waive any of its rights, including withdrawing its demand for a deficiency judgment prior to sale.

7. The undersigned Master-in-Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the undersigned Master-in-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured. To the extent that Notice of Sale is published prior to the entry of this order such publication is ratified nunc pro tunc.

8. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the Property shall not be sold, and in the event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

9. That the undersigned Master-in-Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under the Order of Court;

NEXT: To the payment of the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on same; and

NEXT: Any surplus will be held pending further Order of this Court.

10. IT IS FURTHER ORDERED, ADJUGED AND DECREED that Plaintiff have deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, pursuant to S.C. Code Ann. Section 29-3-660 (1976), should the proceeds of sale fail to pay the total debt owed to the Plaintiff, together with the costs and expenses of this action and the costs of sale, which judgment shall be entered without further notice or hearing.

11. IT IS FURTHER ORDERED, ADJUGED AND DECREED that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon (except the tangible collateral sold with the premises) and put the successful bidder or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

12. IT IS FURTHER ORDERED, ADJUGED AND DECREED that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the Property or have been ejected from the Property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said Property, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not

subject to the lien of Plaintiff's Mortgage, which personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

13. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendants named herein and all persons whosoever claiming under him, them, or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

14. IT IS FURTHER ORDERED that pursuant to S.C. Code Ann § 30-9-31, the deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the Property at the time of filing of the notice of pendency of the within action, and the name of the grantee(s), and the Register of Deeds is authorized to omit from the indices pertaining to such conveyances the names of all parties not contained in said Deed.

15. IT IS FURTHER ORDERED that the undersigned Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds.

16. Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject Property.

17. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Sustainable Building Solutions, Inc. on February 14, 2005, and recorded in Book M526 at Page 278 on February 22, 2005, in the Office of the RMC for Charleston County, as modified by the Modification of Mortgage executed by Sustainable Building Solutions, Inc. on March 6, 2006, and recorded in Book B576 at Page 181 on March 13, 2006 in the Office of the RMC for Charleston County.

18. The following is a description of the Premises herein ordered to be sold:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

B. AS TO THE SUIT ON THE GUARANTY

1. The Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, each executed a valid and enforceable unconditional guaranty guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens Bank, agreeing to all terms of the Note, and promising to pay the debt in the full amount stated therein.

2. Under the terms of the Guaranties, Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, are personally obliged to pay all debts, liabilities, and obligations owing from Sustainable Building Solutions, Inc. to Plaintiff.

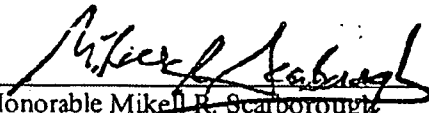
3. As stated above, there is due and owing to Plaintiff the amount of \$1,676,793.78.

4. By not paying the amounts due under the terms and conditions of these Guaranties, the Defendants John P. Porretto, Sr., and Sue A. Porretto have breached the terms and conditions thereof and are personally liable to Plaintiff, both jointly and severally, for the amounts stated herein.

5. As a direct and proximate result of the breach of the Guaranties, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have an unlimited liability to Plaintiff in the amount of \$1,676,793.78 and for which sums they are truly indebted to Plaintiff, and, therefore,

IT IS ORDERED that the Plaintiff Florida Citizens Bank be awarded a judgment against the individual Defendants John P. Porretto, Sr., and Sue A. Porretto, jointly and severally, the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78).

AND IT IS SO ORDERED!


The Honorable Mikell R. Scarborough
Charleston County Master-in Equity

Charleston, South Carolina

4/11, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

FLORIDA CITIZENS BANK,)
)
Plaintiff,)
)
vs.)
)
SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
THE COUNTY OF CHARLESTON)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

FILED
2011 APR 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

AFFIDAVIT OF TESTIMONY

This case having been referred and heard on March 22, 2011, at the Charleston County Courthouse, Charleston, South Carolina, and which was attended by Catherine H. Bryan, attorney for the Plaintiff, and who is authorized to testify and makes part of this record the following:

1. I am an attorney employed by Lyles & Lyles, LLC, the firm which represents the Plaintiff in the above-captioned matter.
2. The Plaintiff Florida Citizens Bank (hereinafter the "Plaintiff" or "Florida Citizens") is a corporation organized under the laws of the State of Florida which does business in Charleston County, South Carolina, and is the lender on the loan that is the subject of this action.
3. This foreclosure action involves a commercial loan.
4. The Defendant Sustainable Building Solutions, Inc. is the owner of the Property described in paragraph 19 below, is the borrower on the loan that is the subject of this action, and is subject to the jurisdiction of this court.

5. The Defendant John P. Porretto, Sr. is a resident of the State of Texas who personally guaranteed a loan for real property located in Charleston County, South Carolina.
6. The Defendant Sue A. Porretto is a resident of Texas who personally guaranteed a loan for real property located in Charleston County, South Carolina.
7. Island Preservation Partnership was made a party to this action upon the belief that it may have some right or claim in the property identified in Paragraph 19 below as "Lot 124", by virtue of that certain mortgage recorded October 1, 2001 in the Charleston County RMC Office in Book T383 at Page 354. The mortgage has been satisfied and Island Preservation Partnership is no longer a party to this action, as evidenced by the Notice of Dismissal as to Island Preservation Partnership Only, dated March 22, 2011, which has been filed by the Plaintiff.
8. This is an action brought by the Plaintiff to foreclose on a mortgage on real property located in Charleston County, South Carolina, which is more specifically described in the Complaint and Lis Pendens filed in this case.
9. The Lis Pendens was filed on April 28, 2010.
10. The Summons and Complaint were filed on April 30, 2010.
11. Defendants above-named were served with the Lis Pendens; Summons; verified Complaint, including Exhibits A, B, C and D; and Fair Debt Collection Notice, via process server on May 14, 2010 as evidenced by the Affidavits of Service filed on May 19, 2010.
12. Counsel for Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto filed an Answer on behalf of same on July 13, 2010.
13. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto, through their attorney of record, were notified of the time, date and place of the hearing in this matter as demonstrated by the Notice of Hearing filed February 24, 2011.

14. At the time of the filing of this action, the Property was titled in the name of Sustainable Building Solutions, Inc.

15. On or about March 6, 2006, Defendant Sustainable Building Solutions, Inc., did execute and deliver to Plaintiff a promissory note (the "March 2006 Note") and promised to pay to Plaintiff the sum of One Million Four Hundred Twenty-Five Thousand and 00/100 Dollars, (\$1,425,000.00) together with interest as provided therein.

16. On or about June 15, 2006, Sustainable Building Solutions, Inc. did execute and deliver a promissory note (the "June 2006 Note") and promised to pay to Plaintiff the sum of One Hundred Seventy-Five Thousand Six Hundred Twelve and 50/100s Dollars (\$175,612.50), together with interest as provided therein.

17. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of One Million Six Hundred Thousand Six Hundred Twelve and 50/100s Dollars (\$1,600,612.50), with interest as provided therein, as renewed by certain promissory notes dated April 15, 2008 and April 15, 2009, and modified by the Debt Modification Agreement dated July 15, 2009, together with certain fees and charges. The above referenced notes and debt modification agreement are collectively referred to as the "Note," true copies of which are attached to the Complaint as Exhibit "A."

18. On or about February 14, 2005, in order to secure the payment of the Note and indebtedness, Sustainable Building Solutions, Inc. made, executed and delivered to Plaintiff a mortgage covering real property located in Charleston County, South Carolina, which was recorded on February 22, 2005, in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage which was recorded on March 13, 2006

in the RMC Office for Charleston County in Book B-576 at Page 181. The mortgage and Modification of Mortgage are hereinafter collectively referred to as the "Mortgage," true copies of which are attached to the Complaint as Exhibit "B."

19. The real property encumbered by the Mortgage (hereinafter referred to as the "Property") is more fully described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as **Lot 95** on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "**LOT 124**" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

20. The Mortgage constitutes a first priority lien on the Property.
21. The Defendant John P. Porretto, Sr., individually, is made a party to this action by virtue of the unconditional guarantee he signed on or about April 15, 2009, guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens. A true copy of the Guaranty is attached as Exhibit "C" to the Complaint filed in this action.
22. Defendant Sue A. Porretto, individually, is made a party to this action by virtue of the unconditional guarantee she signed on April 15, 2009, guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens. A true copy of the Guaranty is attached as Exhibit "D" to the Complaint filed in this action.
23. According to the terms and conditions of the Note and Mortgage, it is provided that if an event of default occurs, or in the event of non-payment of the Note in full at maturity, the entire unpaid balance of the Note shall, at the option of Florida Citizens, become immediately due and payable, without notice or demand.
24. Further, under the terms and conditions of the Mortgage, it was agreed that in the event the mortgagor failed to pay all taxes and assessments upon the Property when the same shall first become payable, then the mortgagee may cause the same to be paid, together with all penalties and costs incurred thereon, which amount, together with interest thereon, would be secured by the Property.
25. The payments due on the Note and Mortgage are in default and the conditions of the Note and Mortgage have been breached.

26. Pursuant to the terms of the Note, Mortgage, and Guaranties, Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto were obligated to pay to Florida Citizens the sums due and owing thereunder.

27. Despite demand, no payment has been made by the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., or Sue A. Porretto, and Florida Citizens filed this action to foreclose on the property.

28. The Plaintiff demands a deficiency judgment against Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto as demonstrated by the Complaint.

29. As demonstrated by the Complaint, with respect to the suit on the Guaranties, Plaintiff also seeks a judgment against Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, for the entire amount due to Plaintiff.

30. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, are delinquent in the amount due to the Plaintiff which, not including attorneys' fees and costs, is \$1,659,090.18, consisting of:

Principal Balance	\$ 1,574,188.52
Interest through 3/22/11	\$ 83,851.66
Appraisal Fee	\$ 1,050.00
Per Diem Rate	\$ 183.30

31. As provided in the Note, Mortgage and Guaranties, the attorneys' fees, legal expenses, and costs of this action will need to be added to the above referenced amounts for the total amount due in this action.

FURTHER AFFIANT SAYETH NOT.

LYLES & LYLES, LLC

Catherine H. Bryan

By: Catherine H. Bryan

SWORN to before me
this 22nd day of March, 2011

Brenda Grederman

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 1-10-2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

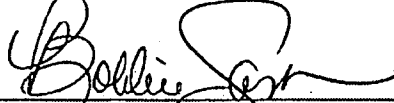
FLORIDA CITIZENS BANK,)
)
Plaintiff,)
)
vs.)
)
SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
THE COUNTY OF CHARLESTON)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

AUTHORIZATION TO TESTIFY

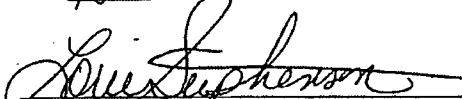
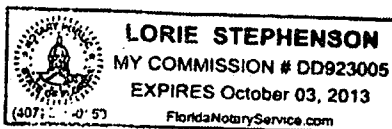
The undersigned, a duly authorized officer of Florida Citizens Bank, authorizes Robert T. Lyles, Jr., Catherine H. Bryan, and Lyles & Lyles, LLC, or its representative, to testify on behalf of Florida Citizens Bank in the above referenced foreclosure action.

FLORIDA CITIZENS BANK



By: Bobbie Gaston
Its: Loan Operations Officer

SWORN to before me
this 18th day of March, 2011


NOTARY PUBLIC FOR FLORIDA
My Commission Expires:

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2010-CP-10-3586

AFFIDAVIT OF ROBERT T. LYLES, JR.

FILED
2011 APR 13 PM 4:28
JULIA J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME the undersigned, Robert T. Lyles, Jr., who,
being first duly sworn, deposes and says:

1. I am over the age of twenty-one years, and I make this Affidavit on my own personal knowledge.
2. I am an attorney with Lyles & Lyles, LLC, attorneys for the Plaintiff in the above referenced foreclosure action.
3. That as part of the above referenced suit on foreclosure, Plaintiff has placed the following documents in the hands of Lyles & Lyles, LLC:
 - a. Note dated March 6, 2006, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,425,000.00.
 - b. Note dated June 15, 2006, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$175,612.50.

- c. Note dated April 15, 2007, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,600,612.50.
 - d. Note dated April 15, 2008, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,600,612.50.
 - e. Note dated April 15, 2009, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, in the principal amount of \$1,540,612.50.
 - f. Debt Modification Agreement dated July 15, 2009, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc.
 - g. Mortgage in the amount of \$1,000,000.00 executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, filed February 22, 2005, in Book M526 at Page 278.
 - h. Modification of Mortgage executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the amount of \$1,425,000.00, filed March 13, 2006 in Book B576 at Page 181.
 - i. Guaranty executed by Defendant John P. Porretto for the benefit of Plaintiff dated April 15, 2009.
 - j. Guaranty executed by Defendant Sue A. Porretto for the benefit of Plaintiff dated April 15, 2009.
4. Plaintiff's attorneys' fees, legal expenses and court costs are recoverable under the terms of the notes, guaranties, and mortgage securing the notes (referenced above).
5. The Defendants are in default under the terms of said note, mortgage and guaranties, and Plaintiff is entitled to reimbursement for the reasonable attorneys' fees, costs and expenses incurred in the prosecution of this action.
6. There are six factors to consider in determining the reasonableness of an award of attorneys fees as set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 SE2d 659 (1993):
- a. Nature, extent and difficulty of the legal services rendered. In this instance, a Note in the amount of \$1,540,612.50 which is in default and was secured by a parcel of property

located in Charleston County is being foreclosed. The principal, interest, late charges, and other expenses, upon information and belief, total \$1,659,090.18. Services provided by Lyles & Lyles, LLC included the review of relevant loan documents; review of public records, specifically Charleston County RMC lien searches; preparation of pleadings and motions necessary to complete the lawsuit on the promissory notes; preparation for, attendance at, and other actions pursuant to the foreclosure proceedings, including the Motion and Order of Reference, hearing notices and hearing for final judgment.

In addition to the foreclosure action, there were services rendered in connection with potential compromise resolution of this action, including communicating with counsel for the Porretto Defendants and Defendant Sustainable Building Solutions, Inc. and communicating with Plaintiff.

Additional services will be rendered and costs incurred in connection with preparation for and attendance at the hearing for final Order and Judgment on March 22, 2011, and in connection with matters following the final hearing and sale, including preparation of documents in connection with same. Moreover, depending upon the interest shown by the Defendants, third parties, or counsel for Defendants and the inherent negotiations required thereby, other time will likely be committed to the completion of this case.

b. Time and Labor Devoted to Case. The time and labor devoted in this matter is outlined in the following summary of billable hours and rates as of March 21, 2011:

Litigation Attorney/ Legal Staff	Hours	Rate/Hour	Billed Amount
R. Lyles, Jr., Esq.	20.3	\$250.00	5,075.00
C. Bryan, Esq.	53.3	\$175.00	9,327.50
D. Welzig	5.4	\$80.00	432.00
		Total	14,834.50

Fees for Professional Services (incurred through 3/21/11)	\$ 14,834.50
Disbursements (incurred through 3/21/11) (Costs which include postage, copies, long distance telephone Calls, research, filing fees, non-legal professional services, courier, and service of documents)	\$ 1,219.19
Total Billing as of 03/21/11	\$ 16,053.69
Estimated fees from 3/21/11 to conclusion of action	\$ 1,500.00
Estimated Disbursements from 3/21/11 to conclusion of action	\$ 150.00
TOTAL BILLING including estimated billing to conclusion of action	\$ 17,703.69

c. Professional Standing of Counsel and Staff. I graduated from the University of South Carolina School of Law, was admitted to practice in the State of South Carolina in 1987 and have remained in good standing since that time. I am licensed to practice in the State Courts of South Carolina, the United States District Court of South Carolina, the Fourth Circuit Court of Appeals, and the Supreme Court of the United States of America. Catherine H. Bryan is an associate of Lyles & Lyles, LLC. She graduated from the University of South Carolina School of Law in 2007, was admitted to practice in the State of South Carolina in 2007, and has remained in good standing since that time. She has been an associate with Lyles & Lyles, LLC since February of 2008. She is licensed to practice in the State Courts of South Carolina and the United States District Court of South Carolina. Danelle A. Welzig is a litigation paralegal and has provided assistance in the preparation of pleadings, tax and lien research, and follow up scheduling for the final hearing. She has been a paralegal with Lyles & Lyles, LLC since June of 2002. She is a graduate of the College of Charleston and an ABA accredited Paralegal Certification program. The attorneys and other professionals involved in handling this matter have the requisite experience and professional standing in the community to provide the services rendered in this matter.

d. Contingency of Compensation. The compensation was to be paid on an hourly basis, which is the normal method of payment for mortgage foreclosures.

e. Fees Customarily Charged in the Locality for Similar Services. Upon information and belief, the hourly rates charged by the attorneys working on the matter are customary for those involved in providing similar services in this community.

f. Beneficial Results Obtained. The results have yet to be determined as a hearing on the merits and damages hearing has been set for March 22, 2011.

6. The Mortgage provides that all costs and expenses incurred by the mortgagee, including a reasonable counsel fee of not less than ten percent (10%) of the amount due, shall be added to the total debt secured by the mortgage. The total amount due is \$1,659,090.18. The total billing (including estimated billing to conclusion of this action) as set forth in Paragraph 6(b), above is \$16,334.50. Therefore, I believe that attorneys fees of \$16,334.50 are reasonable and should be added, along with the costs and expenses which are \$1,369.19, to the debt secured by the mortgage.

FURTHER AFFIANT SAYETH NOT.

Lyles & Lyles, LLC

By: Robert T. Lyles, Jr.

SWORN to before me
this 22 day of March, 2011

Brenda Godeman
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1-10-2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON
PLEAS

Florida Citizens Bank,

Case Number: 2010-CP-10-03586

Plaintiff,

**MASTER'S ORDER OF SALE
AND
DISBURSEMENT**

-v.-

Sustainable Building Solutions, Inc, et al.,

Defendant,

UNDER AUTHORITY of a Decree herein dated April 13, 2011, I offered for sale to the highest bidder for cash, at public auction on July 5, 2011, the premises subject to this suit, and I received a high bid of \$90,000.00 for Lot 95 and \$1,075,000.00 for Lot 124 from the Plaintiff; and I executed and delivered a Master's deed to **Florida Citizens Bank** for Lot 95 and **Phane Edward Duncan and Maria Teresa Brooks** for Lot 124 and I have disbursed the funds as follows:

CONSIDERATION

Deposit (Order of Reference)

Received by Master

Total Received by Master

(Lot 95)
(Lot 124)

\$90,000.00
\$1,075,000.00
\$25.00

\$4,347.47

\$4,472.47

DISBURSEMENTS

Master's Fees

Newspaper Advertisement

County Commission

Master's Deed

Total of Master's Costs

\$100.00

\$947.47

\$3400.00

\$25.00

\$4,472.47

All of the funds having been disbursed, I hereby ORDER the file closed and the case ended.

July 8, 2011
Charleston, SC


Mikell R. Scarborough
Master-in-Equity, Charleston County

ME1005

B

000178

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

WAIVER OF DEFICIENCY JUDGMENT

Plaintiff hereby waives its right to any deficiency judgment in this action.

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

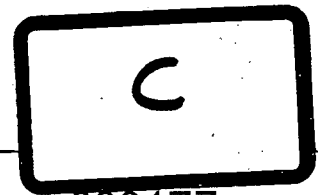
LYLES & LYLES, LLC

By: Catherine Bryan
Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

Attorney for Plaintiff
Florida Citizens Bank

Charleston, South Carolina

April 26, 2011



000177

CERTIFICATE OF SERVICE

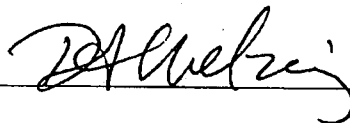
I hereby certify that a copy of the foregoing **Waiver of Deficiency Judgment** in the above-referenced matter has been served on the following named persons by placing a copy of the same in the United States mail with proper postage affixed thereto or via electronic mail on this 26th day of April, 2011:

Via U.S. Mail & Electronic Mail:

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464
***Attorneys for Sustainable Building
Solutions, Inc., John P. Porretto, Sr., and
Sue A. Porretto***

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

LYLES & LYLES, LLC.



Charleston, South Carolina

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

April 26, 2011
VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

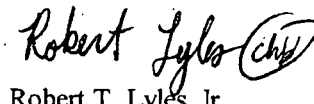
Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of the Waiver of Deficiency Judgment. Please file the original and return the file stamped copy in the envelope provided for you. Thank you in advance for your professional assistance.

By copy of this correspondence and as indicated on the Certificate of Service, I am hereby serving all parties and/or counsel with a copy of the enclosed notice. With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC



Robert T. Lyles, Jr.

RTL/daw

Enclosures

cc: Carl Walls
W. H. Bundy, Jr., Esquire

000179

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Florida Citizens Bank

☐ Plaintiff

v.

Sustainable Building Solutions, Inc., Et. Al

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2010-CP-10-3586

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Robert T. Lyles, Jr, Bar No.

Address:

PO Box 773

Charleston, SC 29402

phone: 843-577-7730 fax: 843-577-7172

e-mail: rtl@lylesfirm.com other:

Defendant's Attorney:

W. H. Bundy, Jr. , Bar No. 1012

Address:

PO BOX 1542, Mt. Pleasant, SC 29402

phone: 881-1623 fax: 881-4406

e-mail: whbesq@s3blaw.com 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: Petition for Order of Appraisal

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

July 27, 2011

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ 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: _____

SCCA/233 (11-03)

D

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-10-3586

Florida Citizens Bank,
Plaintiff,

v.

Sustainable Building Solutions, Inc., John P.
Porretto, Sr., Sue A. Porretto, The County of
Charleston, and Island Preservation
Partnership,

Defendants.

PETITION FOR ORDER OF APPRAISAL

FILED
2011 JUL 27 PM 3:06
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE CLERK OF COURT OF THE COURT OF COMMON PLEAS OF
CHARLESTON COUNTY:

The Petitioner would respectfully show:

1. That the above entitled action was a real estate foreclosure proceeding in which the Petitioners, Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto, were found to be liable for Plaintiffs debt.
2. That fewer than thirty (30) days have elapsed since the sale of the mortgaged property.
3. That the final sale of the property resulted in a deficiency judgment being entered against the said Defendants, Petitioners herein, and Petitioners are informed and believe that by virtue of Section 29-3-680 et. seq. Code of Laws of South Carolina, 1976, they are entitled to have an appraisal made of the subject real estate by a board of three appraisers and that if said appraisers determine that the property has a value greater than that for which it was sold at auction, then the deficiency shall be reduced accordingly.
4. That the Petitioners hereby designate, Thomas Hartnett, a disinterest freeholder of Charleston County, as their appraiser. Said appraiser is neither connected in business

000181

with, nor related by blood or marriage, to any party.

WHEREFORE, Petitioners pray that an Order for Appraisal be issued; that a board of appraisers be constituted and an appraisal had of the subject property pursuant to Section 29-3-680 et. seq., Code of Laws of South Carolina, 1976; that the judgment be extinguished or abated as provided by Section 29-3-740, Code of Laws of South Carolina, 1976.



W. H. Boney, Jr., Esquire
M. Brent McDonald, Esquire
SMITH, BUNDY, BYBEE & BARNETT, P.C.
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
*Attorney for Sustainable Building Solutions, Inc.,
John P. Porretto, Sr. and Sue A. Porretto,*

STATE OF TEXAS)
COUNTY OF Harris)

VERIFICATION

PERSONALLY appeared before me, John P. Poretto and Sue A. Poretto, who, being sworn, depose and say: that they are the Petitioners in the foregoing action; that the foregoing Petition has been read by them and that the allegations therein are true of their own knowledge.

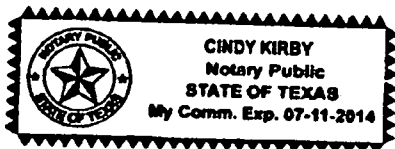
John P. Poretto AKA John P. Poretto
John P. Poretto

Sue A. Poretto AKA Sue Poretto
Sue A. Poretto

John P. Poretto AKA John P. Poretto
John P. Poretto for Sustainable Building Solutions, Inc.

Subscribed and Sworn to before me this 26 day of July, 2011.

Cindy Kirby
Notary Public for the State of Texas
My Commission Expires: 7-11-14



FILED
2011 JUL 27 PM 3:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Florida Citizens Bank,

Plaintiff,

v.

Sustainable Building Solutions, Inc., John P.
Porretto, Sr., Sue A. Porretto, The County of
Charleston, and Island Preservation
Partnership,

Defendants.

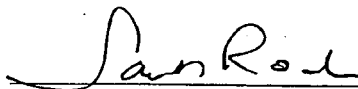
) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-10-3586

CERTIFICATE OF SERVICE

2011 JUL 27 PM 3:06
JUL 27 2011
J. ARMSTRONG
CLERK OF COURT
BY

I, Sarah Foster Rock, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby
certify that true and correct copies of the Civil Motion Coversheet, Petition for Order of
Appraisal and proposed Order for Appraisal were served on all parties this 27th day of July,
2011, via US Mail as follows:

Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
Lyles & Lyles
PO Box 773
Charleston, SC 29402
Attorneys for Plaintiff



Sarah Foster Rock

000184

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-10-3586

Florida Citizens Bank,
Plaintiff,

v.

Sustainable Building Solutions, Inc., John P.
Porretto, Sr., Sue A. Porretto, The County of
Charleston, and Island Preservation
Partnership,
Defendants.

ORDER OF APPRAISAL

BY

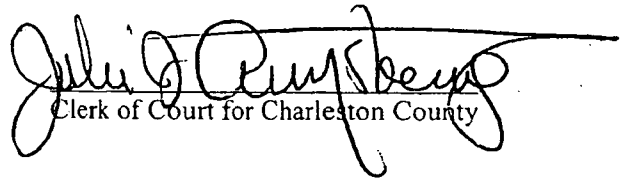
JULIE D. CAMPBELL
CLERK OF COURT

2011 JUL 28 PM 12:39

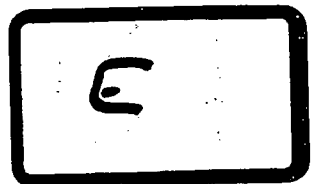
FILED

It appearing that on the 27th day of July, 2011, the Petitioners, Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto, through their attorneys filed a petition for an appraisal in the matter above named pursuant to Section 29-3-680 et. seq. of the South Carolina Code of Laws (1976), and appointing Thomas Hartnett as one of the appraisers.

IT IS HEREBY ORDERED that the property be appraised at its true value as of the date of sale by three disinterested freeholders of the County of Charleston; that a copy of this order be served upon the Judgment creditor, or his attorney of record and he shall have ten (10) days thereafter to designate to the undersigned his appraiser.


Clerk of Court for Charleston County

Charleston, South Carolina
7/28, 2011



000185

SMITH, BUNDY, BYBEE & BARNETT, P.C.

ATTORNEYS AT LAW
1037 CHUCK DAWLEY BOULEVARD
SUITE 100, BUILDING F
POST OFFICE BOX 1542
MOUNT PLEASANT, SC 29465
(843) 881-1623
FAX (843) 881-4406
FED ID # 57-0988087

ELLISON D. SMITH, IV
W.H. BUNDY, JR.
RICHARD D. BYBEE
STAN BARNETT

W.H. BUNDY, JR.
whbesq@s3blaw.com
Direct Line (843) 513-1032

M. BRENT MCDONALD

July 27, 2011

The Honorable Julie J. Armstrong
Charleston County Judicial Center
100 Broad Street
Charleston, SC 29401

RE: Florida Citizens Bank, vs. Sustainable Building Solutions, Inc., John P. Porretto, Sr.,
Sue A. Porretto, The County of Charleston, and Island Preservation Partnership
C/A No. 2010-CP-10-3586

Dear Ms. Armstrong:

Please find enclosed the original and one copy of the Civil Motion Coversheet, Petition for Order of Appraisal and proposed Order of Appraisal regarding the above captioned matter.

Please review the proposed Order and if it meets with your approval, sign the same, filing the originals and return the file stamped copy to me in the self addressed envelope enclosed for your convenience.

Also enclosed is our check in the amount of \$25.00 for the filing fee and my client's check in the amount of \$100.00 representing the appraiser fee.

By copy of this letter I am serving these pleadings on all counsel of record as shown by the Certificate of Service attached.

Thank you for your kind attention to this matter. Should you have any questions or concerns please do not hesitate to contact me.

With kindest regards I remain

Very truly yours,



W.H. Bundy, Jr., Esquire

WHB:sfr
Enclosure
cc: Robert T. Lyles, Jr., Esquire

000186

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE ☐ COURT OF COMMON PLEAS
☐ FAMILY COURT

FLORIDA CITIZENS BANK

☐ Plaintiff

CASE NO. 2010-CP-10-3586

v.

SUSTAINABLE BUILDING SOLUTIONS, INC.,

☐ Defendant

**MOTION INFORMATION FORM
AND COVER SHEET**

check box above indicating submitting party

name, SC Bar no. and address of plaintiff's attorney

Robert T. Lyles, Jr. (SC Bar #10299)

Lyles & Lyles

P.O. Box 773

Charleston, SC 29402

telephone: 577-7730

fax: 577-7172

e-mail: rtl@lylesfirm.com other:

name, SC Bar no. and address of defendant's attorney

W. H. Bundy, Jr., Esquire

Smith, Bundy, Bybee & Barnett, P.C.

Post Office Box 1542

Mt. Pleasant, S.C. 29465

telephone: 881-1623

fax: 881-4406

e-mail: whbesq@s3blaw.com other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Attorneys Fees

Estimated Time

Court Reporter Needed: YES / NO

SECTION II: Motion Type

☐ Written motion attached

☐ Form Motion --

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

Signature of Attorney for Plaintiff/Defendant

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check one) ☐ 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, SCRPC)

☐ 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

DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (1/2003)

F

000187

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

PLAINTIFF'S DESIGNATION OF
APPRAISER AND MOTION FOR
ATTORNEYS FEES AND COSTS

2011 AUG 11 PM 1:25
JILLIE J. ARMSTRONG
CLERK OF COURT

FILED

Plaintiff hereby designates Thomas K. Happel, IV or Atlantic Appraisals as its appraiser pursuant to S.C. Code Ann. §29-3-710.

Plaintiff will further move this Honorable Court for costs, expenses and attorneys fees incurred by Plaintiff in connection with defending its interests under the appraisal statutes pursuant to guaranties signed by Defendants John P. Porretto, Sr. and Sue A. Porretto (attached hereto as Exhibit "A").

LYLES & LYLES, LLC

By: 

 Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

**Attorney for Plaintiff
Florida Citizens Bank**

Charleston, South Carolina

8/11, 2011

000189

GUARANTY
(Continuing Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is April 15, 2009. The parties and their addresses are:

LENDER:

FLORIDA CITIZENS BANK
3818 W. Newberry Road
Gainesville, Florida 32607
Telephone: 352-332-4727

BORROWER:

SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

GUARANTOR:

JOHN P. PORRETTO
P.O. Box 272423
Houston, TX 77277

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refers to the Lender.
B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce your forbearance with respect to any Debt, or to induce you to extend and/or maintain credit, or grant any other financial accommodation, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 200600003509, dated April 15, 2009, from Sustainable Building Solutions, Inc. (Borrower) to you, in the amount of \$1,640,812.50.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guarantees, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetency. Notice of revocation or notice of my death or incompetency will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

8. 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, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.
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 Guaranty.
E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
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. **Perfeiture.** 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.

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Florida Guaranty
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Page 1

Ex. A

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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. **Insolvency.** 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 Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

9. **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 notices of dishonor.

A. **Additional Waivers.** In addition, to the extent permitted by law, I 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 the Debt of this Guaranty.

(1) You may renew or extend payments on the Debt, 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.

(4) You, or any institution participating in the Debt, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guaranteeing or relating to the Debt.

(7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.

(8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.

(9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

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 the Debt Instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. **REMEDIES.** After the Borrower or 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 Guaranty immediately due.

B. **Sources.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.

D. **Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.

E. **Attachment.** You may attach or garnish my wages or earnings.

F. **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 Guaranty 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 Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owed by someone who has not agreed to pay the Debt, 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.

G. **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.

11. **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 Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. 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.

12. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. **RELIANCE.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and that I have signed this Guaranty to induce you to forbear from exercising your remedies against the Borrower, extend credit to the Borrower, maintain the Borrower's credit, or grant any other financial accommodation. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from the continued existence of the Debt guaranteed hereby, and from any loan and/or financial accommodations resulting in the creation of other Debt guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. **APPLICABLE LAW.** This Guaranty is governed by the laws of Florida, 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.

15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. **ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **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 Guaranty.

18. **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 Guarantor will be deemed to be notice to all Guarantors. 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

John P. Porretto
Florida Guaranty
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Page 2

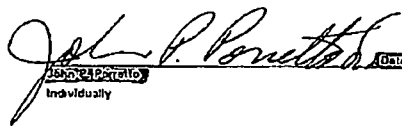
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file any additional documents or certifications that you may consider necessary to perfect, continue, and serve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. SIGNATURES. By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:


John P. Porretto
Individually

GUARANTY
(Continuing Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is April 15, 2009. The parties and their addresses are:

LENDER:
FLORIDA CITIZENS BANK
3919 W. Newberry Road
Gainesville, Florida 32607
Telephone: 352-332-4727

BORROWER:
SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

GUARANTOR:
SUE A. PORRETTO
P.O. Box 272423
Houston, TX 77277

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.
B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce your forbearance with respect to any Debt, or to induce you to extend and/or maintain credit, or grant any other financial accommodation, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 200800003509, dated April 18, 2009, from Sustainable Building Solutions, Inc. (Borrower) to you, in the amount of \$1,540,812.50.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guaranties, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me of my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

8. 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, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.
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 Guaranty.
E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
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.
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Page 1

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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. **Insolvency.** 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 Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

9. **WAVERS 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.** In addition, to the extent permitted by law, I 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 the Debt or this Guaranty.

- (1) You may renew or extend payments on the Debt, 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.
- (4) You, or any institution participating in the Debt, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guaranteeing or relating to the Debt.
- (7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.
- (8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.
- (9) I agree to waive recourse on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes those waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of those other persons.) Any Guarantor who is not an insider makes those waivers until all Debt is fully repaid.

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 the Debt Instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. **REMEDIES.** After the Borrower or 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 Guaranty immediately due.
- B. **Sources.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.
- C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.
- D. **Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.
- E. **Attachment.** You may attach or garnish my wages or earnings.
- F. **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 Guaranty 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 Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty 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 the Debt, 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.

G. **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.

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In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. **RELIANCE.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and that I have signed this Guaranty to induce you to forbear from exercising your remedies against the Borrower, extend credit to the Borrower, maintain the Borrower's credit, or grant any other financial accommodation. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from the continued existence of the Debt guaranteed hereby, and from any loan and/or financial accommodations resulting in the creation of other Debt guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty. If at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty, I may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. **APPLICABLE LAW.** This Guaranty is governed by the laws of Florida, 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.

15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. **ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **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 Guaranty.

18. **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 Guarantor will be deemed to be notice to all Guarantors. 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

Sue A. Porretto
Florida Guaranty
FLM1STEPHEN000000000011051082209M

©1996 Bankers Systems, Inc., St. Cloud, MN 56301

Page 2

000194

file any additional documents or certifications that you may consider necessary to perfect, continue, and . . . have my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. SIGNATURES. By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:

Sue A. Porretto #D262
Sue A. Porretto
Individually

CERTIFICATE OF SERVICE

10-CP-10-3586

I hereby certify that a copy of the foregoing **Designation of Appraiser & Motion for Attorneys Fees** in the above-referenced matter has been served on the following named persons by placing a copy of the same in the United States mail with proper postage affixed thereto or via electronic mail on this 11th day of August, 2011:

Via U.S. Mail & Electronic Mail:

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464
***Attorneys for Sustainable Building
Solutions, Inc., John P. Porretto, Sr., and
Sue A. Porretto***

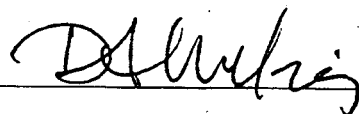
BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2011 AUG 11 PM 1:26

FILED

LYLES & LYLES, LLC.



Charleston, South Carolina

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

August 11, 2011

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

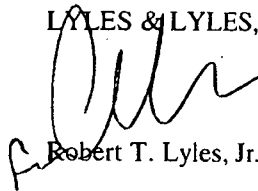
Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of the Designation of Appraiser & Motion for Attorneys Fees. Please file the original and return the file stamped copy to me via courier. Thank you in advance for your professional assistance.

By copy of this correspondence and as indicated on the Certificate of Service, I am hereby serving all parties and/or counsel with a copy of the enclosed notice. With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC



Robert T. Lyles, Jr.

RTL/daw
Enclosures

cc: Carl Walls
W. H. Bundy, Jr., Esquire

000197

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
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Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

January 19, 2016

Via Email and Hand Delivery:

The Honorable Mikell R. Scarborough
100 Broad St, Suite 266
Charleston, SC 29401-2243

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

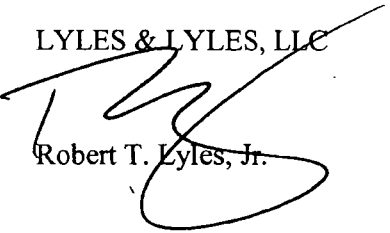
Dear Judge Scarborough,

Enclosed please find Plaintiff's Memorandum of Law in Opposition to Defendants John Porretto and Sue Porretto's Motion for Relief from Judgment in anticipation of the motion hearing scheduled for 2:00 pm today in the above-referenced matter.

With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC


Robert T. Lyles, Jr.

/bt
Enclosures

cc: All Counsel of Record (per attached Certificate of Service)
Jack M. Ross, Esquire (Via Email)

000198

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
FLORIDA CITIZENS BANK,)
Plaintiff,)
vs.)
SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
THE COUNTY OF CHARLESTON)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2010-CP-10-3586

**PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN OPPOSITION TO
DEFENDANTS JOHN AND SUE
PORRETTO'S MOTION FOR RELIEF
FROM JUDGMENT**

FILED
2016 FEB 19 PM 2:13
JULIE J. ARMSTRONG
CLERK OF COURT

Florida Citizens Bank submits and incorporates the following memorandum as a supplement to its Memorandum of Law in Opposition to Defendants John Porretto and Sue Porretto's Motion for Relief from Judgment originally submitted to the court on January 19, 2016 and attached hereto as Exhibit A. The earlier memorandum is incorporated herein by reference.

RELEVANT FACTS

In March 2006, defendant John P. Porretto, Sr. executed a modified mortgage as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, Florida Citizens Bank, encumbering Lot 95 and Lot 124 on Dewees Island in Charleston County. Sustainable Building Solutions, executed two notes for the lots which were consolidated into one loan and modified four times (the "Note", attached as Exhibit B). On April 15, 2009, John P. Porretto, Sr., individually, and Sue Porretto, individually, (together herein referred to the "Guarantors") each executed and delivered to the Plaintiff a Guaranty (the "Guaranties", Exhibit C) guaranteeing

payment to the Plaintiff all sums owing under the Note. On April 28, 2010, the Plaintiff Florida Citizens Bank filed an action for foreclosure as to Defendant Sustainable Building Solutions, Inc., in the same case, an action for breach of guaranty as to Defendants John P. Porretto, Sr. and Sue A. Porretto (Lis Pendens attached as Exhibit D). A hearing was held on March 22, 2011, and no appearance was made on behalf of the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto. The Court issued an Order of Judgment and Foreclosure and Order of Judgment for Suit on Guaranty on April 13, 2011 (Order attached as Exhibit E), which included the following language regarding what we will be referring to as the "Foreclosure Judgment":

IT IS FURTHER ORDERED, ADJUGED AND DECREED that Plaintiff have deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, pursuant to S.C. Code Ann. Section 29-3-660 (1976), should the proceeds of sale fail to pay the total debt owed to the Plaintiff, together with the costs and expenses of this action and the costs of sale, which judgment shall be entered without further notice or hearing.

Order, p. 10, ¶10.

Importantly, the Order contained a second, separate order of judgment against the Porrettos for what will be referred to as the "Guaranty Judgment":

As a direct and proximate result of the breach of the Guaranties, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have an unlimited liability to the Plaintiff in the amount of \$1,676,793.78 and for which sums they are truly indebted to Plaintiff, and therefore,

IT IS ORDERED that the Plaintiff Florida Citizens Bank be awarded a judgment against the individual Defendants John P. Porretto, Sr., and Sue A. Porretto, jointly and severally, the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78).

Order, p. 13, ¶5.

Pursuant to the Foreclosure Judgment, the property was sold at a foreclosure sale on April 13, 2011. The Plaintiff filed a Waiver of Deficiency Judgment on April 26, 2011 (Exhibit F). Apparently not aware of the bank's waiver of deficiency, in June, 2011, the Court indicated that it was going to re-open the sale. Upon notification, on June 21, 2011, Catherine Bryan (counsel for FCB) sent a letter advising or reminding the Court that the right to a deficiency judgment had been previously waived. Counsel for the Porrettos was copied on that letter (Exhibit G).

A month after that, clearly recognizing a guarantors' right to an appraisal pursuant to § 29-3-680, on July 27, 2011, the Porrettos filed a Petition for Order of Appraisal and an Order of Appraisal was issued on July 28, 2011 (Exhibit H). In response, on August 11, 2011, Plaintiff filed Plaintiff's Designation of Appraiser and Motion for Attorneys' Fees and Costs (Exhibit I), indicating it intended to defend its interests and pursue the recovery of all costs and fees associated with the appraisal pursuant to the Guaranties.

It should be noted that there was an exchange of correspondence between counsel as part of the appraisal process, and at the earlier hearing, the Porrettos introduced the letter from Ms. Bryan to Mr. Bundy dated August 3, 2011, as an exhibit at our last hearing (Exhibit J). That letter speaks for itself and may be a material piece of evidence related to this matter.

Despite the fact that this matter arises from their motion, and the Porrettos have the burden of proof, they have not offered any explanation, other than counsel's conjecture, about why the appraisal process was not pursued. What is known is that the Porrettos never saw the appraisal process to completion and the appraisal to which they had a right never occurred.

In October, 2014, FCB secured a certified copy of the judgment and enrolled it in Texas, where it is currently a valid judgment of that state. The pleadings enrolling the judgment are attached as Exhibit K and show that the Porrettos were copied on the filing.

ISSUE BEFORE THE COURT

The Porrettos have filed a motion pursuant to Rule 60(b)(5), SCRCP. In their most recent memorandum they acknowledge that they rely upon the language of the rule which provides, “(5) the judgment has been satisfied, *released*, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated...(emphasis added). Since there is no argument that the judgment has been satisfied or discharged, the Porrettos argument must be that the Guaranty Judgment was released.

“A party filing a Rule 60 motion has the burden of proof and must present evidence entitling him to relief.” The movant in a Rule 60(b) motion has the burden of presenting evidence proving facts essential to entitle him to relief. *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Although motions under 60(b)(5) are not subject to the requirement that they be filed within one year of the judgment, they still must be filed within a reasonable time. *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct. App. 2003).

Here, the Porrettos have failed to satisfy their burden because there is no evidence which supports a contention that FCB released the Guaranty Judgment. Moreover, Petitioners who bear the burden of showing the propriety of their motion, have failed to proffer an argument as to why we should find their delay is reasonable in this case. *See id.*

ARGUMENT

The Poretos' Memorandum in Support of Relief of Judgment is factually and legally flawed for a number of reasons and they have failed to offer facts to support their contention that the Guaranty Judgment is "released." In the first paragraph, the Porrettos misstate the issue before the Court. The issue is not whether or not Florida Citizens Bank (hereinafter "FCB") waived a deficiency judgment against "the guarantors" since there was no "deficiency judgment" against the guarantors. The issue, as stated above, is whether or not the Porrettos have presented evidence (not argument) that FCB released the Guaranty Judgment. The answer to that is clearly no.

The Guaranty Judgment was separate and distinct from the deficiency judgment which resulted from the sale as part of the Foreclosure Judgment. In the Porrettos' Memorandum, they cite the statute governing deficiency judgments, §29-3-660, and emphasize certain aspects of it. However, they neglect to emphasize the primarily relevant portion which clearly and unambiguously states that the statute applies "In actions to foreclose mortgages...". The Guaranty Judgment was the result of an action separate from the foreclosure action. The fact that both actions were successfully litigated in one lawsuit does not change the nature of the actions. The essential fact that the action on the guaranty, which resulted in the Guaranty Judgment, was separate and distinct from the foreclosure action, which resulted in the deficiency judgment, is fundamentally critical to the matter before the court.

The distinction between the two actions, and the two awards, of the Court also undercuts the Porrettos' other false argument, which is that FCB waived¹ its rights with respect to the

¹ Rule 60(b)(5) does not refer to "waiver" but rather refers to release, which for purposes of this argument alone, can be considered a synonymous word.

Guaranty Judgment when it waived its right to the deficiency judgment. The waiver of deficiency judgment had no bearing whatsoever on the Guaranty Judgment.

The view that waiver of a deficiency judgment does not effect a waiver of a judgment on a guaranty is not expressly addressed in South Carolina cases, but there is support for that in other jurisdictions. The Wisconsin case of *Bank Mut. V. S.J. Boyer Const., Inc.*, 785 N.W.2d 462 (Wis. 2010), is instructive. In *S.J. Boyer*, the lender sued both the mortgagor and the guarantors after the mortgagor defaulted on its notes. *Id.* at 465. The lender foreclosed against the mortgagor and waived its right to a deficiency judgment in order to shorten the redemption period. *Id.* at 466. The operative Wisconsin statute provides for a shortened redemption period if the lender waives a deficiency judgment against “every party who is personally liable for the debt secured by the mortgage.” *Id.* The property was sold and the lender moved for confirmation of the sale. *Id.* The guarantors objected and argued that the confirmation violated Wisconsin statutes because the lender did not also expressly waive a deficiency against the guarantors. *Id.* The trial court held that the guaranty, as a contract separate from the notes which were foreclosed, provided an independent basis for the guarantors to be liable to the lender. *Id.* The appellate court rejected that view, and reversed the trial court. *Id.* at 468. However, the Wisconsin Supreme Court agreed with the trial court and reversed the appellate court. *Id.* at 483.

Although much is made in the opinion of the statutory language quoted above, particularly the “personally liable” portion (which language is not present in the South Carolina statute regarding deficiency judgments. Instead it reads “if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor the plaintiff may make such person a party to the action...” *S.C. Code 29-3-660*), the Court noted that the guarantors’ liability arose from the guaranty, not from the debt itself. *Id.* at 477. Specifically, the Court

stated that “Wisconsin law treats the liability of a guarantor as separate and distinct from the liability of the borrower, arising not from the debt itself but from the terms of the guaranty contract.” *Id.* at 476. This is also the law in South Carolina. *Citizens and Southern Nat. Bank of South Carolina v. Lanford*, 443 S.E.2d 549, 544 (S.C. 1994).

In *U.S. Bank Nat. Ass’n. v. Zarrabi*, 560 Fed. Appx. 181, 182-183 (4th Cir. 2014), the Court applied Virginia law, holding that a certificate of satisfaction was a release of the encumbrance as to which such payment or satisfaction is entered, and could operate as a reconveyance of the property. It did not, however, extinguish the guarantors’ liability. *Id.* at 183. The Court specifically noted that the guarantees provided that the release of any property connected to the debt is not a release of the guarantors’ obligations. *Id.* Similarly, as discussed above, the Porrettos’ Guarantees provide that the obligations imposed will survive the foreclosure of the property or the release of the borrower.

The Waiver of Deficiency is plain on its face and does not mention the Guaranty Judgment. If there were a question about that, the Porrettos should have raised it at that time. In fact, there is clear and convincing evidence before the Court that the Porrettos knew and understood that the Guaranty Judgment was in effect long after FCB waived its right to a deficiency judgment. As noted, the deficiency was waived in April, 2011, a fact that was reiterated in the letter from Catherine Bryan to the Court in June, 2011². A month later, on July 27, 2011, the Porrettos filed the Petition for Appraisal, recognizing their right as debtors on the Guaranty Judgment. The Porrettos did not make a request that the Guaranty Judgment be marked satisfied or indicate that it had been release or waived. They did not seek clarification from the Court via a Rule 59 or 60 motion. Instead, they merely attempted to reduce the amount

² Contrary to the Porrettos’ contention, the letter was not a second waiver of anything, but merely Ms. Bryan’s effort to point out to the Court that the deficiency had been waived in April.

of the existing Guaranty Judgment through the appraisal process provided in §29-3-680, to which they had a right.

Because the Porrettos cannot change the procedural history to the case and cannot deny what happened, in their Memorandum, rather than offer evidence to support their motion, the Porrettos speculate about why the appraisal process was abandoned. The Court should note that neither the Porrettos nor Mr. Bundy have filed an affidavit supporting their conjecture. They have certainly not provided the Court with any evidence to support it.

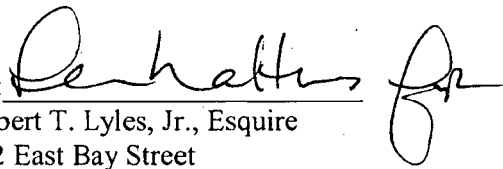
Though FCB does not bear the burden of any proof, the evidence in the case strongly suggests that what happened is largely reflected in Catherine Bryan's letter to Bill Bundy dated August 3, 2011 (Exhibit J). The Porrettos were insolvent and unable to pay their mortgage debt or satisfy the Guaranty Judgment. Rather than pay for the appraisal process, which they began, and expose themselves to even greater liability in the form of FCB's attorneys fees, the Porrettos never completed the appraisal process, abandoning it instead. Though we do not know their state of mind, they must have assumed that the matter would not be of further consequence to them. Now that it is, and they appear to have the funds to satisfy the debt, they want to re-write history and say that the Guaranty Judgment, for which they exercised their appraisal rights, had, in actuality, been "released" or "waived" months before. They now want the Court to infer, in the absence of any evidence, that their exercise of appraisal rights was simply a mistake.

Finally, the Court should also note that the record is devoid of any indication that there is any effort in Texas to invalidate that judgment. Further, when it was enrolled in Texas the Porrettos received notice of it, on October 28, 2014. This motion was not filed until October 30, 2015, thus it was not filed within a reasonable time period. See *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct. App. 2003)

CONCLUSION

For these reasons, Plaintiff respectfully requests that defendants John Porretto and Sue Porretto's Motion for Relief from Judgment be denied.

LYLES & LYLES, LLC

By: 

Robert T. Lyles, Jr., Esquire

342 East Bay Street

P.O. Box 773 (29402)

Charleston, SC 29401

(843)577-7730

Attorney for Plaintiff

Florida Citizens Bank

February 18, 2016
Charleston, South Carolina

LYLES & LYLES, LLC
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Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
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January 19, 2016

Via Email and Hand Delivery:

The Honorable Mikell R. Scarborough
100 Broad St, Suite 266
Charleston, SC 29401-2243

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

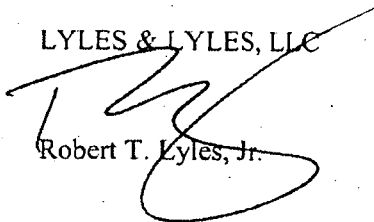
Dear Judge Scarborough,

Enclosed please find Plaintiff's Memorandum of Law in Opposition to Defendants John Porretto and Sue Porretto's Motion for Relief from Judgment in anticipation of the motion hearing scheduled for 2:00 pm today in the above-referenced matter.

With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC


Robert T. Lyles, Jr.

/bt
Enclosures

cc: All Counsel of Record (per attached Certificate of Service)
Jack M. Ross, Esquire (Via Email)



000208

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO. 2010-CP-10-3586
FLORIDA CITIZENS BANK,	)	
	)	
Plaintiff,	)	
vs.	)	PLAINTIFF'S MEMORANDUM OF
	)	LAW IN OPPOSITION TO
SUSTAINABLE BUILDING	)	DEFENDANTS JOHN PORRETTO
SOLUTIONS, INC., JOHN P.	)	AND SUE PORRETTO'S MOTION
PORRETTO, SR., SUE A. PORRETTO,	)	FOR RELIEF FROM JUDGMENT
THE COUNTY OF CHARLESTON	)	
AND ISLAND PRESERVATION	)	
PARTNERSHIP,	)	
	)	
Defendants.	)	
	)	

Florida Citizens Bank, Plaintiff ("FCB") submits the following Memorandum of Law in opposition to Defendants John Porretto and Sue Porretto's Motion for Relief from Judgment.

RELEVANT FACTS

In March 2006, defendant John P. Porretto, Sr. executed a modified mortgage as President of defendant Sustainable Building Solutions, Inc. ("Sustainable Building") in favor of FCB, encumbering Lot 95 and Lot 124 on Dewees Island in Charleston County. Sustainable Building Solutions, executed two notes for the lots, which were consolidated into one loan, and modified four times (the "Note"). On April 15, 2009, John P. Porretto, Sr., individually and Sue Poretto, individually (together herein referred to the "Guarantors"), each executed and delivered to FCB a Guaranty (the "Guarantees") guaranteeing payment to the Plaintiff all sums owing under the Note.

After default under the Note, on April 28, 2010, the FCB filed an action for foreclosure as to defendant Sustainable Building Solutions, Inc. and for breach of guaranty as to defendants

John P. Porretto, Sr., Sue A. Porretto. A hearing was held on March 22, 2011, and no appearance was made on behalf of the defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto. The Court issued an Order of Judgment and Foreclosure and Order of Judgment for Suit on Guaranty on April 13, 2011 (attached hereto as Exhibit A), which included the following language:

IT IS FURTHER ORDERED, ADJUGED AND DECREED that Plaintiff have deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, pursuant to S.C. Code Ann. Section 29-3-660 (1976), should the proceeds of sale fail to pay the total debt owed to the Plaintiff, together with the costs and expenses of this action and the costs of sale, which judgment shall be entered without further notice or hearing.

...
As a direct and proximate result of the breach of the Guaranties, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have an unlimited liability to the Plaintiff in the amount of \$1,676,793.78 and for which sums they are truly indebted to Plaintiff, and therefore,

IT IS ORDERED that the Plaintiff Florida Citizens Bank be awarded a judgment against the individual Defendants John P. Porretto, Sr., and Sue A. Porretto, jointly and severally, the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78).

The property was sold at a foreclosure sale on April 13, 2011 (attached hereto as Exhibit B). FCB filed a Waiver of Deficiency Judgment on April 26, 2011 (attached hereto as Exhibit C).

Subsequently, recognizing a guarantor's right to an appraisal, on July 27, 2011, defendants John P. Porretto, Sr. and Sue A. Porretto filed a Petition for Order of Appraisal (attached hereto as Exhibit D), and an Order of Appraisal was issued on July 28, 2011 (attached hereto as Exhibit E). In response, on August 11, 2011, Plaintiff filed Plaintiff's Designation of Appraiser and Motion for Attorneys' Fees and Costs (attached hereto as Exhibit F), indicating it intended to defend its interests and pursue the recovery of all costs and fees associated with the

appraisal against the Guarantors pursuant to the terms of the Guarantees. Despite initiating the appraisal process more than four years ago, there is nothing on the record that indicates that the Poretos took any further action until the filing of the current motion seeking for relief from the Judgment.

ARGUMENT

I. Rule 60(b)(5) cannot be utilized to equitably adjust or relieve a party from a money judgment.

The Poretos have asked the Court to relieve them from the FCB judgment based upon Rule 60(b)(5) which states as follows:

- (b) Grounds for Relief from a Final Judgment, Order, or Proceeding.
On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
 - (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.

There is no evidence that the judgment against the Poretos as Guarantors has been satisfied or released. In fact that is precisely what the Poretos ask the Court to do now. Nor is there any evidence that the prior judgment was reversed or vacated (no appeal was taken and no action was filed seeking to vacate the judgment). Therefore, those provisions of Rule 60(b)(5) simply do not apply.

The Poretos also expressly asked the court to invoke the equitable leg of Rule 60(b)(5) to relieve them from the money judgment obtained by FCB. In a case of striking similarity to the one before the Court, the Eighth Circuit Court of Appeals has held that, "Rule 60(b)(5)'s equitable leg cannot be used to relieve a party from a money judgment."

II. The judgment against the Guarantors is separate and distinct from the foreclosure judgment, and therefore the waiver of deficiency is immaterial as to judgment on the guarantees.

As a threshold matter, the judgment against the Porrettos is clearly separate and distinct from the foreclosure judgment against Sustainable Building.

The Guarantees themselves contemplate that the obligations imposed would survive the foreclosure of the property or the release of the borrower:

I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the debt or against any Property...**I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.** [Emphasis added.]

In addition, to the extent permitted by law, I 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 the Debt or this Guaranty...**You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer...You may release, substitute or impair any Property.** [Emphasis added.]

"A guaranty of payment is an absolute or unconditional promise to pay a particular debt if it is not paid by the debtor at maturity." *Bank of Camden v. Hooker*, No. 8:14-CV-01050-JMC, 2014 WL 4129579, at *2 (D.S.C. Aug. 19, 2014) (quoting *AMA Management Corp. v. Strasburger*, 309 S.C. 213, 420 S.E.2d 868, 872 (S.C.Ct.App.1992) (internal quotation marks omitted). Thus, "[u]nder an absolute guaranty of payment, the creditor may maintain an action against the guarantor immediately upon default of the debtor." *Id.* (citing *Peoples Federal Sav. and Loan Ass'n v. Myrtle Beach Retirement Group, Inc.*, 300 S.C. 277, 281, 387 S.E.2d 672 (1989). Therefore, Florida Citizens Bank would have been well within its rights to forego foreclosure and proceed only on the guarantees, if it had so chosen.

“The general rule in South Carolina...is that a guaranty of payment is an obligation separate and distinct from the original note.” *Citizens and Southern Nat. Bank of South Carolina v. Lanford*, 443 S.E.2d 549, 544 (S.C. 1994): The *Lanford* Court held that a guarantor could not avail himself of the defense of impairment of collateral, as he was not a party to the note. *Id.* Likewise here, the Guarantors are not parties to the note and mortgage. The waiver of the deficiency only operates to protect against a deficiency judgment and not a judgment on a guarantee.

Also, in *U.S. Bank Nat. Ass'n. v. Zarrabi*, 560 Fed. Appx. 181, 182-183 (4th Cir. 2014), the Court applied Virginia law, holding that a certificate of satisfaction was a release of the encumbrance as to which such payment or satisfaction is entered, and could operate as a reconveyance of the property. It did not, however, extinguish the guarantors' liability. *Id.* at 183. The Court specifically noted that the guarantees provided that the release of any property connected to the debt is not a release of the guarantors' obligations. *Id.* Similarly, as discussed above, the Guarantees provide that the obligations imposed will survive the foreclosure of the property or the release of the borrower.

Other cases from South Carolina reinforce the idea that a guarantor's liability is not extinguished by a waiver of deficiency judgment. In *AMA Mgmt. Corp. v. Strasburger*, 420 S.E.2d 868, 872 (S.C. Ct. App. 1992), the court noted that if the debtor files a petition for bankruptcy, the guarantor is not discharged and does not receive the benefit of the automatic stay, thereby allowing the creditor to bring a separate state court action against the guarantors, even though a bankruptcy petition had been filed by the debtor. *Id.* In *Branch Banking & Trust Co. v. Brown*, 3:12-CV-1059-JFA, 2013 WL 2099488, at *3 (D.S.C. 2013), the court held that the parties in the federal action on the guaranties were not litigating substantially the same issues

that were being litigated by the parties in a concurrent state court foreclosure action. Finally, in *In re Southco, Inc.*, 168 B.R. 95, 101 (Bankr. D.S.C. 1994), the court stated that "the contract of guaranty is a separate undertaking and if the terms and conditions of the contract so state, a guarantor may assume a greater liability than that of the principal."

The Court's Order of April 11, 2011, makes it clear that a judgment was rendered on the foreclosure action and against the Porrettos for their liability under the Guarantees. There is nothing to suggest and no law to support a contention that waiver of a deficiency with respect to the foreclosure action precludes the judgment against the Porrettos on the Guarantees.

III. The Porrettos were entitled to the appraisal process but elected not to pursue the process to completion.

While the law is clear that a guarantors' obligations are independent from the obligations of the mortgage debtor, the law in South Carolina is also clear that a guarantor does have rights to relief under the appraisal statute. *Anderson Brothers Bank v. Adams*, 305 S.C. 25, 406 S.C.2nd 173 (1991). In their motion, the Poretos improperly confuse the sequence of events in the procedural history of the case in an effort to make it appear as though they gave up their appraisal rights upon FCB's decision to waive the deficiency in the foreclosure action, or repeated above, the sequence of events was not as the Poretos portray them. In fact, the Poretos exercised their rights to an appraisal well after FCB waived its rights to a deficiency judgment against Sustainable Building Solutions and then inexplicably ended that process.

Well after FCB waived its right to a deficiency judgment on the foreclosure action on April 26, 2011 (Exhibit C), the Poretos filed a Petition for Order of Appraisal and designated Thomas Hartnett as their appraiser on July 27, 2011 (Exhibit D). The Clerk of Court entered an Order of Appraisal the next day on July 28, 2011 (Exhibit E). Even though FCB responding in a timely fashion on August 11, 2011 (Exhibit F), the record does not indicate that the Poretos

exerted any other efforts with respect to their appraisal rights and the appraisal process to which they were entitled simply ended.

The Poretos clearly recognized both their separate judgment liability to FCB as Guarantors and their rights to the appraisal process in order to modify the amount of that liability through the appraisal process. For reasons that are unknown to FCB, the Poretos did not pursue those rights and which are now stale.

IV. FCB's issuance of a 1099 to Sustainable Building Solutions, Inc. is irrelevant to the proceedings and does not provide a basis for legal or equitable relief.

The Poretos also seem to argue that that since the debt relief realized by Sustainable Building, as a result of the waiver of deficiency, was reported to the IRS, there is an equitable or legal basis for providing them with the requested relief. This fails for two reasons. First, the Poretos have not cited any statutory or common law to suggest that issuing a 1099 to one entity or person discharges a legal obligation much less a legal obligation of another party. Second, the 1099 was sent to Sustainable Building, and while it may or may not have affected the tax liability of Sustainable Building, other than a bold assertion that "Defendants have paid taxes on the cancellation.," the Poretos have failed to establish that it affected their tax liability or that any taxes were paid or by whom.

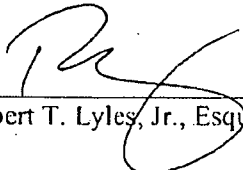
Even if the Poretos incurred personal tax liability as the result of the debt relief, that is a matter between the Poretos and the IRS and is entirely unrelated to the valid debt the Poretos owe to FCB. The Poretos are free to deal with the IRS in any way they see fit upon the payment of the judgment debt they still owe to FCB.

In sum, the 1099 is irrelevant and provides no legal or equitable basis for the relief requested by the Poretos.

CONCLUSION

For these reasons, Plaintiff respectfully requests that defendants John Porretto and Sue Porretto's Motion for Relief from Judgment be denied.

LYLES & LYLES, LLC

By: 
Robert T. Lyles, Jr., Esquire

342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

**Attorney for Plaintiff
Florida Citizens Bank**

Charleston, South Carolina
1/19, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

FLORIDA CITIZENS BANK,)
)
Plaintiff,)
)
vs.)
)
SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

FILED
2011 APR 13 PM 4:28
CLERK OF COURT

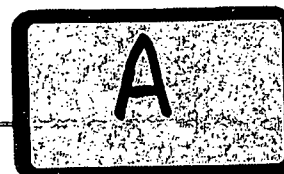
**ORDER OF JUDGMENT AND
FORECLOSURE
AND
ORDER OF JUDGMENT FOR
SUIT ON GUARANTY**

Pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure*, the above-captioned matter was referred to the undersigned Master in Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment, and to hear and determine any post-judgment proceedings. Any appeal from the decision of the Master in Equity shall be directly to the South Carolina Supreme Court.

Pursuant to the Order of Reference, a hearing was held on March 22, 2011 before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County. Catherine H. Bryan of Lyles & Lyles, LLC appeared for the Plaintiff. No appearance was made on behalf of the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto. Island Preservation Partnership has been dismissed from this action as evidenced by Plaintiff's Notice of Dismissal as to Island Preservation Partnership Only dated March 22, 2011.

At the hearing, the testimony was taken, which is reported herewith, and from the record in this case including the pleadings, admissions, testimony and evidence, I find and conclude as follows:

1



000217

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Lis Pendens was filed on April 28, 2010.
2. The Summons and Complaint were filed on April 30, 2010.
3. Since this foreclosure action involves a commercial loan, the Home Affordable Modification Program is inapplicable.
4. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., Sue A. Porretto, and Island Preservation Partnership were served with the Lis Pendens; Summons; verified Complaint, including Exhibits A, B, C, and D; and Fair Debt Collection Notice via process server on May 14, 2010, as evidenced by the Affidavits of Service filed on May 19, 2010.
5. The Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto filed an answer on July 13, 2010, admitting the allegations of the Complaint.
6. The Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto, through their attorney of record, were notified of the time, date and place of the hearing in this matter on January 25, 2011, as indicated by the filed Notice of Hearing.
7. On or about March 6, 2006, Plaintiff made a loan to Sustainable Building Solutions, Inc. as evidenced by a note in the principal amount of One Million Four Hundred Twenty-Five Thousand and 00/100 Dollars (\$1,425,000.00) with interest as provided therein (the "March 2006 Note").
8. On or about June 15, 2006, Plaintiff made a loan to Sustainable Building Solutions as evidenced by the note in the principal amount of One Hundred Seventy-Five Thousand Six Hundred Twelve and 50/100 Dollars (\$175,612.50) with interest as provided therein (the "June 2006 Note").

9. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of One Million Six Hundred Thousand Six Hundred Twelve and 50/100s Dollars (\$1,600,612.50) with interest as provided therein (the "April 2007 Note"), as renewed by certain promissory notes dated April 15, 2008 (the "April 2008 Note") and April 15, 2009 (the "April 2009 Note"), and modified by the Debt Modification Agreement dated July 15, 2009 (the "July 2009 Modification"), together with certain fees and charges.

10. True copies of the March 2006 Note, June 2006 Note, April 2007 Note, April 2008 Note, April 2009 Note and July 2009 Modification (hereinafter collectively referred to as the "Note") are incorporated herein by reference.

11. On or about February 14, 2005, in order to secure the payment of the Note and indebtedness, Sustainable Building Solutions, Inc. made, executed and delivered to Plaintiff a mortgage covering real property located in Charleston County, South Carolina, which was recorded on February 22, 2005, in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage, dated March 6, 2006, and recorded on March 13, 2006 in the RMC Office for Charleston County in Book B-576 at Page 181. The mortgage and Modification of Mortgage are hereinafter collectively referred to as the "Mortgage."

12. The real property encumbered by the Mortgage (hereinafter referred to as the "Property") is more fully described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and

recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

13. A true copy of the Mortgage is incorporated herein by reference.
14. The Mortgage constitutes a first lien on the Property.
15. On or about April 15, 2009, John P. Porretto, Sr., individually, and Sue A. Porretto, individually, each executed and delivered to the Plaintiff a valid and enforceable Guaranty (hereinafter referred to as the "Guaranties"), guaranteeing payment to Plaintiff all sums owing under the Note, promising to pay the debt in the full amount as stated therein, and agreeing to all terms of the Note.

16. The Guaranties constitute valid and enforceable contracts.

17. By failing and refusing to make the required payments to Florida Citizens Bank, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have breached the terms of the unconditional guarantecs without legal excuse and are personally liable under the terms of the Guaranties for the full amount of indebtedness to Florida Citizens Bank as set forth more fully herein.

18. According to the terms of the Note and Mortgage, if an event of default occurs or in the event of non-payment of the Note in full at maturity, the entire unpaid balance of the Note shall, at the option of Florida Citizens Bank, become immediately due and payable, without notice or demand.

19. Under the terms of the Mortgage, it was agreed that in the event the mortgagor failed to pay all taxes and assessments upon the Property when the same shall first become payable, then the mortgagee may cause the same to be paid, together with all penalties and costs incurred thereon, which amount, together with interest thereon, would be secured by the Property.

20. The payments due under the Note and Mortgage are in default and the conditions of the Note and Mortgage have been breached.

21. Pursuant to the terms of the Note and Mortgage, the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, were obligated to pay the Plaintiff the sums due and owing thereunder.

22. Despite demand, no payment has been made by the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, or Sue A. Porretto, individually, and Florida Citizens Bank filed this action to foreclose on the property.

23. The Mortgage provides that, in the event legal proceedings are instituted for the foreclosure of the Mortgage, or should the Note be placed in the hands of any attorney for collection, all costs and expenses incurred by Florida Citizens Bank, including a reasonable counsel fee of not less than ten percent (10%) of the amount involved, shall be added to the total debt secured by the Mortgage. Further, the Note provides that the Borrower will pay Lender the costs and expenses of collection, including Lender's reasonable attorneys' fees, Lender's legal expenses, and any court costs.

24. Counsel for the Plaintiff filed an Affidavit of Attorneys' Fees and Costs dated March 22, 2011, which was not contested, therefore, I find as fact herein the amounts due as stated therein. Having considered the nature, extent and difficulty of the services rendered, the fees customarily charged for such services, the time involved, the standing of counsel, and the beneficial results obtained by counsel for the Plaintiff, I find that the sum of \$16,334.50 is a reasonable attorneys' fee to allow under the Note and Mortgage for the services rendered and performed and anticipated to be performed until the final adjudication of this action. Further, I find costs of \$1,369.19 are due, as stated in the Affidavit of Attorneys' Fees and Costs.

25. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, is as follows:

(a)	Principal Balance as of March 22, 2011	\$1,574,188.52
	(Per Diem Rate of \$183.30)	
(b)	Interest (to 3/22/11)	\$ 83,851.66
(c)	Appraisal Fee	\$ 1,050.00
(d)	Costs of Collection	\$ 1,369.10

(e) Attorneys' Fees \$ 16,334.50

TOTAL DEBT due as of
March 22, 2011 secured by the
Note and Mortgage, including
interest to date shown \$1,676,793.78

26. Interest for the period from March 22, 2011 through the date of this judgment, at the stated rate of \$183.30 per diem, shall be added to the above stated "Total Debt" to comprise the amount of the Judgment debt to be entered herein. Interest after the date of Judgment at the rate allowed by law, shall be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

27. Florida Citizens Bank is seeking foreclosure of the Mortgage and specifically demands a deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, pursuant to S.C. Code Ann. Section 29-3-660 (1976) for any deficiency in this action remaining after the sale of the Property.

28. Defendants reserve any rights they have pursuant to Sections 29-3-680 through - 780 (1976).

29. The Plaintiff should have a judgment of foreclosure of its Mortgage; and the mortgaged Property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. AS TO THE FORECLOSURE

1. There is due to the Plaintiff on the Note and Mortgage the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78) representing the "Total Debt" due to Plaintiff as set out in Paragraph 25, *supra*, together with interest at the daily rate stated in Paragraph 26 from the date aforesaid to the date this Judgment is filed.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in the findings of fact, *supra*, and later accrued interest and costs) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the statutory rate.

3. The Defendants liable for the aforesaid debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney, the amount of the Plaintiff's total debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

4. That on default of payment at or before the time herein indicated, the Property described in the Complaint, as hereinafter described, together with any furniture, fixtures, equipment and other Collateral located thereon shall be sold by the undersigned Master-in-Equity, or his agent under the direction of the Master-in-Equity, at public auction at the Charleston County Courthouse, Charleston, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

- a. FOR CASH: The undersigned Master-in-Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) to be paid on the date of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within thirty (30) days, same to be forfeited without further hearing and applied to the costs and Plaintiff's debt.
- b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.5 percent (7.5%) per annum.
- c. The sale shall be subject to taxes, assessments, existing easements and restrictions, and easements and restrictions of record.
- d. This Mortgage constitutes the first lien on the Property.
- e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes.

5. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master-in-Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness. No deposit shall be due if Plaintiff is the successful bidder.

6. A deficiency judgment having been demanded, the sale shall reopen for additional bids on the 30th day after the date of sale; however, Plaintiff may waive any of its rights, including withdrawing its demand for a deficiency judgment prior to sale.

7. The undersigned Master-in-Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof, and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the undersigned Master-in-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured. To the extent that Notice of Sale is published prior to the entry of this order such publication is ratified nunc pro tunc.

8. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the Property shall not be sold, and in the event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

9. That the undersigned Master-in-Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under the Order of Court;

NEXT: To the payment of the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on same; and

NEXT: Any surplus will be held pending further Order of this Court.

10. IT IS FURTHER ORDERED, ADJUGED AND DECREED that Plaintiff have deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, pursuant to S.C. Code Ann. Section 29-3-660 (1976), should the proceeds of sale fail to pay the total debt owed to the Plaintiff, together with the costs and expenses of this action and the costs of sale, which judgment shall be entered without further notice or hearing.

11. IT IS FURTHER ORDERED, ADJUGED AND DECREED that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon (except the tangible collateral sold with the premises) and put the successful bidder or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

12. IT IS FURTHER ORDERED, ADJUGED AND DECREED that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the Property or have been ejected from the Property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said Property, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not

subject to the lien of Plaintiff's Mortgage, which personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

13. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendants named herein and all persons whosoever claiming under him, them, or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

14. IT IS FURTHER ORDERED that pursuant to S.C. Code Ann § 30-9-31, the deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the Property at the time of filing of the notice of pendency of the within action, and the name of the grantee(s), and the Register of Deeds is authorized to omit from the indices pertaining to such conveyances the names of all parties not contained in said Deed.

15. IT IS FURTHER ORDERED that the undersigned Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds.

16. Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject Property.

17. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Sustainable Building Solutions, Inc. on February 14, 2005, and recorded in Book M526 at Page 278 on February 22, 2005, in the Office of the RMC for Charleston County, as modified by the Modification of Mortgage executed by Sustainable Building Solutions, Inc. on March 6, 2006, and recorded in Book B576 at Page 181 on March 13, 2006 in the Office of the RMC for Charleston County.

18. The following is a description of the Premises herein ordered to be sold:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as **Lot 95** on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-'37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "**LOT 124**" on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

B. AS TO THE SUIT ON THE GUARANTY

1. The Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, each executed a valid and enforceable unconditional guaranty guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens Bank, agreeing to all terms of the Note, and promising to pay the debt in the full amount stated therein.

2. Under the terms of the Guaranties, Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, are personally obliged to pay all debts, liabilities, and obligations owing from Sustainable Building Solutions, Inc. to Plaintiff.

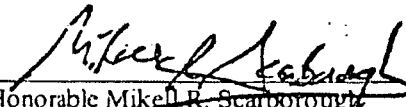
3. As stated above, there is due and owing to Plaintiff the amount of \$1,676,793.78.

4. By not paying the amounts due under the terms and conditions of these Guaranties, the Defendants John P. Porretto, Sr., and Sue A. Porretto have breached the terms and conditions thereof and are personally liable to Plaintiff, both jointly and severally, for the amounts stated herein.

5. As a direct and proximate result of the breach of the Guaranties, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have an unlimited liability to Plaintiff in the amount of \$1,676,793.78 and for which sums they are truly indebted to Plaintiff, and, therefore,

IT IS ORDERED that the Plaintiff Florida Citizens Bank be awarded a judgment against the individual Defendants John P. Porretto, Sr., and Sue A. Porretto, jointly and severally, the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78).

AND IT IS SO ORDERED!


The Honorable Mikel R. Scarborough
Charleston County Master-in Equity

Charleston, South Carolina

4/11, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

FLORIDA CITIZENS BANK,)

Plaintiff,)

vs.)

SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
THE COUNTY OF CHARLESTON)
AND ISLAND PRESERVATION)
PARTNERSHIP,)

Defendants.)

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2010-CP-10-3586

AFFIDAVIT OF TESTIMONY

FILED
2011 APR 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

This case having been referred and heard on March 22, 2011, at the Charleston County Courthouse, Charleston, South Carolina, and which was attended by Catherine H. Bryan, attorney for the Plaintiff, and who is authorized to testify and makes part of this record the following:

1. I am an attorney employed by Lyles & Lyles, LLC, the firm which represents the Plaintiff in the above-captioned matter.
2. The Plaintiff Florida Citizens Bank (hereinafter the "Plaintiff" or "Florida Citizens") is a corporation organized under the laws of the State of Florida which does business in Charleston County, South Carolina, and is the lender on the loan that is the subject of this action.
3. This foreclosure action involves a commercial loan.
4. The Defendant Sustainable Building Solutions, Inc. is the owner of the Property described in paragraph 19 below, is the borrower on the loan that is the subject of this action, and is subject to the jurisdiction of this court.

5. The Defendant John P. Porretto, Sr. is a resident of the State of Texas who personally guaranteed a loan for real property located in Charleston County, South Carolina.
6. The Defendant Sue A. Porretto is a resident of Texas who personally guaranteed a loan for real property located in Charleston County, South Carolina.
7. Island Preservation Partnership was made a party to this action upon the belief that it may have some right or claim in the property identified in Paragraph 19 below as "Lot 124", by virtue of that certain mortgage recorded October 1, 2001 in the Charleston County RMC Office in Book T383 at Page 354. The mortgage has been satisfied and Island Preservation Partnership is no longer a party to this action, as evidenced by the Notice of Dismissal as to Island Preservation Partnership Only, dated March 22, 2011, which has been filed by the Plaintiff.
8. This is an action brought by the Plaintiff to foreclose on a mortgage on real property located in Charleston County, South Carolina, which is more specifically described in the Complaint and Lis Pendens filed in this case.
9. The Lis Pendens was filed on April 28, 2010.
10. The Summons and Complaint were filed on April 30, 2010.
11. Defendants above-named were served with the Lis Pendens; Summons; verified Complaint, including Exhibits A, B, C and D; and Fair Debt Collection Notice, via process server on May 14, 2010 as evidenced by the Affidavits of Service filed on May 19, 2010.
12. Counsel for Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto filed an Answer on behalf of same on July 13, 2010.
13. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto, through their attorney of record, were notified of the time, date and place of the hearing in this matter as demonstrated by the Notice of Hearing filed February 24, 2011.

14. At the time of the filing of this action, the Property was titled in the name of Sustainable Building Solutions, Inc.

15. On or about March 6, 2006, Defendant Sustainable Building Solutions, Inc., did execute and deliver to Plaintiff a promissory note (the "March 2006 Note") and promised to pay to Plaintiff the sum of One Million Four Hundred Twenty-Five Thousand and 00/100 Dollars; (\$1,425,000.00) together with interest as provided therein.

16. On or about June 15, 2006, Sustainable Building Solutions, Inc. did execute and deliver a promissory note (the "June 2006 Note") and promised to pay to Plaintiff the sum of One Hundred Seventy-Five Thousand Six Hundred Twelve and 50/100s Dollars (\$175,612.50), together with interest as provided therein.

17. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of One Million Six Hundred Thousand Six Hundred Twelve and 50/100s Dollars (\$1,600,612.50), with interest as provided therein, as renewed by certain promissory notes dated April 15, 2008 and April 15, 2009, and modified by the Debt Modification Agreement dated July 15, 2009, together with certain fees and charges. The above referenced notes and debt modification agreement are collectively referred to as the "Note," true copies of which are attached to the Complaint as Exhibit "A."

18. On or about February 14, 2005, in order to secure the payment of the Note and indebtedness, Sustainable Building Solutions, Inc. made, executed and delivered to Plaintiff a mortgage covering real property located in Charleston County, South Carolina, which was recorded on February 22, 2005, in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage which was recorded on March 13, 2006

in the RMC Office for Charleston County in Book B-576 at Page 181. The mortgage and Modification of Mortgage are hereinafter collectively referred to as the "Mortgage," true copies of which are attached to the Complaint as Exhibit "B."

19. The real property encumbered by the Mortgage (hereinafter referred to as the "Property") is more fully described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

20. The Mortgage constitutes a first priority lien on the Property.
21. The Defendant John P. Porretto, Sr., individually, is made a party to this action by virtue of the unconditional guarantee he signed on or about April 15, 2009, guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens. A true copy of the Guaranty is attached as Exhibit "C" to the Complaint filed in this action.
22. Defendant Sue A. Porretto, individually, is made a party to this action by virtue of the unconditional guarantee she signed on April 15, 2009, guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens. A true copy of the Guaranty is attached as Exhibit "D" to the Complaint filed in this action.
23. According to the terms and conditions of the Note and Mortgage, it is provided that if an event of default occurs, or in the event of non-payment of the Note in full at maturity, the entire unpaid balance of the Note shall, at the option of Florida Citizens, become immediately due and payable, without notice or demand.
24. Further, under the terms and conditions of the Mortgage, it was agreed that in the event the mortgagor failed to pay all taxes and assessments upon the Property when the same shall first become payable, then the mortgagee may cause the same to be paid, together with all penalties and costs incurred thereon, which amount, together with interest thereon, would be secured by the Property.
25. The payments due on the Note and Mortgage are in default and the conditions of the Note and Mortgage have been breached.

26. Pursuant to the terms of the Note, Mortgage, and Guaranties, Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto were obligated to pay to Florida Citizens the sums due and owing thereunder.

27. Despite demand, no payment has been made by the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., or Sue A. Porretto, and Florida Citizens filed this action to foreclose on the property.

28. The Plaintiff demands a deficiency judgment against Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto as demonstrated by the Complaint.

29. As demonstrated by the Complaint, with respect to the suit on the Guaranties, Plaintiff also seeks a judgment against Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, for the entire amount due to Plaintiff.

30. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, are delinquent in the amount due to the Plaintiff which, not including attorneys' fees and costs, is \$1,659,090.18, consisting of:

Principal Balance	\$ 1,574,188.52
Interest through 3/22/11	\$ 83,851.66
Appraisal Fee	\$ 1,050.00
Per Diem Rate	\$ 183.30

31. As provided in the Note, Mortgage and Guaranties, the attorneys' fees, legal expenses, and costs of this action will need to be added to the above referenced amounts for the total amount due in this action.

FURTHER AFFIANT SAYETH NOT.

LYLES & LYLES, LLC

Catherine H. Bryan

By: Catherine H. Bryan

SWORN to before me
this 22nd day of March, 2011

Brenda Rederman

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 1-10-2015

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

FLORIDA CITIZENS BANK,)

Plaintiff,)

vs.)

SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
THE COUNTY OF CHARLESTON)
AND ISLAND PRESERVATION)
PARTNERSHIP,)

Defendants.)

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2010-CP-10-3586

AUTHORIZATION TO TESTIFY

The undersigned, a duly authorized officer of Florida Citizens Bank, authorizes Robert T. Lyles, Jr., Catherine H. Bryan, and Lyles & Lyles, LLC, or its representative, to testify on behalf of Florida Citizens Bank in the above referenced foreclosure action.

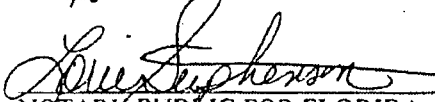
FLORIDA CITIZENS BANK

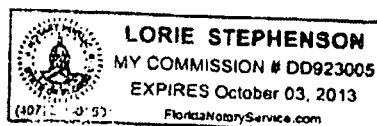


By: Bobbie Gaston

Its: Loan Operations Officer

SWORN to before me
this 18th day of March, 2011


NOTARY PUBLIC FOR FLORIDA
My Commission Expires:



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2010-CP-10-3586

AFFIDAVIT OF ROBERT T. LYLES, JR.

FILED
2011 APR 13 PM 4:28
JULIENNE J. GIBBS, CLERK OF COURT

PERSONALLY APPEARED BEFORE ME the undersigned, Robert T. Lyles, Jr., who,
being first duly sworn, deposes and says:

1. I am over the age of twenty-one years, and I make this Affidavit on my own personal knowledge.
2. I am an attorney with Lyles & Lyles, LLC, attorneys for the Plaintiff in the above referenced foreclosure action.
3. That as part of the above referenced suit on foreclosure, Plaintiff has placed the following documents in the hands of Lyles & Lyles, LLC:
 - a. Note dated March 6, 2006, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,425,000.00.
 - b. Note dated June 15, 2006, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$175,612.50.

- c. Note dated April 15, 2007, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,600,612.50.
 - d. Note dated April 15, 2008, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,600,612.50.
 - e. Note dated April 15, 2009, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, in the principal amount of \$1,540,612.50.
 - f. Debt Modification Agreement dated July 15, 2009, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc.
 - g. Mortgage in the amount of \$1,000,000.00 executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, filed February 22, 2005, in Book M526 at Page 278.
 - h. Modification of Mortgage executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the amount of \$1,425,000.00, filed March 13, 2006 in Book B576 at Page 181.
 - i. Guaranty executed by Defendant John P. Porretto for the benefit of Plaintiff dated April 15, 2009.
 - j. Guaranty executed by Defendant Sue A. Porretto for the benefit of Plaintiff dated April 15, 2009.
4. Plaintiff's attorneys' fees, legal expenses and court costs are recoverable under the terms of the notes, guaranties, and mortgage securing the notes (referenced above).
5. The Defendants are in default under the terms of said note, mortgage and guaranties, and Plaintiff is entitled to reimbursement for the reasonable attorneys' fees, costs and expenses incurred in the prosecution of this action.
6. There are six factors to consider in determining the reasonableness of an award of attorneys fees as set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 SE2d 659 (1993):
- a. Nature, extent and difficulty of the legal services rendered. In this instance, a Note in the amount of \$1,540,612.50 which is in default and was secured by a parcel of property

located in Charleston County is being foreclosed. The principal, interest, late charges, and other expenses, upon information and belief, total \$1,659,090.18. Services provided by Lyles & Lyles, LLC included the review of relevant loan documents; review of public records, specifically Charleston County RMC lien searches; preparation of pleadings and motions necessary to complete the lawsuit on the promissory notes; preparation for, attendance at, and other actions pursuant to the foreclosure proceedings, including the Motion and Order of Reference; hearing notices and hearing for final judgment.

In addition to the foreclosure action, there were services rendered in connection with potential compromise resolution of this action, including communicating with counsel for the Porretto Defendants and Defendant Sustainable Building Solutions, Inc. and communicating with Plaintiff.

Additional services will be rendered and costs incurred in connection with preparation for and attendance at the hearing for final Order and Judgment on March 22, 2011, and in connection with matters following the final hearing and sale, including preparation of documents in connection with same. Moreover, depending upon the interest shown by the Defendants, third parties, or counsel for Defendants and the inherent negotiations required thereby, other time will likely be committed to the completion of this case.

b. Time and Labor Devoted to Case. The time and labor devoted in this matter is outlined in the following summary of billable hours and rates as of March 21, 2011:

Litigation Attorney/ Legal Staff	Hours	Rate/Hour	Billed Amount
R. Lyles, Jr., Esq.	20.3	\$250.00	5,075.00
C. Bryan, Esq.	53.3	\$175.00	9,327.50
D. Welzig	5.4	\$80.00	432.00
		Total	14,834.50

Fees for Professional Services (incurred through 3/21/11)	\$ 14,834.50
Disbursements (incurred through 3/21/11) (Costs which include postage, copies, long distance telephone Calls, research, filing fees, non-legal professional services, courier, and service of documents)	\$ 1,219.19
Total Billing as of 03/21/11	\$ 16,053.69
Estimated fees from 3/21/11 to conclusion of action	\$ 1,500.00
Estimated Disbursements from 3/21/11 to conclusion of action	\$ 150.00
TOTAL BILLING including estimated billing to conclusion of action	\$ 17,703.69

c. Professional Standing of Counsel and Staff. I graduated from the University of South Carolina School of Law, was admitted to practice in the State of South Carolina in 1987 and have remained in good standing since that time. I am licensed to practice in the State Courts of South Carolina, the United States District Court of South Carolina, the Fourth Circuit Court of Appeals, and the Supreme Court of the United States of America. Catherine H. Bryan is an associate of Lyles & Lyles, LLC. She graduated from the University of South Carolina School of Law in 2007, was admitted to practice in the State of South Carolina in 2007, and has remained in good standing since that time. She has been an associate with Lyles & Lyles, LLC since February of 2008. She is licensed to practice in the State Courts of South Carolina and the United States District Court of South Carolina. Danelle A. Welzig is a litigation paralegal and has provided assistance in the preparation of pleadings, tax and lien research, and follow up scheduling for the final hearing. She has been a paralegal with Lyles & Lyles, LLC since June of 2002. She is a graduate of the College of Charleston and an ABA accredited Paralegal Certification program. The attorneys and other professionals involved in handling this matter have the requisite experience and professional standing in the community to provide the services rendered in this matter.

d. Contingency of Compensation. The compensation was to be paid on an hourly basis, which is the normal method of payment for mortgage foreclosures.

e. Fees Customarily Charged in the Locality for Similar Services. Upon information and belief, the hourly rates charged by the attorneys working on the matter are customary for those involved in providing similar services in this community.

f. Beneficial Results Obtained. The results have yet to be determined as a hearing on the merits and damages hearing has been set for March 22, 2011.

6. The Mortgage provides that all costs and expenses incurred by the mortgagee, including a reasonable counsel fee of not less than ten percent (10%) of the amount due, shall be added to the total debt secured by the mortgage. The total amount due is \$1,659,090.18. The total billing (including estimated billing to conclusion of this action) as set forth in Paragraph 6(b), above is \$16,334.50. Therefore, I believe that attorneys fees of \$16,334.50 are reasonable and should be added, along with the costs and expenses which are \$1,369.19, to the debt secured by the mortgage.

FURTHER AFFIANT SAYETH NOT.

Lyles & Lyles, LLC

By: Robert T. Lyles, Jr.

SWORN to before me
this 22 day of March, 2011

Brenda Pederman
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1-10-2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Florida Citizens Bank,
Plaintiff,

-v.-

Sustainable Building Solutions, Inc, et al.,
Defendant,

IN THE COURT OF COMMON
PLEAS

Case Number: 2010-CP-10-03586

**MASTER'S ORDER OF SALE
AND
DISBURSEMENT**

UNDER AUTHORITY of a Decree herein dated April 13, 2011, I offered for sale to the highest bidder for cash, at public auction on July 5, 2011, the premises subject to this suit, and I received a high bid of \$90,000.00 for Lot 95 and \$1,075,000.00 for Lot 124 from the Plaintiff; and I executed and delivered a Master's deed to **Florida Citizens Bank** for Lot 95 and **Thane Edward Duncan and Maria Teresa Brooks** for Lot 124 and I have disbursed the funds as follows:

CONSIDERATION

Deposit (Order of Reference)

Received by Master

Total Received by Master

(Lot 95) \$90,000.00
(Lot 124) \$1,075,000.00
\$125.00
\$4,347.47

JUL 18 2011
J. ARS RONG
CLERK OF COURT

\$4,472.47

DISBURSEMENTS

Master's Fees

Newspaper Advertisement

County Commission

Master's Deed

Total of Master's Costs

\$100.00

\$947.47

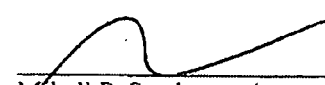
\$3400.00

\$25.00

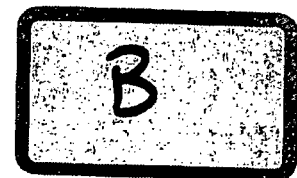
\$4,472.47

All of the funds having been disbursed, I hereby ORDER the file closed and the case ended.

July 8, 2011
Charleston, SC


Mikell R. Scarborough
Master-in-Equity, Charleston County

ME1005



000244

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

WAIVER OF DEFICIENCY JUDGMENT

Plaintiff hereby waives its right to any deficiency judgment in this action.

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

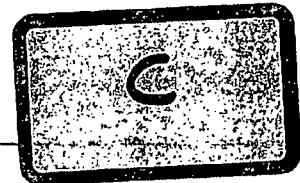
LYLES & LYLES, LLC

By: Catherine H. Bryan
Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

Attorney for Plaintiff
Florida Citizens Bank

Charleston, South Carolina

April 26, 2011



000245

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Waiver of Deficiency Judgment** in the above-referenced matter has been served on the following named persons by placing a copy of the same in the United States mail with proper postage affixed thereto or via electronic mail on this 26th day of April, 2011:

Via U.S. Mail & Electronic Mail:

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464

*Attorneys for Sustainable Building
Solutions, Inc., John P. Porretto, Sr., and
Sue A. Porretto*

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

LYLES & LYLES, LLC.

DA Buckley

Charleston, South Carolina

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

April 26, 2011
VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

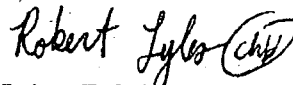
Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of the Waiver of Deficiency Judgment. Please file the original and return the file stamped copy in the envelope provided for you. Thank you in advance for your professional assistance.

By copy of this correspondence and as indicated on the Certificate of Service, I am hereby serving all parties and/or counsel with a copy of the enclosed notice. With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC



Robert T. Lyles, Jr.

RTL/daw
Enclosures

cc: Carl Walls
W. H. Bundy, Jr., Esquire

000247

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Florida Citizens Bank

☐ Plaintiff

v.

Sustainable Building Solutions, Inc., Et. Al

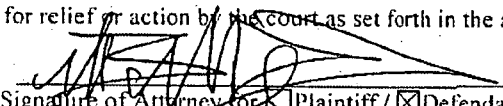
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-10-3586

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Robert T. Lyles, Jr, Bar No. Address: PO Box 773 Charleston, SC 29402 phone: 843-577-7730 fax: 843-577-7172 e-mail: rtl@lylesfirm.com other:		Defendant's Attorney: W. H. Bundy, Jr., Bar No. 1012 Address: PO BOX 1542, Mt. Pleasant, SC 29402 phone: 881-1623 fax: 881-4406 e-mail: whbesq@s3blaw.com 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: Petition for Order of Appraisal 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		July 27, 2011 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: 25.00 ☐ 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: _____			

SCCA/233 (11-03)



000248

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Florida Citizens Bank,

Plaintiff,

v.

Sustainable Building Solutions, Inc., John P.
Porretto, Sr., Sue A. Porretto, The County of
Charleston, and Island Preservation
Partnership,

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-10-3586

PETITION FOR ORDER OF APPRAISAL

FILED
2011 JUL 27 PM 3:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE CLERK OF COURT OF THE COURT OF COMMON PLEAS OF
CHARLESTON COUNTY:

The Petitioner would respectfully show:

1. That the above entitled action was a real estate foreclosure proceeding in which the Petitioners, Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto, were found to be liable for Plaintiffs debt.
2. That fewer than thirty (30) days have elapsed since the sale of the mortgaged property.
3. That the final sale of the property resulted in a deficiency judgment being entered against the said Defendants, Petitioners herein, and Petitioners are informed and believe that by virtue of Section 29-3-680 et. seq. Code of Laws of South Carolina, 1976, they are entitled to have an appraisal made of the subject real estate by a board of three appraisers and that if said appraisers determine that the property has a value greater than that for which it was sold at auction, then the deficiency shall be reduced accordingly.
4. That the Petitioners hereby designate, Thomas Hartnett, a disinterest freeholder of Charleston County, as their appraiser. Said appraiser is neither connected in business

000249

with, nor related by blood or marriage, to any party.

WHEREFORE, Petitioners pray that an Order for Appraisal be issued; that a board of appraisers be constituted and an appraisal had of the subject property pursuant to Section 29-3-680 et. seq., Code of Laws of South Carolina, 1976; that the judgment be extinguished or abated as provided by Section 29-3-740, Code of Laws of South Carolina, 1976.



W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
SMITH, BUNDY, BYBEE & BARNETT, P.C.
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
*Attorney for Sustainable Building Solutions, Inc.,
John P. Porretto, Sr. and Sue A. Porretto,*

STATE OF TEXAS)
COUNTY OF Harris)

VERIFICATION

PERSONALLY appeared before me, John P. Poretto and Sue A. Poretto, who, being sworn, depose and say: that they are the Petitioners in the foregoing action; that the foregoing Petition has been read by them and that the allegations therein are true of their own knowledge.

John P. Poretto AKA John Poretto
John P. Poretto

Sue A. Poretto AKA Sue Poretto
Sue A. Poretto

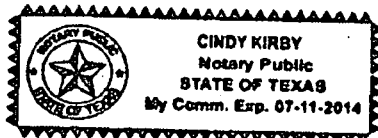
John P. Poretto AKA John Poretto
John P. Poretto for Sustainable Building Solutions, Inc.

Subscribed and Sworn to before me this 26 day of July, 2011.

Cindy Kirby

Notary Public for the State of Texas

My Commission Expires: 7-11-14



2011 JUL 27 PM 3:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

000251

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Florida Citizens Bank,

Plaintiff,

v.

Sustainable Building Solutions, Inc., John P.
Porretto, Sr., Sue A. Porretto, The County of
Charleston, and Island Preservation
Partnership,

Defendants.

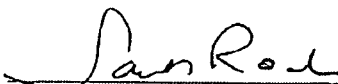
) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-10-3586

CERTIFICATE OF SERVICE

2011 JUL 27 PM 3:06
JUL 27 2011
J. ARNSTRONG
CLERK OF COURT

I, Sarah Foster Rock, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby
certify that true and correct copies of the Civil Motion Coversheet, Petition for Order of
Appraisal and proposed Order for Appraisal were served on all parties this 27th day of July,
2011, via US Mail as follows:

Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
Lyles & Lyles
PO Box 773
Charleston, SC 29402
Attorneys for Plaintiff



Sarah Foster Rock

000252

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-10-3586

Florida Citizens Bank,

Plaintiff,

v.

Sustainable Building Solutions, Inc., John P.
Porretto, Sr., Sue A. Porretto, The County of
Charleston, and Island Preservation
Partnership,

Defendants.

ORDER OF APPRAISAL

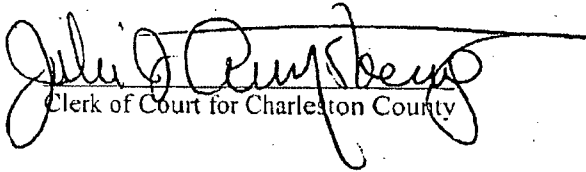
BY

JULIE J. CAMPBELL
CLERK OF COURT

2011 JUL 28 PM 12:39

It appearing that on the 27th day of July, 2011, the Petitioners, Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto, through their attorneys filed a petition for an appraisal in the matter above named pursuant to Section 29-3-680 et. seq. of the South Carolina Code of Laws (1976), and appointing Thomas Hartnett as one of the appraisers.

IT IS HEREBY ORDERED that the property be appraised at its true value as of the date of sale by three disinterested freeholders of the County of Charleston; that a copy of this order be served upon the Judgment creditor, or his attorney of record and he shall have ten (10) days thereafter to designate to the undersigned his appraiser.


Clerk of Court for Charleston County

Charleston, South Carolina

7/28, 2011



000253

SMITH, BUNDY, BYBEE & BARNETT, P.C.

ATTORNEYS AT LAW
1037 CHUCK DAWLEY BOULEVARD
SUITE 100, BUILDING F
POST OFFICE BOX 1542
MOUNT PLEASANT, SC 29465
(843) 881-1623
FAX (843) 881-4406
FED ID # 57-0988087

ELLISON D. SMITH, IV
W.H. BUNDY, JR.
RICHARD D. BYBEE
STAN BARNETT

W.H. BUNDY, JR.
whbesq@s3blaw.com
Direct Line (843) 513-1032

M. BRENT MCDONALD

July 27, 2011

The Honorable Julie J. Armstrong
Charleston County Judicial Center
100 Broad Street
Charleston, SC 29401

RE: Florida Citizens Bank, vs. Sustainable Building Solutions, Inc., John P. Porretto, Sr.,
Sue A. Porretto, The County of Charleston, and Island Preservation Partnership
C/A No. 2010-CP-10-3586

Dear Ms. Armstrong:

Please find enclosed the original and one copy of the Civil Motion Coversheet, Petition for Order of Appraisal and proposed Order of Appraisal regarding the above captioned matter.

Please review the proposed Order and if it meets with your approval, sign the same, filing the originals and return the file stamped copy to me in the self addressed envelope enclosed for your convenience.

Also enclosed is our check in the amount of \$25.00 for the filing fee and my client's check in the amount of \$100.00 representing the appraiser fee.

By copy of this letter I am serving these pleadings on all counsel of record as shown by the Certificate of Service attached.

Thank you for your kind attention to this matter. Should you have any questions or concerns please do not hesitate to contact me.

With kindest regards I remain

Very truly yours,



W.H. Bundy, Jr., Esquire

WHB:sfr

Enclosure

cc: Robert T. Lyles, Jr., Esquire

000254

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE ☐ COURT OF COMMON PLEAS
☐ FAMILY COURT

FLORIDA CITIZENS BANK

☐ Plaintiff

CASE NO. 2010-CP-10-3586

v.

SUSTAINABLE BUILDING SOLUTIONS, INC.,

**MOTION INFORMATION FORM
AND COVER SHEET**

☐ Defendant

check box above indicating submitting party

<u>name, SC Bar no. and address of plaintiff's attorney</u> Robert T. Lyles, Jr. (SC Bar #10299) Lyles & Lyles P.O. Box 773 Charleston, SC 29402 telephone: 577-7730 fax: 577-7172 e-mail: rtl@lylesfirm.com other:	<u>name, SC Bar no. and address of defendant's attorney</u> W. H. Bundy, Jr., Esquire Smith, Bundy, Bybee & Barnett, P.C. Post Office Box 1542 Mt. Pleasant, S.C. 29465 telephone: 881-1623 fax: 881-4406 e-mail: whbesq@s3blaw.com other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: <u>Motion for Attorneys Fees</u> Estimated Time _____ Court Reporter Needed: <u>YES</u> / NO	
SECTION II: Motion Type ☐ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order. _____ Signature of Attorney for Plaintiff/Defendant Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: <u>\$25.00</u> ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check one) ☐ 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: _____ (print name) ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____ DATE FILED _____	

SCCA/233 (1/2003)



000255

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

FLORIDA CITIZENS BANK,
Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

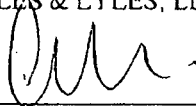
PLAINTIFF'S DESIGNATION OF
APPRAISER AND MOTION FOR
ATTORNEYS FEES AND COSTS

FILED
2011 AUG 11 PM 1:25
JULE J. ARMSTRONG
CLERK OF COURT

Plaintiff hereby designates Thomas K. Happel, IV or Atlantic Appraisals as its appraiser pursuant to S.C. Code Ann. §29-3-710.

Plaintiff will further move this Honorable Court for costs, expenses and attorneys fees incurred by Plaintiff in connection with defending its interests under the appraisal statutes pursuant to guaranties signed by Defendants John P. Porretto, Sr. and Sue A. Porretto (attached hereto as Exhibit "A").

LYLES & LYLES, LLC

By: 

Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

**Attorney for Plaintiff
Florida Citizens Bank**

Charleston, South Carolina

8/11, 2011

000257

GUARANTY

(Continuing Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is April 16, 2009. The parties and their addresses are:

LENDER:

FLORIDA CITIZENS BANK
3815 W. Newberry Road
Gainesville, Florida 32607
Telephone: 352-322-4727

BORROWER:

SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

GUARANTOR:

JOHN P. PORRETTO
P.O. Box 272423
Houston, TX 77277

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

A. **Pronouns.** The pronouns "I," "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.

B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.

C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce your forbearance with respect to any Debt, or to induce you to extend and/or maintain credit, or grant any other financial accommodation, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, secured interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 2006000033509, dated April 16, 2009, from Sustainable Building Solutions, Inc. (Borrower) to you, in the amount of \$1,640,612.60.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guarantees, advances for losses, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, tort, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertaking by, or against, you or against any property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest receives and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the property.

8. 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, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.

C. **Death or Incapacity.** 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 Guaranty.

E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.

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 spend 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.

John P. Porretto
Florida Guaranty
FLNLETPHEN000000000111051062203N

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Page 1

EX. A

000258

- 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. **Insolvency.** 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 Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.
8. **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.** In addition, to the extent permitted by law, I 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 the Debt as this Guaranty.
- (1) You may renew or extend payments on the Debt, 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 my Property.
 - (4) You, or any institution participating in the Debt, may invoke your right of set-off.
 - (5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.
 - (6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guarantying or relating to the Debt.
 - (7) You may undertake a valuation of my Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.
 - (8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.
 - (9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way effect or impair my liability. In addition, until the obligations of the Borrower to lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.
- Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.
- 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 the Debt Instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.
- C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.
10. **REMEDIES.** After the Borrower or 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 Guaranty immediately due.
 - B. **Seizure.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.
 - C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.
 - D. **Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.
 - E. **Attachment.** You may attach or garnish my wages or earnings.
 - F. **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 Guaranty 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 Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty 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 the Debt, 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.
- G. **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.
11. **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 Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. 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 or against me.
12. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.
- In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not called on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.
13. **RELIANCE.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and that I have signed this Guaranty to induce you to forbear from exercising your remedies against the Borrower, extend credit to the Borrower, maintain the Borrower's credit, or grant any other financial accommodation. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from the continued existence of the Debt guaranteed hereby, and from any loan and/or financial accommodations resulting in the creation of other Debt guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.
14. **APPLICABLE LAW.** This Guaranty is governed by the laws of Florida, 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.
15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.
16. **ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.
17. **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 Guaranty.
18. **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 Guarantor will be deemed to be notice to all Guarantors. I will inform you in writing of any change in my name, address or other contact 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

John P. Ponetto
Florida Guaranty
FLJALSTEPHEN000000000011051062205N

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Page 2

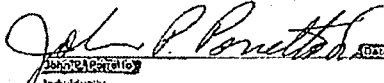
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file any additional documents or certifications that you may consider necessary to perfect, continue, and have my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. SIGNATURES. By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:



John P. Porretto Date
Individually

GUARANTY
(Continuing Debt - Unrelated)

DATE AND PARTIES. The date of this Guaranty is April 15, 2003. The parties and their addresses are:

LENDER:
FLORIDA CITIZENS BANK
3315 W. Newberry Road
Gainesville, Florida 32607
Telephone: 352-332-4727

BORROWER:
SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

GUARANTOR:
SUE A. PORNETTO
P.O. Box 272423
Houston, TX 77277

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I," "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.
- B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
- C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce your forbearance with respect to any Debt, or to induce you to extend and/or maintain credit, or grant any other financial accommodation, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 200600003805, dated April 18, 2003, from Sustainable Building Solutions, Inc. (Borrower) to you, in the amount of \$1,540,812.50.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guarantees, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

8. 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, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.
- 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 Guaranty.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
- 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 contains 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.

Sue A. Pernetto
Florida Guaranty
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Page 1

000261

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. **Insolvency.** 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 Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

8. **WAIVER 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.** In addition, to the extent permitted by law, I 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 the Debt or this Guaranty.

(1) You may renew or extend payments on the Debt, 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.

(4) You, or any institution participating in the Debt, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guarantying or relating to the Debt.

(7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.

(8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.

(9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive my right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

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 the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. **REMEDIES.** After the Borrower or 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 Guaranty immediately due.

B. **Seizure.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.

D. **Payments Made as the Borrower's Benefit.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.

E. **Attachment.** You may attach or garnish my wages or earnings.

F. **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 Guaranty 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 Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owed by someone who has not agreed to pay the Debt, 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.

G. **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.

11. **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 Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. 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.

12. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. **RELiance.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and that I have signed this Guaranty to induce you to forbear from exercising your remedies against the Borrower, extend credit to the Borrower, maintain the Borrower's credit, or grant any other financial accommodation. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from the continued existence of the Debt guaranteed hereby, and from any loan and/or financial accommodations resulting in the creation of other Debt guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. **APPLICABLE LAW.** This Guaranty is governed by the laws of Florida, 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.

15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. **ASSIGNMENT.** If you assign any of the Debt, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debt that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debt and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **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 Guaranty.

18. **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 Guarantor will be deemed to be notice to all Guarantors. I will inform you in writing of any change in my name, address or other application information. I will provide you my 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

Sue A. Ponette
Florida Guaranty
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Page 2

000262

file any additional documents or certifications that you may consider necessary to perfect, continue, and . . . give my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. SIGNATURES. By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:

Sue A. Porretto Signature
Individual

000263

CERTIFICATE OF SERVICE

10-CR-10-358b

I hereby certify that a copy of the foregoing **Designation of Appraiser & Motion for Attorneys Fees** in the above-referenced matter has been served on the following named persons by placing a copy of the same in the United States mail with proper postage affixed thereto or via electronic mail on this 11th day of August, 2011:

Via U.S. Mail & Electronic Mail:

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464
***Attorneys for Sustainable Building
Solutions, Inc., John P. Porretto, Sr., and
Sue A. Porretto***

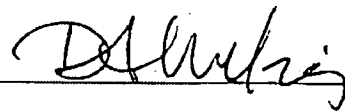
BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2011 AUG 11 PM 1:26

FILED

LYLES & LYLES, LLC.



Charleston, South Carolina

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

August 11, 2011

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

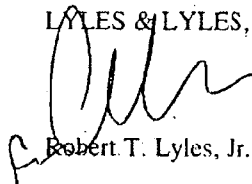
Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of the Designation of Appraiser & Motion for Attorneys Fees. Please file the original and return the file stamped copy to me via courier. Thank you in advance for your professional assistance.

By copy of this correspondence and as indicated on the Certificate of Service, I am hereby serving all parties and/or counsel with a copy of the enclosed notice. With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC


Robert T. Lyles, Jr.

RTL/daw
Enclosures

cc: Carl Walls
W. H. Bundy, Jr., Esquire

000265

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Plaintiff's Memorandum of Law in Opposition to Defendant John Porretto and Sue Porretto's Motion for Relief from Judgment** in the above-referenced matter has been served on the following named persons by placing a copy of the same in the United States mail with proper postage affixed thereto or via electronic mail on this 19 day of January, 2016:

Via Electronic Mail and Hand Delivery:

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464

And

Paul E. Tinkler, Esquire
Law Offices of Paul E. Tinkler
154 King Street, Third Floor
Charleston, SC 29402
*Attorneys for Sustainable Building
Solutions, Inc., John P. Porretto, Sr., and
Sue A. Porretto*

LYLES & LYLES, LLC.

Brooke Trevino

Charleston, South Carolina

PAID BY RENEWAL or
CONSOLIDATION to
loan # 2006-3509
dtd 4/13/08 by CHM

PROMISSORY NOTE

FLORIDA
CITIZENS BANK

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$1,600,612.50	04-15-2007	04-15-2008	200600003509		***	JAJ	
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							

Borrower: Sustainable Building Solutions, Inc.
247 Old House Lane
Dewees Island, SC 29451-9408

Lender: Florida Citizens Bank
Newberry Road
3919 West Newberry Road
Gainesville, FL 32607

Principal Amount: \$1,600,612.50

Initial Rate: 9.250%

Date of Note: April 15, 2007

PROMISE TO PAY. Sustainable Building Solutions, Inc. ("Borrower") promises to pay to Florida Citizens Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million Six Hundred Thousand Six Hundred Twelve & 50/100 Dollars (\$1,600,612.50) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on April 15, 2008. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning May 15, 2007, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the annual interest rate over the number of days in a year (366 during leap years), multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the Wall Street Journal Prime as published in the "Money Section" of the Wall Street Journal (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 8.250% per annum. The interest rate to be applied to the unpaid principal balance during this Note will be at a rate of 1.000 percentage point over the Index, adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 9.250% per annum. **NOTICE:** Under no circumstances will the effective rate of interest on this Note be less than 5.000% per annum or more than (except for any higher default rate shown below) the lesser of 18.000% per annum or the maximum rate allowed by applicable law.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Florida Citizens Bank, Newberry Road, 3919 West Newberry Road, Gainesville, FL 32607.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased to 18.000% per annum. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Change In Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender the amount of these costs and expenses, which includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Alachua County, State of Florida.

000267

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Alachua County, State of Florida.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$25.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instrument listed herein: a Mortgage dated 02/14/2005, to Lender on real property located in Charleston County, State of South Carolina.

PRINCIPAL REDUCTION. Borrower agrees to reduce the principal balance by 25% at maturity.

PRIOR NOTE. Renewal of existing loan 200600003509.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Borrower does not agree or intend to pay, and Lender does not agree or intend to contract for, charge, collect, take, reserve or receive (collectively referred to herein as "charge or collect"), any amount in the nature of interest or in the nature of a fee for this loan, which would in any way or event (including demand, prepayment, or acceleration) cause Lender to charge or collect more for this loan than the maximum Lender would be permitted to charge or collect by federal law or the law of the State of Florida (as applicable). Any such excess interest or unauthorized fee shall, instead of anything stated to the contrary, be applied first to reduce the principal balance of this loan, and when the principal has been paid in full, be refunded to Borrower. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

SUSTAINABLE BUILDING SOLUTIONS, INC.

By 
John P. Porretto, Sr., President of Sustainable
Building Solutions, Inc.

Florida Documentary Stamp Tax

Florida documentary stamp tax in the amount required by law has been paid with respect to this Note on the Mortgage securing this Note.

GUARANTY
(Continuing Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is April 15, 2009. The parties and their addresses are:

LENDER:
FLORIDA CITIZENS BANK
3919 W. Newberry Road
Gainesville, Florida 32607
Telephone: 352-332-4727

BORROWER:
SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

GUARANTOR:
JOHN P. PORRETTO
P.O. Box 272423
Houston, TX 77277

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.
B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce your forbearance with respect to any Debt, or to induce you to extend and/or maintain credit, or grant any other financial accommodation, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, which allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 200600003509, dated April 16, 2009, from Sustainable Building Solutions, Inc. (Borrower) to you, in the amount of \$1,540,612.50.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guarantees, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

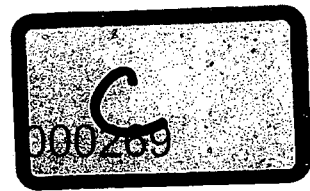
8. DEFAULT. I will be in default if any of the following occur:

- 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, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.
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 Guaranty.
E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
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.

John P. Porretto
Florida Guaranty
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Page 1



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 Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

9. **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. In addition, to the extent permitted by law, I 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 the Debt or this Guaranty.

(1) You may renew or extend payments on the Debt, 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.

(4) You, or any institution participating in the Debt, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guarantying or relating to the Debt.

(7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.

(8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.

(9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

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 the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. Waiver of Claims. I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. **REMEDIES.** After the Borrower or 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 Guaranty immediately due.

B. Sources. You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.

C. Insurance Benefits. You may make a claim for any and all insurance benefits or refunds that may be available on default.

D. Payments Made on the Borrower's Behalf. Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.

E. Attachment. You may attach or garnish my wages or earnings.

F. 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 Guaranty 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 Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty 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 the Debt, 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.

G. 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.

11. **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 Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. 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.

12. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. **RELIANCE.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and that I have signed this Guaranty to induce you to forbear from exercising your remedies against the Borrower, extend credit to the Borrower, maintain the Borrower's credit, or grant any other financial accommodation. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from the continued existence of the Debt guaranteed hereby, and from any loan and/or financial accommodations resulting in the creation of other Debt guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. **APPLICABLE LAW.** This Guaranty is governed by the laws of Florida, 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.

15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. **ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **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 Guaranty.

18. **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 Guarantor will be deemed to be notice to all Guarantors. 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

John P. Porretto
Florida Guaranty
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Page 2

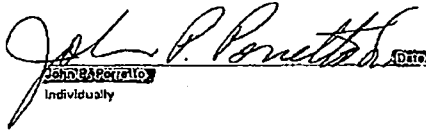
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file any additional documents or certifications that you may consider necessary to perfect, continue, and serve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. SIGNATURES. By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:

 _____
John P. Porretto Date
Individually

GUARANTY
(Continuing Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is April 15, 2009. The parties and their addresses are:

LENDER:
FLORIDA CITIZENS BANK
3919 W. Newberry Road
Gainesville, Florida 32607
Telephone: 352-332-4727

BORROWER:
SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

GUARANTOR:
SUE A. PORRETTO
P.O. Box 272423
Houston, TX 77277

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.
- B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
- C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce your forbearance with respect to any Debt, or to induce you to extend and/or maintain credit, or grant any other financial accommodation, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 200800003809, dated April 15, 2009, from Sustainable Building Solutions, Inc. (Borrower) to you, in the amount of \$1,540,612.60.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guaranties, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

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8. 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, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.
- 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 Guaranty.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
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- 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.
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Sue A. Porretto
Florida Guaranty
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Page 1

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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 Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

9. **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.** In addition, to the extent permitted by law, I 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 the Debt or this Guaranty.

(1) You may renew or extend payments on the Debt, 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.

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(7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.

(8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.

(9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

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 the Debt Instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damages caused by your acts or omissions where you acted reasonably and in good faith.

10. **REMEDIES.** After the Borrower or 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 Guaranty immediately due.

B. **Sources.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.

D. **Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.

E. **Attachment.** You may attach or garnish my wages or earnings.

F. **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 Guaranty 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 Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty 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 the Debt, 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 enforcement.

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.

G. **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.

11. **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 Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. 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.

12. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. **RELiance.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and that I have signed this Guaranty to induce you to forbear from exercising your remedies against the Borrower, extend credit to the Borrower, maintain the Borrower's credit, or grant any other financial accommodation. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from the continued existence of the Debt guaranteed hereby, and from any loan and/or financial accommodations resulting in the creation of other Debt guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. **APPLICABLE LAW.** This Guaranty is governed by the laws of Florida, 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.

15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. **ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **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 Guaranty.

18. **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 Guarantor will be deemed to be notice to all Guarantors. 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

Sue A. Portette
Florida Guaranty
FLM1STEPHEN000000000011051062209N

©1998 Bankers Systems, Inc., St. Cloud, MN **ESSENTIAL**

Page 2

000273

file any additional documents or certifications that you may consider necessary to perfect, continue, and serve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. SIGNATURES. By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:

Sue A. Porretto Date:
Sue A. Porretto
Individually

000274

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

FLORIDA CITIZENS BANK,)

Plaintiff,)

vs.)

SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
AND ISLAND PRESERVATION)
PARTNERSHIP,)

Defendants.)

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2010-CP-10-104

LIS PENDENS

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 APR 28 PM 3:36

FILED

NOTICE IS HEREBY GIVEN that the Plaintiff intends to commence an action against defendants to enforce a contract of sale on the property located in Charleston County, owned by Defendants and more fully described as follows:

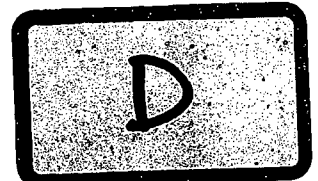
ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167. Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of American, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWES ISLAND CHARLESTON COUNTY, SOUTH



000275

CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

Catherine H. Bryan

Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
LYLES & LYLES, LLC
342 East Bay Street
Charleston, South Carolina 29401
ATTORNEYS FOR PLAINTIFF

April ____, 2010

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK

Plaintiff(s)

vs.

SUSTAINABLE BUILDING SOLUTIONS, INC.,
JOHN P. PORRETTO, SR., ET AL.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 10- 3586

(Please Print)

Submitted By: ROBERT T. LYLES, JR.

Address: 342 EAST BAY STREET

CHARLESTON, SC 29401

SC Bar #: 10299

Telephone #: 843-577-7730

Fax #: 843-577-7172

Other:

E-mail: rtl@lylesfirm.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

☐ 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/Libel (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-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:

Catherine H. Byers

Date:

4.28.2010

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

FOR MANDATED ADR COUNTIES ONLY

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

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 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.**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-_____

SUMMONS
NON-JURY
FORECLOSURE OF REAL ESTATE
(Deficiency Judgment Demanded)

2010 APR 30 PM 2:23
JULIE J. ANASTROM
CLERK OF COURT

FILED

TO: THE ABOVE NAMED DEFENDANTS:

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 said Complaint on the attorney for the aforesaid Plaintiff within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Catherine H. Bryan

Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
LYLES & LYLES, LLC
342 East Bay Street (29401)
P.O. Box 773
Charleston, South Carolina 29402
Rtl@lylesfirm.com / chb@lylesfirm.com
ATTORNEYS FOR PLAINTIFF

April 28, 2010
Charleston, South Carolina

000279

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

FLORIDA CITIZENS BANK,)

Plaintiff,)

vs.)

SUSTAINABLE BUILDING)

SOLUTIONS, INC., JOHN P.)

PORRETTO, SR., SUE A. PORRETTO)

AND ISLAND PRESERVATION)

PARTNERSHIP)

Defendants.)

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2010-CP-10-_____

COMPLAINT

NON-JURY

FORECLOSURE OF REAL ESTATE

(Deficiency Judgment Demanded)

2010 APR 30 PM 2:23
J. ANNISTON
CLERK OF COURT

FILED

TO: THE ABOVE NAMED DEFENDANTS:

Plaintiff, Florida Citizens Bank, ("Plaintiff"), complaining of Defendants Sustainable Building Solutions, Inc. ("Sustainable"), John P. Porretto, Sr. ("J. Porretto"), and Sue A. Porretto (S. Porretto") would show unto this Honorable Court:

1. Plaintiff is a corporation organized under the laws of the State of Florida which does business in Charleston County, South Carolina, and is the lender on the loan that is the subject of this action.

2. Upon information and belief, Sustainable is a corporation organized under the laws of the State of South Carolina which conducts business in Charleston County, South Carolina.

3. Sustainable is the owner of the property described in Paragraph 18 below, is the borrower on the loan which the subject of this action, and is subject to the jurisdiction of this court.

4. Upon information and belief, J. Porretto is a resident of the State of Texas, is the President of Sustainable, is a guarantor of the loan that is the subject of this action, and is subject to the jurisdiction of this court.

5. Upon information and belief, S. Porretto is a resident of the State of Texas, is a guarantor of the loan which is the subject of this action, and is subject to the jurisdiction of this court. (Hereinafter, J. Porretto and S. Porretto shall be collectively referred to as "Guarantors".)

6. Upon information and belief, Island Preservation Partnership is a South Carolina General Partnership.

7. The property which is the subject of this action, described in Paragraph 18 below, is situated on Dewees Island, in Charleston County, South Carolina.

8. This court has jurisdiction over the subject matter and parties of this action.

9. The subject mortgage is not owned, securitized or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).

10. The subject loan is a commercial loan and is therefore, not subject to the Home Affordable Modification Program.

**FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mortgage as to Defendant Sustainable Building Solutions, Inc.)**

11. Plaintiff reasserts and realleges the allegations contained above as if fully set forth herein verbatim.

12. On or about March 6, 2006, Defendant J. Porretto, as President of Defendant Sustainable, executed and delivered to Plaintiff a promissory note in the principal amount of ONE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND 00/100

DOLLARS (\$1,425,000.00) with interest as provided therein, bearing loan number 200600002972 (the "March 2006 Note").

13. On or about June 15, 2006, Defendant J. Porretto, as President of Defendant Sustainable, executed and delivered to Plaintiff a promissory note in the principal amount of ONE HUNDRED SEVENTY-FIVE THOUSAND SIX HUNDRED TWELVE DOLLARS AND FIFTY CENTS (\$175,612.50) with interest as provided therein, bearing loan number 200700003946 (the "June 2006 Note").

14. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of ONE MILLION SIX HUNDRED THOUSAND SIX HUNDRED TWELVE DOLLARS AND FIFTY CENTS (\$1,600,612.50) with interest as provided therein (the "April 2007 Note"), as renewed by certain promissory notes dated April 15, 2008 (the "April 2008 Note") and April 15, 2009 (the "April 2009 Note"), and modified by the Debt Modification Agreement dated July 15, 2009 (the "July 2009 Modification"), together with certain fees and charges, payable in the following manner:

A copy of the March 2006 Note, the June 2006 Note, April 2007 Note, April 2008 Note, April 2009 Note, and July 2009 Modification, collectively referred to as the "Note", are attached hereto as Exhibit "A" and the terms thereof are incorporated herein by reference.

15. The Note and the debt represented thereby is secured by a mortgage executed and delivered by the Defendant J. Porretto, as President of Defendant Sustainable, to the Plaintiff, dated February 14, 2005 (the "2005 Mortgage"), and recorded in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage dated March 6, 2006 (the "Modification to Mortgage"), and recorded in the RMC Office for Charleston County in Book B-576 at Page 181. The 2005 Mortgage and the Modification to Mortgage,

collectively referred to herein as the "Mortgage", are attached hereto as Exhibit "B" and the terms thereof are incorporated herein by reference.

16. The Note and the debt represented thereby is further secured by a guaranty executed and delivered by Defendant J. Porretto to the Plaintiff dated April 15, 2009 (the "J. Porretto Guaranty"). A copy of the J. Porretto Guaranty is attached hereto as Exhibit "C" and the terms thereof are incorporated herein by reference.

17. The Note and the debt represented thereby is further secured by a guaranty executed and delivered by Defendant S. Porretto to the Plaintiff dated April 15, 2009 (the "S. Porretto Guaranty"). A copy of the S. Porretto Guaranty is attached hereto as Exhibit D and the terms thereof are incorporated herein by reference.

18. The real property which is covered by the Mortgage is more fully described as follows (hereinafter referred to as the "Property"):

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-117[sic]¹

ALSO

¹ The TMS# shown in the mortgage filed with the RMC described above is: 608-11-00-117. However, the correct TMS# for the property described in the mortgage and described above is 608-11-00-017.

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

19. The Note and Mortgage provide that upon failure by Defendant Sustainable to make payments thereunder when due, the entire outstanding balance under the Note and Mortgage shall, at the option of the holder, become immediately due and payable.

20. Defendant Sustainable is in default under the Note and Mortgage by failing to make payments when due, despite demand by Plaintiff.

21. Plaintiff, as the holder of the Note and Mortgage, has and does hereby elect to declare the total unpaid balance of principal and interest on the Note and Mortgage due and payable and does hereby elect to foreclose its Mortgage on the Property; reserving, however, any and all other rights and remedies Plaintiff may have under the Note and Mortgage including the right to a deficiency judgment.

22. There is currently due and owing on the Note, as of April 26, 2010, the following amounts:

Principal balance on Note	\$1,547,125.12
Interest through 4/26/2010	\$ 23,663.26
Late Charges	\$ 529.60

Total Due as of 4/26/2010

\$1,571,317.98

Interest accrues at the rate provided in the Note from April 27, 2010, to the date of payment, at the per diem rate of \$180.1447

23. In accordance with the terms of the Mortgage, the Plaintiff shall also seek payment of all expenses of foreclosure, including, but not limited to the costs of this action, including reasonable attorney's fees, all of which are additional sums secured by the Mortgage.

24. Plaintiff does not waive, but specifically demands judgment against Defendant Sustainable for the full amount found to be due to Plaintiff on the Note and Mortgage, with the right to enter a deficiency judgment against Defendant Sustainable for any deficiency in this action remaining after the sale of the Property.

25. Plaintiff specifically demands judgment of foreclosure against Defendant Sustainable.

26. Upon information and belief, said information having been obtained from the records of Charleston County, South Carolina, the Defendant Island Preservation Partnership has or may claim to have some interest in or lien upon that portion of the Property described in paragraph 18 above identified specifically as Lot 124, TMS# 608-09-00-012, by virtue of that certain mortgage recorded in the RMC Office for Charleston County on October 1, 2001, in Book T-383, at Page 354.

FOR A SECOND CAUSE OF ACTION

(Breach of Guaranty as to Defendants John P. Porretto and Sue A. Porretto)

27. Plaintiff reasserts and realleges the allegations contained above as if fully set forth herein verbatim.

28. As set forth above in Paragraphs 16 and 17, Guarantors executed guarantees for the Note. The J. Porretto and S. Porretto guarantees are collectively referred to as the "Guarantees".

29. The Guarantees provide, inter alia, for payment to Plaintiff by Guarantors of all principal, accrued interest, attorneys' fees and collection costs that may become due from Sustainable to the Plaintiff. (See Exhibits "C" and "D", the terms of which have been incorporated herein by reference.)

30. The Guarantees further provide that, should Sustainable default on the Note, Guarantors shall be in default of their obligations under the Guarantees, and in the event of such a default, Guarantors agree to pay all expenses of collection, enforcement or protection of Plaintiff's rights and remedies under the Guarantees or Note, including reasonable attorney's fees.

31. Sustainable failed to pay the amounts owed to Plaintiff under the Note and is in default.

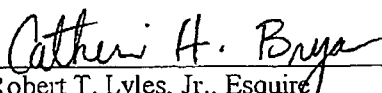
32. Despite demand, Guarantors have failed to fulfill their obligations to timely pay the amounts due to Plaintiff as set forth in the paragraphs above, and are in default under the terms of the Guarantees.

33. Plaintiff has placed this matter with the undersigned attorneys for collection and has expended reasonable attorney's fees and costs attempting to collect the amount due and owing and is entitled to judgment against the Guarantors in the total amount of \$1,571,317.98, together with prejudgment interest thereon and the costs of this action including reasonable attorneys fees.

WEREFORE, Plaintiff prays that judgment be entered against Defendant as follows:

- a. For actual damages in the amount listed above;
- b. Foreclosure of the real estate secured by the Note and Mortgage;
- c. For reasonable attorney's fees pursuant to the Note, Mortgage and Guarantees;
- d. For the costs of this action;

- e. For a personal or deficiency judgment; and
- f. For such other and further relief as may be just and proper.


Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
LYLES & LYLES, LLC
342 East Bay Street (29401)
P.O. Box 773
Charleston, South Carolina 29402
Rtl@lylesfirm.com / chb@lylesfirm.com
ATTORNEYS FOR PLAINTIFF

April 28, 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
FLORIDA CITIZENS BANK,)
Plaintiff,)
vs.)
SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

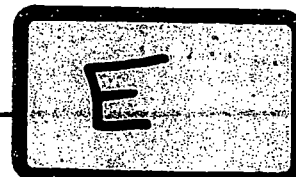
**ORDER OF JUDGMENT AND
FORECLOSURE
AND
ORDER OF JUDGMENT FOR
SUIT ON GUARANTY**

FILED
2011 APR 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

Pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure*, the above-captioned matter was referred to the undersigned Master in Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment, and to hear and determine any post-judgment proceedings. Any appeal from the decision of the Master in Equity shall be directly to the South Carolina Supreme Court.

Pursuant to the Order of Reference, a hearing was held on March 22, 2011 before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County. Catherine H. Bryan of Lyles & Lyles, LLC appeared for the Plaintiff. No appearance was made on behalf of the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto. Island Preservation Partnership has been dismissed from this action as evidenced by Plaintiff's Notice of Dismissal as to Island Preservation Partnership Only dated March 22, 2011.

At the hearing, the testimony was taken, which is reported herewith, and from the record in this case including the pleadings, admissions, testimony and evidence, I find and conclude as follows:



FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Lis Pendens was filed on April 28, 2010.
2. The Summons and Complaint were filed on April 30, 2010.
3. Since this foreclosure action involves a commercial loan, the Home Affordable Modification Program is inapplicable.
4. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., Sue A. Porretto, and Island Preservation Partnership were served with the Lis Pendens; Summons; verified Complaint, including Exhibits A, B, C, and D; and Fair Debt Collection Notice via process server on May 14, 2010, as evidenced by the Affidavits of Service filed on May 19, 2010.
5. The Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto filed an answer on July 13, 2010, admitting the allegations of the Complaint.
6. The Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto, through their attorney of record, were notified of the time, date and place of the hearing in this matter on January 25, 2011, as indicated by the filed Notice of Hearing.
7. On or about March 6, 2006, Plaintiff made a loan to Sustainable Building Solutions, Inc. as evidenced by a note in the principal amount of One Million Four Hundred Twenty-Five Thousand and 00/100 Dollars (\$1,425,000.00) with interest as provided therein (the "March 2006 Note").
8. On or about June 15, 2006, Plaintiff made a loan to Sustainable Building Solutions as evidenced by the note in the principal amount of One Hundred Seventy-Five Thousand Six Hundred Twelve and 50/100 Dollars (\$175,612.50) with interest as provided therein (the "June 2006 Note").

9. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of One Million Six Hundred Thousand Six Hundred Twelve and 50/100s Dollars (\$1,600,612.50) with interest as provided therein (the "April 2007 Note"), as renewed by certain promissory notes dated April 15, 2008 (the "April 2008 Note") and April 15, 2009 (the "April 2009 Note"), and modified by the Debt Modification Agreement dated July 15, 2009 (the "July 2009 Modification"), together with certain fees and charges.

10. True copies of the March 2006 Note, June 2006 Note, April 2007 Note, April 2008 Note, April 2009 Note and July 2009 Modification (hereinafter collectively referred to as the "Note") are incorporated herein by reference.

11. On or about February 14, 2005, in order to secure the payment of the Note and indebtedness, Sustainable Building Solutions, Inc. made, executed and delivered to Plaintiff a mortgage covering real property located in Charleston County, South Carolina, which was recorded on February 22, 2005, in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage, dated March 6, 2006, and recorded on March 13, 2006 in the RMC Office for Charleston County in Book B-576 at Page 181. The mortgage and Modification of Mortgage are hereinafter collectively referred to as the "Mortgage."

12. The real property encumbered by the Mortgage (hereinafter referred to as the "Property") is more fully described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and

recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

13. A true copy of the Mortgage is incorporated herein by reference.
14. The Mortgage constitutes a first lien on the Property.
15. On or about April 15, 2009, John P. Porretto, Sr., individually, and Sue A. Porretto, individually, each executed and delivered to the Plaintiff a valid and enforceable Guaranty (hereinafter referred to as the "Guaranties"), guaranteeing payment to Plaintiff all sums owing under the Note, promising to pay the debt in the full amount as stated therein, and agreeing to all terms of the Note.

16. The Guaranties constitute valid and enforceable contracts.

17. By failing and refusing to make the required payments to Florida Citizens Bank, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have breached the terms of the unconditional guarantees without legal excuse and are personally liable under the terms of the Guaranties for the full amount of indebtedness to Florida Citizens Bank as set forth more fully herein.

18. According to the terms of the Note and Mortgage, if an event of default occurs or in the event of non-payment of the Note in full at maturity, the entire unpaid balance of the Note shall, at the option of Florida Citizens Bank, become immediately due and payable, without notice or demand.

19. Under the terms of the Mortgage, it was agreed that in the event the mortgagor failed to pay all taxes and assessments upon the Property when the same shall first become payable, then the mortgagee may cause the same to be paid, together with all penalties and costs incurred thereon, which amount, together with interest thereon, would be secured by the Property.

20. The payments due under the Note and Mortgage are in default and the conditions of the Note and Mortgage have been breached.

21. Pursuant to the terms of the Note and Mortgage, the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, were obligated to pay the Plaintiff the sums due and owing thereunder.

22. Despite demand, no payment has been made by the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, or Sue A. Porretto, individually, and Florida Citizens Bank filed this action to foreclose on the property.

23. The Mortgage provides that, in the event legal proceedings are instituted for the foreclosure of the Mortgage, or should the Note be placed in the hands of any attorney for collection, all costs and expenses incurred by Florida Citizens Bank, including a reasonable counsel fee of not less than ten percent (10%) of the amount involved, shall be added to the total debt secured by the Mortgage. Further, the Note provides that the Borrower will pay Lender the costs and expenses of collection, including Lender's reasonable attorneys' fees, Lender's legal expenses, and any court costs.

24. Counsel for the Plaintiff filed an Affidavit of Attorneys' Fees and Costs dated March 22, 2011, which was not contested, therefore, I find as fact herein the amounts due as stated therein. Having considered the nature, extent and difficulty of the services rendered, the fees customarily charged for such services, the time involved, the standing of counsel, and the beneficial results obtained by counsel for the Plaintiff, I find that the sum of \$16,334.50 is a reasonable attorneys' fee to allow under the Note and Mortgage for the services rendered and performed and anticipated to be performed until the final adjudication of this action. Further, I find costs of \$1,369.19 are due, as stated in the Affidavit of Attorneys' Fees and Costs.

25. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, is as follows:

(a)	Principal Balance as of March 22, 2011	\$1,574,188.52
	(Per Diem Rate of \$183.30)	
(b)	Interest (to 3/22/11)	\$ 83,851.66
(c)	Appraisal Fee	\$ 1,050.00
(d)	Costs of Collection	\$ 1,369.10

(e) Attorneys' Fees \$ 16,334.50

TOTAL DEBT due as of
March 22, 2011 secured by the
Note and Mortgage, including
interest to date shown \$1,676,793.78

26. Interest for the period from March 22, 2011 through the date of this judgment, at the stated rate of \$183.30 per diem, shall be added to the above stated "Total Debt" to comprise the amount of the Judgment debt to be entered herein. Interest after the date of Judgment at the rate allowed by law, shall be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

27. Florida Citizens Bank is seeking foreclosure of the Mortgage and specifically demands a deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, pursuant to S.C. Code Ann. Section 29-3-660 (1976) for any deficiency in this action remaining after the sale of the Property.

28. Defendants reserve any rights they have pursuant to Sections 29-3-680 through - 780 (1976).

29. The Plaintiff should have a judgment of foreclosure of its Mortgage; and the mortgaged Property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. AS TO THE FORECLOSURE

1. There is due to the Plaintiff on the Note and Mortgage the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78) representing the "Total Debt" due to Plaintiff as set out in Paragraph 25, *supra*, together with interest at the daily rate stated in Paragraph 26 from the date aforesaid to the date this Judgment is filed.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in the findings of fact, *supra*, and later accrued interest and costs) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the statutory rate.

3. The Defendants liable for the aforesaid debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney, the amount of the Plaintiff's total debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

4. That on default of payment at or before the time herein indicated, the Property described in the Complaint, as hereinafter described, together with any furniture, fixtures, equipment and other Collateral located thereon shall be sold by the undersigned Master-in-Equity, or his agent under the direction of the Master-in-Equity, at public auction at the Charleston County Courthouse, Charleston, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

- a. FOR CASH: The undersigned Master-in-Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) to be paid on the date of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within thirty (30) days, same to be forfeited without further hearing and applied to the costs and Plaintiff's debt.
- b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.5 percent (7.5%) per annum.
- c. The sale shall be subject to taxes, assessments, existing easements and restrictions, and easements and restrictions of record.
- d. This Mortgage constitutes the first lien on the Property.
- e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes.

5. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master-in-Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness. No deposit shall be due if Plaintiff is the successful bidder.

6. A deficiency judgment having been demanded, the sale shall reopen for additional bids on the 30th day after the date of sale; however, Plaintiff may waive any of its rights, including withdrawing its demand for a deficiency judgment prior to sale.

7. The undersigned Master-in-Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the undersigned Master-in-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured. To the extent that Notice of Sale is published prior to the entry of this order such publication is ratified nunc pro tunc.

8. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the Property shall not be sold, and in the event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

9. That the undersigned Master-in-Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under the Order of Court;

NEXT: To the payment of the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on same; and

NEXT: Any surplus will be held pending further Order of this Court.

10. IT IS FURTHER ORDERED, ADJUGED AND DECREED that Plaintiff have deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, pursuant to S.C. Code Ann. Section 29-3-660 (1976), should the proceeds of sale fail to pay the total debt owed to the Plaintiff, together with the costs and expenses of this action and the costs of sale, which judgment shall be entered without further notice or hearing.

11. IT IS FURTHER ORDERED, ADJUGED AND DECREED that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon (except the tangible collateral sold with the premises) and put the successful bidder or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

12. IT IS FURTHER ORDERED, ADJUGED AND DECREED that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the Property or have been ejected from the Property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said Property, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not

subject to the lien of Plaintiff's Mortgage, which personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

13. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendants named herein and all persons whosoever claiming under him, them, or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

14. IT IS FURTHER ORDERED that pursuant to S.C. Code Ann § 30-9-31, the deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the Property at the time of filing of the notice of pendency of the within action, and the name of the grantee(s), and the Register of Deeds is authorized to omit from the indices pertaining to such conveyances the names of all parties not contained in said Deed.

15. IT IS FURTHER ORDERED that the undersigned Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds.

16. Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject Property.

17. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Sustainable Building Solutions, Inc. on February 14, 2005, and recorded in Book M526 at Page 278 on February 22, 2005, in the Office of the RMC for Charleston County, as modified by the Modification of Mortgage executed by Sustainable Building Solutions, Inc. on March 6, 2006, and recorded in Book B576 at Page 181 on March 13, 2006 in the Office of the RMC for Charleston County.

18. The following is a description of the Premises herein ordered to be sold:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-'37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

B. AS TO THE SUIT ON THE GUARANTY

1. The Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, each executed a valid and enforceable unconditional guaranty guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens Bank, agreeing to all terms of the Note, and promising to pay the debt in the full amount stated therein.

2. Under the terms of the Guaranties, Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, are personally obliged to pay all debts, liabilities, and obligations owing from Sustainable Building Solutions, Inc. to Plaintiff.

3. As stated above, there is due and owing to Plaintiff the amount of \$1,676,793.78.

4. By not paying the amounts due under the terms and conditions of these Guaranties, the Defendants John P. Porretto, Sr., and Sue A. Porretto have breached the terms and conditions thereof and are personally liable to Plaintiff, both jointly and severally, for the amounts stated herein.

5. As a direct and proximate result of the breach of the Guaranties, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have an unlimited liability to Plaintiff in the amount of \$1,676,793.78 and for which sums they are truly indebted to Plaintiff, and, therefore,

IT IS ORDERED that the Plaintiff Florida Citizens Bank be awarded a judgment against the individual Defendants John P. Porretto, Sr., and Sue A. Porretto, jointly and severally, the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78).

AND IT IS SO ORDERED!


The Honorable Mikel R. Scarborough
Charleston County Master-in Equity

Charleston, South Carolina

4/11, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
FLORIDA CITIZENS BANK,)
)
Plaintiff,)
)
vs.)
)
SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
THE COUNTY OF CHARLESTON)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

FILED
2011 APR 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

AFFIDAVIT OF TESTIMONY

This case having been referred and heard on March 22, 2011, at the Charleston County Courthouse, Charleston, South Carolina, and which was attended by Catherine H. Bryan, attorney for the Plaintiff, and who is authorized to testify and makes part of this record the following:

1. I am an attorney employed by Lyles & Lyles, LLC, the firm which represents the Plaintiff in the above-captioned matter.
2. The Plaintiff Florida Citizens Bank (hereinafter the "Plaintiff" or "Florida Citizens") is a corporation organized under the laws of the State of Florida which does business in Charleston County, South Carolina, and is the lender on the loan that is the subject of this action.
3. This foreclosure action involves a commercial loan.
4. The Defendant Sustainable Building Solutions, Inc. is the owner of the Property described in paragraph 19 below, is the borrower on the loan that is the subject of this action, and is subject to the jurisdiction of this court.

5. The Defendant John P. Porretto, Sr. is a resident of the State of Texas who personally guaranteed a loan for real property located in Charleston County, South Carolina.
6. The Defendant Sue A. Porretto is a resident of Texas who personally guaranteed a loan for real property located in Charleston County, South Carolina.
7. Island Preservation Partnership was made a party to this action upon the belief that it may have some right or claim in the property identified in Paragraph 19 below as "Lot 124", by virtue of that certain mortgage recorded October 1, 2001 in the Charleston County RMC Office in Book T383 at Page 354. The mortgage has been satisfied and Island Preservation Partnership is no longer a party to this action, as evidenced by the Notice of Dismissal as to Island Preservation Partnership Only, dated March 22, 2011, which has been filed by the Plaintiff.
8. This is an action brought by the Plaintiff to foreclose on a mortgage on real property located in Charleston County, South Carolina, which is more specifically described in the Complaint and Lis Pendens filed in this case.
9. The Lis Pendens was filed on April 28, 2010.
10. The Summons and Complaint were filed on April 30, 2010.
11. Defendants above-named were served with the Lis Pendens; Summons; verified Complaint, including Exhibits A, B, C and D; and Fair Debt Collection Notice, via process server on May 14, 2010 as evidenced by the Affidavits of Service filed on May 19, 2010.
12. Counsel for Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto filed an Answer on behalf of same on July 13, 2010.
13. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto, through their attorney of record, were notified of the time, date and place of the hearing in this matter as demonstrated by the Notice of Hearing filed February 24, 2011.

14. At the time of the filing of this action, the Property was titled in the name of Sustainable Building Solutions, Inc.

15. On or about March 6, 2006, Defendant Sustainable Building Solutions, Inc., did execute and deliver to Plaintiff a promissory note (the "March 2006 Note") and promised to pay to Plaintiff the sum of One Million Four Hundred Twenty-Five Thousand and 00/100 Dollars, (\$1,425,000.00) together with interest as provided therein.

16. On or about June 15, 2006, Sustainable Building Solutions, Inc. did execute and deliver a promissory note (the "June 2006 Note") and promised to pay to Plaintiff the sum of One Hundred Seventy-Five Thousand Six Hundred Twelve and 50/100s Dollars (\$175,612.50), together with interest as provided therein.

17. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of One Million Six Hundred Thousand Six Hundred Twelve and 50/100s Dollars (\$1,600,612.50), with interest as provided therein, as renewed by certain promissory notes dated April 15, 2008 and April 15, 2009, and modified by the Debt Modification Agreement dated July 15, 2009, together with certain fees and charges. The above referenced notes and debt modification agreement are collectively referred to as the "Note," true copies of which are attached to the Complaint as Exhibit "A."

18. On or about February 14, 2005, in order to secure the payment of the Note and indebtedness, Sustainable Building Solutions, Inc. made, executed and delivered to Plaintiff a mortgage covering real property located in Charleston County, South Carolina, which was recorded on February 22, 2005, in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage which was recorded on March 13, 2006

in the RMC Office for Charleston County in Book B-576 at Page 181. The mortgage and Modification of Mortgage are hereinafter collectively referred to as the "Mortgage," true copies of which are attached to the Complaint as Exhibit "B."

19. The real property encumbered by the Mortgage (hereinafter referred to as the "Property") is more fully described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as **Lot 95** on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-'37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "**LOT 124**" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

20. The Mortgage constitutes a first priority lien on the Property.
21. The Defendant John P. Porretto, Sr., individually, is made a party to this action by virtue of the unconditional guarantee he signed on or about April 15, 2009, guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens. A true copy of the Guaranty is attached as Exhibit "C" to the Complaint filed in this action.
22. Defendant Sue A. Porretto, individually, is made a party to this action by virtue of the unconditional guarantee she signed on April 15, 2009, guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens. A true copy of the Guaranty is attached as Exhibit "D" to the Complaint filed in this action.
23. According to the terms and conditions of the Note and Mortgage, it is provided that if an event of default occurs, or in the event of non-payment of the Note in full at maturity, the entire unpaid balance of the Note shall, at the option of Florida Citizens, become immediately due and payable, without notice or demand.
24. Further, under the terms and conditions of the Mortgage, it was agreed that in the event the mortgagor failed to pay all taxes and assessments upon the Property when the same shall first become payable, then the mortgagee may cause the same to be paid, together with all penalties and costs incurred thereon, which amount, together with interest thereon, would be secured by the Property.
25. The payments due on the Note and Mortgage are in default and the conditions of the Note and Mortgage have been breached.

26. Pursuant to the terms of the Note, Mortgage, and Guaranties, Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto were obligated to pay to Florida Citizens the sums due and owing thereunder.

27. Despite demand, no payment has been made by the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., or Sue A. Porretto, and Florida Citizens filed this action to foreclose on the property.

28. The Plaintiff demands a deficiency judgment against Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto as demonstrated by the Complaint.

29. As demonstrated by the Complaint, with respect to the suit on the Guaranties, Plaintiff also seeks a judgment against Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, for the entire amount due to Plaintiff.

30. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, are delinquent in the amount due to the Plaintiff which, not including attorneys' fees and costs, is \$1,659,090.18, consisting of:

Principal Balance	\$ 1,574,188.52
Interest through 3/22/11	\$ 83,851.66
Appraisal Fee	\$ 1,050.00
Per Diem Rate	\$ 183.30

31. As provided in the Note, Mortgage and Guaranties, the attorneys' fees, legal expenses, and costs of this action will need to be added to the above referenced amounts for the total amount due in this action.

FURTHER AFFIANT SAYETH NOT.

LYLES & LYLES, LLC

Catherine H. Bryan

By: Catherine H. Bryan

SWORN to before me
this 22nd day of March, 2011

Brenda Rederman

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 1-10-2015

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

FLORIDA CITIZENS BANK,)

Plaintiff,)

vs.)

SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)

PORRETTO, SR., SUE A. PORRETTO,)

THE COUNTY OF CHARLESTON)

AND ISLAND PRESERVATION)

PARTNERSHIP,)

Defendants.)

COURT OF COMMON PLEAS

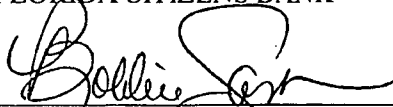
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2010-CP-10-3586

AUTHORIZATION TO TESTIFY

The undersigned, a duly authorized officer of Florida Citizens Bank, authorizes Robert T. Lyles, Jr., Catherine H. Bryan, and Lyles & Lyles, LLC, or its representative, to testify on behalf of Florida Citizens Bank in the above referenced foreclosure action.

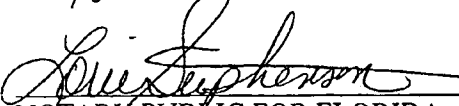
FLORIDA CITIZENS BANK



By: Bobbie Gaston

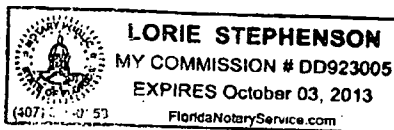
Its: Loan Operations Officer

SWORN to before me
this 18th day of March, 2011



NOTARY PUBLIC FOR FLORIDA

My Commission Expires:



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

FLORIDA CITIZENS BANK,)
Plaintiff,)
vs.)

SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
THE COUNTY OF CHARLESTON)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

AFFIDAVIT OF ROBERT T. LYLES, JR.

FILED
2011 APR 13 PM 4:28
JULIE J. GIBBSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME the undersigned, Robert T. Lyles, Jr., who,
being first duly sworn, deposes and says:

1. I am over the age of twenty-one years, and I make this Affidavit on my own personal knowledge.
2. I am an attorney with Lyles & Lyles, LLC, attorneys for the Plaintiff in the above referenced foreclosure action.
3. That as part of the above referenced suit on foreclosure, Plaintiff has placed the following documents in the hands of Lyles & Lyles, LLC:
 - a. Note dated March 6, 2006, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,425,000.00.
 - b. Note dated June 15, 2006, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$175,612.50.

- c. Note dated April 15, 2007, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,600,612.50.
 - d. Note dated April 15, 2008, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,600,612.50.
 - e. Note dated April 15, 2009, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, in the principal amount of \$1,540,612.50.
 - f. Debt Modification Agreement dated July 15, 2009, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc.
 - g. Mortgage in the amount of \$1,000,000.00 executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, filed February 22, 2005, in Book M526 at Page 278.
 - h. Modification of Mortgage executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the amount of \$1,425,000.00, filed March 13, 2006 in Book B576 at Page 181.
 - i. Guaranty executed by Defendant John P. Porretto for the benefit of Plaintiff dated April 15, 2009.
 - j. Guaranty executed by Defendant Sue A. Porretto for the benefit of Plaintiff dated April 15, 2009.
4. Plaintiff's attorneys' fees, legal expenses and court costs are recoverable under the terms of the notes, guaranties, and mortgage securing the notes (referenced above).
5. The Defendants are in default under the terms of said note, mortgage and guaranties, and Plaintiff is entitled to reimbursement for the reasonable attorneys' fees, costs and expenses incurred in the prosecution of this action.
6. There are six factors to consider in determining the reasonableness of an award of attorneys fees as set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 SE2d 659 (1993):
- a. Nature, extent and difficulty of the legal services rendered. In this instance, a Note in the amount of \$1,540,612.50 which is in default and was secured by a parcel of property

located in Charleston County is being foreclosed. The principal, interest, late charges, and other expenses, upon information and belief, total \$1,659,090.18. Services provided by Lyles & Lyles, LLC included the review of relevant loan documents; review of public records, specifically Charleston County RMC lien searches; preparation of pleadings and motions necessary to complete the lawsuit on the promissory notes; preparation for, attendance at, and other actions pursuant to the foreclosure proceedings, including the Motion and Order of Reference, hearing notices and hearing for final judgment.

In addition to the foreclosure action, there were services rendered in connection with potential compromise resolution of this action, including communicating with counsel for the Porretto Defendants and Defendant Sustainable Building Solutions, Inc. and communicating with Plaintiff.

Additional services will be rendered and costs incurred in connection with preparation for and attendance at the hearing for final Order and Judgment on March 22, 2011, and in connection with matters following the final hearing and sale, including preparation of documents in connection with same. Moreover, depending upon the interest shown by the Defendants, third parties, or counsel for Defendants and the inherent negotiations required thereby, other time will likely be committed to the completion of this case.

b. Time and Labor Devoted to Case. The time and labor devoted in this matter is outlined in the following summary of billable hours and rates as of March 21, 2011:

Litigation Attorney/ Legal Staff	Hours	Rate/Hour	Billed Amount
R. Lyles, Jr., Esq.	20.3	\$250.00	5,075.00
C. Bryan, Esq.	53.3	\$175.00	9,327.50
D. Welzig	5.4	\$80.00	432.00
		Total	14,834.50

Fees for Professional Services (incurred through 3/21/11)	\$ 14,834.50
Disbursements (incurred through 3/21/11) (Costs which include postage, copies, long distance telephone Calls, research, filing fees, non-legal professional services, courier, and service of documents)	\$ 1,219.19
Total Billing as of 03/21/11	\$ 16,053.69
Estimated fees from 3/21/11 to conclusion of action	\$ 1,500.00
Estimated Disbursements from 3/21/11 to conclusion of action	\$ 150.00
TOTAL BILLING including estimated billing to conclusion of action	\$ 17,703.69

c. Professional Standing of Counsel and Staff. I graduated from the University of South Carolina School of Law, was admitted to practice in the State of South Carolina in 1987 and have remained in good standing since that time. I am licensed to practice in the State Courts of South Carolina, the United States District Court of South Carolina, the Fourth Circuit Court of Appeals, and the Supreme Court of the United States of America. Catherine H. Bryan is an associate of Lyles & Lyles, LLC. She graduated from the University of South Carolina School of Law in 2007, was admitted to practice in the State of South Carolina in 2007, and has remained in good standing since that time. She has been an associate with Lyles & Lyles, LLC since February of 2008. She is licensed to practice in the State Courts of South Carolina and the United States District Court of South Carolina. Danelle A. Welzig is a litigation paralegal and has provided assistance in the preparation of pleadings, tax and lien research, and follow up scheduling for the final hearing. She has been a paralegal with Lyles & Lyles, LLC since June of 2002. She is a graduate of the College of Charleston and an ABA accredited Paralegal Certification program. The attorneys and other professionals involved in handling this matter have the requisite experience and professional standing in the community to provide the services rendered in this matter.

d. Contingency of Compensation. The compensation was to be paid on an hourly basis, which is the normal method of payment for mortgage foreclosures.

e. Fees Customarily Charged in the Locality for Similar Services. Upon information and belief, the hourly rates charged by the attorneys working on the matter are customary for those involved in providing similar services in this community.

f. Beneficial Results Obtained. The results have yet to be determined as a hearing on the merits and damages hearing has been set for March 22, 2011.

6. The Mortgage provides that all costs and expenses incurred by the mortgagee, including a reasonable counsel fee of not less than ten percent (10%) of the amount due, shall be added to the total debt secured by the mortgage. The total amount due is \$1,659,090.18. The total billing (including estimated billing to conclusion of this action) as set forth in Paragraph 6(b), above is \$16,334.50. Therefore, I believe that attorneys fees of \$16,334.50 are reasonable and should be added; along with the costs and expenses which are \$1,369.19, to the debt secured by the mortgage.

FURTHER AFFIANT SAYETH NOT.

Lyles & Lyles, LLC

By: Robert T. Lyles, Jr.

SWORN to before me
this 22 day of March, 2011

Brenda Godeman
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1-10-2015

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

WAIVER OF DEFICIENCY JUDGMENT

Plaintiff hereby waives its right to any deficiency judgment in this action.

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT

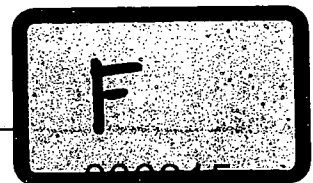
LYLES & LYLES, LLC

By: Catherine Bryan
Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

Attorney for Plaintiff
Florida Citizens Bank

Charleston, South Carolina

April 26, 2011



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Waiver of Deficiency Judgment** in the above-referenced matter has been served on the following named persons by placing a copy of the same in the United States mail with proper postage affixed thereto or via electronic mail on this 26th day of April, 2011:

Via U.S. Mail & Electronic Mail:

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464
*Attorneys for Sustainable Building
Solutions, Inc., John P. Porretto, Sr., and
Sue A. Porretto*

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

LYLES & LYLES, LLC.



Charleston, South Carolina

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

April 26, 2011
VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of the Waiver of Deficiency Judgment. Please file the original and return the file stamped copy in the envelope provided for you. Thank you in advance for your professional assistance.

By copy of this correspondence and as indicated on the Certificate of Service, I am hereby serving all parties and/or counsel with a copy of the enclosed notice. With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC



Robert T. Lyles, Jr.

RTL/daw
Enclosures

cc: Carl Walls
W. H. Bundy, Jr., Esquire

000317

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Catherine H. Bryan.
Associate

Direct: (843) 735-5563
E-mail: chb@lylesfirm.com

June 21, 2011
Via Electronic Mail Only

The Honorable Judy H. Dawkins
Clerk of Equity Court
Charleston County Master in Equity
100 Broad Street, Suite 266
Charleston, SC 29401
jdawkins@charlestoncounty.org

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

Dear Ms. Dawkins:

I am in receipt of the Master's Sale notice regarding the property that was the subject of the above-referenced action. Robert Lyles and I represent Plaintiff, Florida Citizens Bank, in this matter. The Master's Sale notice indicates that the sale, which is scheduled for July 5, 2011, will be re-opened for final bidding on August 4, 2011. I am writing to bring your attention to the Waiver of Deficiency Judgment dated and filed April 26, 2011. (A copy of the Waiver of Deficiency Judgment is attached for your convenience.) While the Master's Sale notice correctly notes that Plaintiff did not waive its right for a deficiency judgment in the Complaint, Plaintiff expressly waived its right to any deficiency in the Waiver of Deficiency Judgment filed April 26, 2011. Accordingly, I would ask that the sale not be re-opened on August 4.

The Waiver of Deficiency Judgment was made and filed with the understanding that Plaintiff was entitled to waive its right to the deficiency judgment at any time prior to the sale and that with such a waiver, the sale would not reopen. If this is not correct, please let me know.

Please confirm whether the final sale can be held on July 5. Thank you in advance for your attention to this matter. With kind regards, I remain

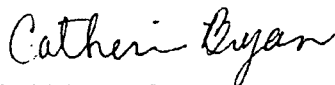


000318

Ms. Dawkins
June 21, 2011
Page 2

Sincerely,

LYLES & LYLES, LLC

A handwritten signature in cursive script that reads "Catherine Bryan".

Catherine H. Bryan

CHB
Enclosure

cc: Carl Walls
W. H. Bundy, Jr., Esquire

000319

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2010-CP-10-3586

WAIVER OF DEFICIENCY JUDGMENT

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Plaintiff hereby waives its right to any deficiency judgment in this action.

LYLES & LYLES, LLC

By: Catherine Bryan
Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

Attorney for Plaintiff
Florida Citizens Bank

Charleston, South Carolina

April 26, 2011

000320

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Waiver of Deficiency Judgment** in the above-referenced matter has been served on the following named persons by placing a copy of the same in the United States mail with proper postage affixed thereto or via electronic mail on this 26th day of April, 2011:

Via U.S. Mail & Electronic Mail:

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464
***Attorneys for Sustainable Building
Solutions, Inc., John P. Porretto, Sr., and
Sue A. Porretto***

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

LYLES & LYLES, LLC.



Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Florida Citizens Bank,

Plaintiff,

v.

Sustainable Building Solutions, Inc., John P.
Porretto, Sr., Sue A. Porretto, The County of
Charleston, and Island Preservation
Partnership,

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-10-3586

ORDER OF APPRAISAL

BY

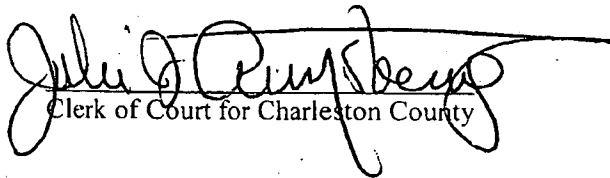
JULIE D. CAMPBELL
CLERK OF COURT

2011 JUL 28 PM 12:39

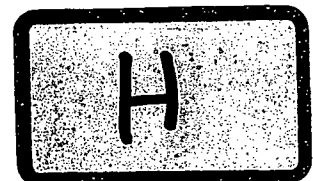
FILED

It appearing that on the 27th day of July, 2011, the Petitioners, Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto, through their attorneys filed a petition for an appraisal in the matter above named pursuant to Section 29-3-680 et. seq. of the South Carolina Code of Laws (1976), and appointing Thomas Hartnett as one of the appraisers.

IT IS HEREBY ORDERED that the property be appraised at its true value as of the date of sale by three disinterested freeholders of the County of Charleston; that a copy of this order be served upon the Judgment creditor, or his attorney of record and he shall have ten (10) days thereafter to designate to the undersigned his appraiser.


Clerk of Court for Charleston County

Charleston, South Carolina
7/28, 2011



000322

SMITH, BUNDY, BYBEE & BARNETT, P.C.

ATTORNEYS AT LAW
1037 CHUCK DAWLEY BOULEVARD
SUITE 100, BUILDING F
POST OFFICE BOX 1542
MOUNT PLEASANT, SC 29465
(843) 881-1623
FAX (843) 881-4406
FED ID # 57-0988087

ELLISON D. SMITH, IV
W.H. BUNDY, JR.
RICHARD D. BYBEE
STAN BARNETT

W.H. BUNDY, JR.
whbesq@s3blaw.com
Direct Line (843) 513-1032

M. BRENT MCDONALD

July 27, 2011

The Honorable Julie J. Armstrong
Charleston County Judicial Center
100 Broad Street
Charleston, SC 29401

RE: Florida Citizens Bank, vs. Sustainable Building Solutions, Inc., John P. Porretto, Sr.,
Sue A. Porretto, The County of Charleston, and Island Preservation Partnership
C/A No. 2010-CP-10-3586

Dear Ms. Armstrong:

Please find enclosed the original and one copy of the Civil Motion Coversheet, Petition for Order of Appraisal and proposed Order of Appraisal regarding the above captioned matter.

Please review the proposed Order and if it meets with your approval, sign the same, filing the originals and return the file stamped copy to me in the self addressed envelope enclosed for your convenience.

Also enclosed is our check in the amount of \$25.00 for the filing fee and my client's check in the amount of \$100.00 representing the appraiser fee.

By copy of this letter I am serving these pleadings on all counsel of record as shown by the Certificate of Service attached.

Thank you for your kind attention to this matter. Should you have any questions or concerns please do not hesitate to contact me.

With kindest regards I remain

Very truly yours,



W.H. Bundy, Jr., Esquire

WHB:sfr

Enclosure

cc: Robert T. Lyles, Jr., Esquire

000323

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE ☐ COURT OF COMMON PLEAS
☐ FAMILY COURT

FLORIDA CITIZENS BANK

☐ Plaintiff

CASE NO. 2010-CP-10-3586

v.

SUSTAINABLE BUILDING SOLUTIONS, INC.,

☐ Defendant

**MOTION INFORMATION FORM
AND COVER SHEET**

check box above indicating submitting party

name, SC Bar no. and address of plaintiff's attorney

Robert T. Lyles, Jr. (SC Bar #10299)

Lyles & Lyles

P.O. Box 773

Charleston, SC 29402

telephone: 577-7730

fax: 577-7172

e-mail: rtl@lylesfirm.com other:

name, SC Bar no. and address of defendant's attorney

W. H. Bundy, Jr., Esquire

Smith, Bundy, Bybee & Barnett, P.C.

Post Office Box 1542

Mt. Pleasant, S.C. 29465

telephone: 881-1623

fax: 881-4406

e-mail: whbesq@s3blaw.com other:

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

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

SECTION I: Hearing Information

Nature of Motion: Motion for Attorneys Fees

Estimated Time

Court Reporter Needed: YES / NO

SECTION II: Motion Type

☐ Written motion attached

☐ Form Motion --

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

Signature of Attorney for Plaintiff/Defendant

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check one) ☐ 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, SCRPC)

☐ 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

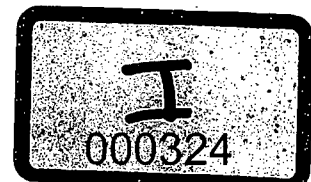
DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (1/2003)



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

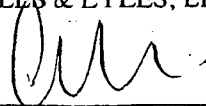
**PLAINTIFF'S DESIGNATION OF
APPRAISER AND MOTION FOR
ATTORNEYS FEES AND COSTS**

FILED
2011 AUG 11 PM 1:25
WILE J. ARMSTRONG
CLERK OF COURT

Plaintiff hereby designates Thomas K. Happel, IV or Atlantic Appraisals as its appraiser pursuant to S.C. Code Ann. §29-3-710.

Plaintiff will further move this Honorable Court for costs; expenses and attorneys fees incurred by Plaintiff in connection with defending its interests under the appraisal statutes pursuant to guaranties signed by Defendants John P. Porretto, Sr. and Sue A. Porretto (attached hereto as Exhibit "A").

LYLES & LYLES, LLC

By: 

 Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

**Attorney for Plaintiff
Florida Citizens Bank**

Charleston, South Carolina

8/11, 2011

000326

GUARANTY
(Continuing Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is April 16, 2009. The parties and their addresses are:

LENDER:
FLORIDA CITIZENS BANK
3819 W. Newberry Road
Gainesville, Florida 32607
Telephone: 352-332-4727

BORROWER:
SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

GUARANTOR:
JOHN P. PORRETTO
P.O. Box 272423
Houston, TX 77277

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

A. Pronouns. The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.

B. Note. "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.

C. Property. "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce your forbearance with respect to any Debt, or to induce you to extend and/or maintain credit, or grant any other financial accommodation, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 200600003509, dated April 18, 2009, from Sustainable Building Solutions, Inc. (Borrower) to you, in the amount of \$1,540,612.60.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guarantees, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

8. DEFAULT. I will be in default if any of the following occurs:

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, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.

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 Guaranty.

E. Other Documents. A default occurs under the terms of any other document relating to the Debt.

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.

John P. Porretto
Florida Guaranty
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Page 1

EX. A

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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. Insolvency. 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 Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

N. 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. In addition, to the extent permitted by law, I 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 the Debt or this Guaranty.

- (1) You may renew or extend payments on the Debt, 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.
- (4) You, or any institution participating in the Debt, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guaranteeing or relating to the Debt.
- (7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.
- (8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.
- (9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

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 the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. Waiver of Claims. I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. REMEDIES. After the Borrower or 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 Guaranty immediately due.
- B. Sources.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.
- C. Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.
- D. Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.
- E. Attachment.** You may attach or garnish my wages or earnings.
- F. 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 Guaranty 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 Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty 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 the Debt, 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.

G. 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.

11. 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 or remedies under this Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. 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.

12. WARRANTIES AND REPRESENTATIONS. I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. RELIANCE. I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and that I have signed this Guaranty to induce you to forbear from exercising your remedies against the Borrower, extend credit to the Borrower, maintain the Borrower's credit, or grant any other financial accommodation. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from the continued existence of the Debt guaranteed hereby, and from any loan and/or financial accommodations resulting in the creation of other Debt guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. APPLICABLE LAW. This Guaranty is governed by the laws of Florida, 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.

15. AMENDMENT, INTEGRATION AND SEVERABILITY. This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. ASSIGNMENT. If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. 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 Guaranty.

18. 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 Guarantor will be deemed to be notice to all Guarantors. 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

John P. Porretto
Florida Guaranty
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Page 2

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file any additional documents or certifications that you may consider necessary to perfect, continue, and my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. SIGNATURES. By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:

John P. Porretto
Signature Date
Individually

000329

GUARANTY
(Continuing Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is April 15, 2009. The parties and their addresses are:

LENDER:
FLORIDA CITIZENS BANK
3919 W. Newberry Road
Gainesville, Florida 32607
Telephone: 352-332-4727

BORROWER:
SUSTAINABLE BUILDING SOLUTIONS, INC.
a South Carolina Corporation
P.O. Box 272423
Houston, TX 77277

GUARANTOR:
SUE A. PORNETTO
P.O. Box 272423
Houston, TX 77277

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.
B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce your forbearance with respect to any Debt, or to induce you to extend and/or maintain credit, or grant any other financial accommodation, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of such and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 200800003809, dated April 18, 2003, from Sustainable Building Solutions, Inc. (Borrower) to you, in the amount of \$1,540,812.50.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guaranties, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

3. EXTENSIONS. I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

6. REVOCATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetency. Notice of revocation or notice of my death or incompetency will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

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 assistance 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, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.
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 Guaranty.
E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
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.

Sue A. Poretto
Florida Guaranty
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Page 1

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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. **Insolvency.** 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 Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

9. **WAVERS 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.** In addition, to the extent permitted by law, I 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 the Debt or this Guaranty.

- (1) You may renew or extend payments on the Debt, 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.
- (4) You, or any institution participating in the Debt, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guaranteeing or relating to the Debt.
- (7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.
- (8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.
- (9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

8. **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 the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

C. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

10. **REMEDIES.** After the Borrower or 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 Guaranty immediately due.
- B. **Source.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.
- C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.
- D. **Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.
- E. **Attachment.** You may attach or garnish my wages or earnings.
- F. **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 Guaranty 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 Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty 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 the Debt, 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.

G. **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.

11. **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 Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. 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.

12. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

13. **RELiance.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and that I have signed this Guaranty to induce you to forbear from exercising your remedies against the Borrower, extend credit to the Borrower, maintain the Borrower's credit, or grant any other financial accommodation. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from the continued existence of the Debt guaranteed hereby, and from any loan and/or financial accommodations resulting in the creation of other Debt guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

14. **APPLICABLE LAW.** This Guaranty is governed by the laws of Florida, 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.

15. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

16. **ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **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 Guaranty.

18. **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 Guarantor will be deemed to be notice to all Guarantors. 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

Suo A. Porretto
Florida Guaranty
FL4L5TEPHEND00000000011051062203N

©1996 Bankers Systems, Inc., St. Cloud, MN Export

Page 2

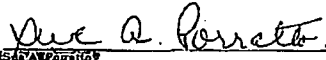
000331

file any additional documents or certifications that you may consider necessary to perfect, continue, and, serve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

19. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

20. SIGNATURES. By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:

Sue A. Perretto 
Sue A. Perretto 
Individually

000332

CERTIFICATE OF SERVICE

10-CR-10-358b

I hereby certify that a copy of the foregoing **Designation of Appraiser & Motion for Attorneys Fees** in the above-referenced matter has been served on the following named persons by placing a copy of the same in the United States mail with proper postage affixed thereto or via electronic mail on this 11th day of August, 2011:

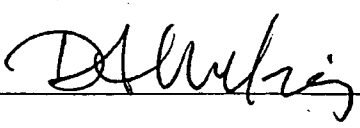
Via U.S. Mail & Electronic Mail:

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464

***Attorneys for Sustainable Building
Solutions, Inc., John P. Porretto, Sr., and
Sue A. Porretto***

FILED
2011 AUG 11 PM 1:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

LYLES & LYLES, LLC.



Charleston, South Carolina

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

August 11, 2011

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

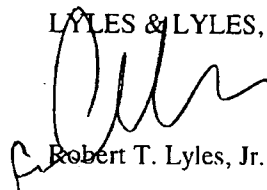
Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of the Designation of Appraiser & Motion for Attorneys Fees. Please file the original and return the file stamped copy to me via courier. Thank you in advance for your professional assistance.

By copy of this correspondence and as indicated on the Certificate of Service, I am hereby serving all parties and/or counsel with a copy of the enclosed notice. With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC



Robert T. Lyles, Jr.

RTL/daw
Enclosures

cc: Carl Walls
W. H. Bundy, Jr., Esquire

000334

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Catherine H. Bryan
Associate

Direct: (843) 735-5563
E-mail: chb@lylesfirm.com

August 3, 2011

Via U.S. Mail and Electronic Mail

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464
bundyw@bellsouth.net

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

Dear Bill:

I am in receipt of the Petition for Order of Appraisal. You may recall that in the guaranties signed by the Porrettos, the Porrettos agreed to pay all costs and expenses, including attorneys' fees, incurred by the Bank in connection with collection or protection of its rights under the Guaranty or other loan documents. Accordingly, unless your client withdraws the Petition, Florida Citizens Bank will ask the judge to add to its judgment against the Porrettos all attorney's fees and costs incurred in connection with protecting the Bank's rights with respect to the appraisal.

If the Porrettos are judgment proof, as you have repeatedly indicated to me and most recently on July 25, the amount of the judgment against them is of no consequence. If the Porrettos are judgment-proof, further action under the appraisal statute serves no proper purpose. Please ask your clients to withdraw the petition so this matter can be finally resolved.

If you have any questions, please feel free to give me a call. With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC

Catherine H. Bryan
Catherine H. Bryan



000335

cc: Carl Walls

000336

Cause No. 2014-63525

FLORIDA CITIZENS BANK,

Plaintiff,

VS.

JOHN P. PORRETTO, SR., and
SUE A. PORRETTO,

Defendants.

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IN THE DISTRICT COURT

129th JUDICIAL DISTRICT

OF HARRIS COUNTY, TEXAS

NOTICE OF FILING OF FOREIGN JUDGMENT

To: Defendant/Judgment Debtor JOHN P. PORRETTO, SR. is located at 2640 Arbuckle Street, Houston, TX 77006.

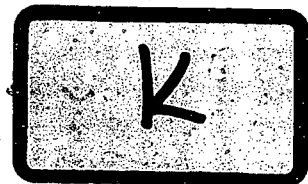
Defendant/Judgment Debtor SUE A. PORRETTO is located at 2640 Arbuckle Street, Houston, TX 77006.

1. You are hereby notified that on this 28th day of October, 2014 Plaintiff/Judgment-Creditor FLORIDA CITIZENS BANK, by and through its attorney of record, James F. Kovach, filed with the Court and under the case style shown above an authenticated and exemplified copy of a foreign judgment for domestication pursuant to Chapter 35 of the Texas Civil Practices and Remedies Code. The filing was made under the provisions of the Uniform Enforcement of Foreign Judgments Act.

2 The names and addresses of the Defendants/Judgment-Debtors are as follows:

Defendant/Judgment Debtor JOHN P. PORRETTO, SR. is located at 2640 Arbuckle Street, Houston, TX 77006.

Defendant/Judgment Debtor SUE A. PORRETTO is located at 2640 Arbuckle Street, Houston, TX 77006.



000337

3. The name and address of Plaintiff/Judgment-Creditor is as follows:

Florida Citizens Bank

c/o Mr. James F. Kovach
McELVANEY & KOVACH, LLP
170 Westcott St.
Houston, TX 77007
(713) 877-1881
(713) 877-8833 Fax

4. Attached hereto as Exhibit "1" is an affidavit showing the last known post office address of the Defendants/Judgment-debtors and the Plaintiff/Judgment Creditor.

5. Attached hereto as Exhibit "2" is an authenticated and exemplified copy of the foreign state judgment, which is summarized as follows:

The judgment was rendered on April 11, 2011, in the case styled *FLORIDA CITIZENS BANK vs. SUSTAINABLE BUILDING SOLUTIONS, INC., JOHN P. PORRETTO, SR., SUE A. PORRETTO, and ISLAND PRESERVATION PARTNERSHIP*, filed as Docket No. 2010-CP-10-3586, in the Court of Common Pleas, Ninth Judicial Circuit, County of Charleston, in the State of South Carolina and awarded Plaintiff the amount of \$1,676,793.78 jointly and severally against Defendants. Credits in the amount of \$90,000.00 dated July 8, 2011 and \$1,067,026.25 dated July 12, 2011 are applied to the Judgment as of this date.

- (A) The Judgment was rendered on April 11, 2011;
- (B) The Judgment was rendered In the Court of Common Please, Ninth Judicial District Court of Charleston County, South Carolina; Before: Judge Mikell R. Scarborough;
- (C) The rendered Judgment is for the following amounts:

ORDERED Judgment is entered in favor of Plaintiff FLORIDA CITIZENS BANK and against Defendants/Judgment debtors *JOHN P. PORRETTO, SR., and SUE A. PORRETTO, jointly and severally* in the amount of \$1,676,793.78. Further, the Judgment Ordered Defendants to pay interest and states that Plaintiff is to recover from Defendants, jointly and severally "[i]nterest after the date of Judgment at the rate allowable by law shall be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed." The Judgment is incorporated herein as if set forth verbatim.

(D) Credits to the Judgment should be applied as follows:

Credit 1: July 8, 2011, Credit in the amount of \$90,000.00; and
Credit 1: July 12, 2011, Credit in the amount of \$1,067,026.25.

Total Credits to Date: \$1,157,026.25

(E) Summary of Remaining Judgment Debt:

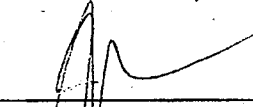
Total Judgment Amount: \$1,676,793.78

Less Credits to Date: <\$1,157,026.25>

Total Outstanding Judgment: \$519,767.53 plus interest and costs

Respectfully submitted,

McELVANEY & KOVACH, L.L.P.

By: 

James F. Kovach

Jim@MKLawyers.net

State Bar No. 11694585

Houston, Texas 77007

(713) 877-1881

(713) 877-8833 (FAX)

Attorneys for Plaintiff/Judgment-Creditor

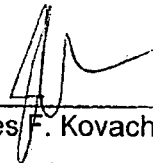
Florida Citizens Bank

CERTIFICATE OF LAST KNOWN ADDRESSES

I hereby certify that the last known addresses of Defendants/Judgment-Debtors are as follows:

Defendant/Judgment Debtor JOHN P. PORRETTO, SR. is located at 2640 Arbuckle Street, Houston, TX 77006.

Defendant/Judgment Debtor SUE A. PORRETTO is located at 2640 Arbuckle Street, Houston, TX 77006.



James F. Kovach

PROOF OF MAILING

I hereby certify that the above and foregoing NOTICE OF FILING OF FOREIGN JUDGMENT has been mailed to the Defendants/Judgment-Debtors at the address shown herein by certified mail, by depositing it, postage paid, in an official depository under the care and custody of the United States Postal Service on October 28, 2014, enclosed in an envelope properly addressed to Defendant/Judgment-Debtors with Certified Mail No. return receipt requested as follows:

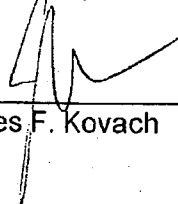
Current addresses:

Certified No. 70073020000084845822

Defendant/Judgment Debtor JOHN P. PORRETTO, SR. is located at 2640 Arbuckle Street, Houston, TX 77006.

Certified No. 70073020000084845839

Defendant/Judgment Debtor SUE A. PORRETTO is located at 2640 Arbuckle Street, Houston, TX 77006.



James F. Kovach

00902/NoticeofFiling.ForeignJmt.doc

AFFIDAVIT

THE STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared James F. Kovach, who, upon being by me first duly sworn, stated as follows:

"My name is James F. Kovach and I am one of the attorneys of record for Plaintiff and Judgment-Debtor. I am over twenty-one years of age and have never been convicted of a felony or a crime involving moral turpitude, nor have I ever been adjudged incompetent. I am of sound mind, duly competent, and capable and qualified in all respects to make this Affidavit from my own personal knowledge. I am personally acquainted with the facts herein stated.

I AM THE ATTORNEY FOR PLAINTIFF/JUDGMENT-CREDITOR AND I THEREBY CERTIFY THAT Notice of Filing of Foreign Judgment HAS BEEN MAILED TO THE DEFENDANTS/JUDGMENT-DEBTORS AT THE ADDRESSES AS SHOWN IN THE NOTICE BY CERTIFIED MAIL, BY DEPOSITING IT, POSTAGE PAID, IN AN OFFICIAL DEPOSITORY UNDER THE CARE AND CUSTODY OF THE UNITED STATES POSTAL SERVICE ON OCTOBER 28, 2014, ENCLOSED IN AN ENVELOPE PROPERLY ADDRESSED TO DEFENDANTS/JUDGMENT-DEBTORS WITH CERTIFIED MAIL NOS. 7007 3020 0000 8484 5822 AND 7007 3020 0000 8484 5839, RETURN RECEIPT REQUESTED AT THE FOLLOWING ADDRESSES:

Certified No. 7007 3020 0000 8484 5822

John P. Porretto, Sr.
2640 Arbuckle St.
Houston, TX 77006

Certified No. 7007 3020 0000 8484 5839

Sue A. Porretto
2640 Arbuckle St.
Houston, TX 77006

EXHIBIT 11

000341

The address of Plaintiff/Judgment Creditor is

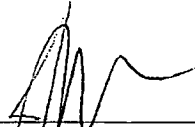
FLORIDA CITIZENS BANK
c/o McElvaney & Kovach, LLP
170 Westcott St.
Houston, TX 77007

Plaintiff's direct office mailing address is

Florida Citizens Bank
c/o Mr. Carl Walls, President
3919 W. Newberry Rd.
Gainesville, FL 32607

Each and every fact, matter, and opinion stated herein is true and correct within my own personal knowledge."

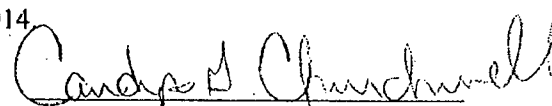
FURTHER AFFIANT SAYETH NAUGHT:



James F. Kovach

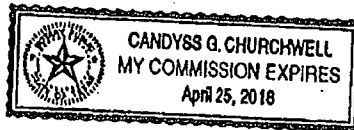
SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority,

on this 28th day of October, 2014



Notary Public, State of TEXAS

JFK:
00902\aff.address.jfk.doc



000342

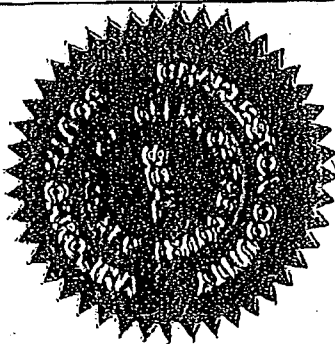
STATE OF SOUTH CAROLINA
OFFICE OF THE CLERK OF COURT
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY

EXEMPLIFICATION

I, Julie J. Armstrong as Clerk of Court for Common Pleas and General Sessions in and for the County of Charleston, South Carolina, legal custodian of the records, documents, and papers of, or appertain to, the Court, and on file or of record in the office of said Court, certify that the attached copies of the documents described below are true and accurate reproductions of the originals now on file in this office.

Docket or Judgment Roll Number 2010-CP-10-3586

Florida Citizens Bank VS. John P Porretto Sr and Sue A Porretto



Date:

9/26/14

Signature:

Julie J. Armstrong
Julie J. Armstrong

As a Presiding Judge of said court, I certify that the signature appearing above is that of the Clerk of Charleston County, who is duly sworn. I further certify that the seal affixed to the certificate appears to be the seal of this court and that it has been used here in good form by the proper officer.

Date:

9/26/2014

Signature of Judge:

R. M. [Signature]

As Clerk of Court for Charleston, South Carolina, I certify that the signature appearing above is that of the sworn judge of said court, duly commissioned and qualified.



Date:

9/26/14

Signature:

Julie J. Armstrong
Julie J. Armstrong

EXHIBIT "2"

000343

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

FLORIDA CITIZENS BANK,)
Plaintiff,)

vs.)

SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
AND ISLAND PRESERVATION)
PARTNERSHIP,)
Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

ORDER OF JUDGMENT AND
FORECLOSURE
AND
ORDER OF JUDGMENT FOR
SUIT ON GUARANTY

FILED
2011 APR 13 PM 4:28
JILLIE J. ARTHUR
CLERK OF COURT

Pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure*, the above-captioned matter was referred to the undersigned Master in Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment, and to hear and determine any post-judgment proceedings. Any appeal from the decision of the Master in Equity shall be directly to the South Carolina Supreme Court.

Pursuant to the Order of Reference, a hearing was held on March 22, 2011 before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County. Catherine H. Bryan of Lyles & Lyles, LLC appeared for the Plaintiff. No appearance was made on behalf of the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto. Island Preservation Partnership has been dismissed from this action as evidenced by Plaintiff's Notice of Dismissal as to Island Preservation Partnership Only dated March 22, 2011.

At the hearing, the testimony was taken, which is reported herewith, and from the record in this case including the pleadings, admissions, testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Lis Pendens was filed on April 28, 2010.
2. The Summons and Complaint were filed on April 30, 2010.
3. Since this foreclosure action involves a commercial loan, the Home Affordable Modification Program is inapplicable.
4. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., Sue A. Porretto, and Island Preservation Partnership were served with the Lis Pendens; Summons; verified Complaint, including Exhibits A, B, C, and D; and Fair Debt Collection Notice via process server on May 14, 2010, as evidenced by the Affidavits of Service filed on May 19, 2010.
5. The Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto filed an answer on July 13, 2010, admitting the allegations of the Complaint.
6. The Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto, through their attorney of record, were notified of the time, date and place of the hearing in this matter on January 25, 2011, as indicated by the filed Notice of Hearing.
7. On or about March 6, 2006, Plaintiff made a loan to Sustainable Building Solutions, Inc. as evidenced by a note in the principal amount of One Million Four Hundred Twenty-Five Thousand and 00/100 Dollars (\$1,425,000.00) with interest as provided therein (the "March 2006 Note").
8. On or about June 15, 2006, Plaintiff made a loan to Sustainable Building Solutions as evidenced by the note in the principal amount of One Hundred Seventy-Five Thousand Six Hundred Twelve and 50/100 Dollars (\$175,612.50) with interest as provided therein (the "June 2006 Note").

9. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of One Million Six Hundred Thousand Six Hundred Twelve and .50/100s Dollars (\$1,600,612.50) with interest as provided therein (the "April 2007 Note"), as renewed by certain promissory notes dated April 15, 2008 (the "April 2008 Note") and April 15, 2009 (the "April 2009 Note"), and modified by the Debt Modification Agreement dated July 15, 2009 (the "July 2009 Modification"), together with certain fees and charges.

10. True copies of the March 2006 Note, June 2006 Note, April 2007 Note, April 2008 Note, April 2009 Note and July 2009 Modification (hereinafter collectively referred to as the "Note") are incorporated herein by reference.

11. On or about February 14, 2005, in order to secure the payment of the Note and indebtedness, Sustainable Building Solutions, Inc. made, executed and delivered to Plaintiff a mortgage covering real property located in Charleston County, South Carolina, which was recorded on February 22, 2005, in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage, dated March 6, 2006, and recorded on March 13, 2006 in the RMC Office for Charleston County in Book B-576 at Page 181. The mortgage and Modification of Mortgage are hereinafter collectively referred to as the "Mortgage."

12. The real property encumbered by the Mortgage (hereinafter referred to as the "Property") is more fully described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-'37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and

recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

13. A true copy of the Mortgage is incorporated herein by reference.
14. The Mortgage constitutes a first lien on the Property.
15. On or about April 15, 2009, John P. Porretto, Sr., individually, and Sue A. Porretto, individually, each executed and delivered to the Plaintiff a valid and enforceable Guaranty (hereinafter referred to as the "Guaranties"), guaranteeing payment to Plaintiff all sums owing under the Note, promising to pay the debt in the full amount as stated therein, and agreeing to all terms of the Note.

16. The Guaranties constitute valid and enforceable contracts.

17. By failing and refusing to make the required payments to Florida Citizens Bank, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have breached the terms of the unconditional guarantees without legal excuse and are personally liable under the terms of the Guaranties for the full amount of indebtedness to Florida Citizens Bank as set forth more fully herein.

18. According to the terms of the Note and Mortgage, if an event of default occurs or in the event of non-payment of the Note in full at maturity, the entire unpaid balance of the Note shall, at the option of Florida Citizens Bank, become immediately due and payable, without notice or demand.

19. Under the terms of the Mortgage, it was agreed that in the event the mortgagor failed to pay all taxes and assessments upon the Property when the same shall first become payable, then the mortgagee may cause the same to be paid, together with all penalties and costs incurred thereon, which amount, together with interest thereon, would be secured by the Property.

20. The payments due under the Note and Mortgage are in default and the conditions of the Note and Mortgage have been breached.

21. Pursuant to the terms of the Note and Mortgage, the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, were obligated to pay the Plaintiff the sums due and owing thereunder.

22. Despite demand, no payment has been made by the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, or Sue A. Porretto, individually, and Florida Citizens Bank filed this action to foreclose on the property.

23. The Mortgage provides that, in the event legal proceedings are instituted for the foreclosure of the Mortgage, or should the Note be placed in the hands of any attorney for collection, all costs and expenses incurred by Florida Citizens Bank, including a reasonable counsel fee of not less than ten percent (10%) of the amount involved, shall be added to the total debt secured by the Mortgage. Further, the Note provides that the Borrower will pay Lender the costs and expenses of collection, including Lender's reasonable attorneys' fees, Lender's legal expenses, and any court costs.

24. Counsel for the Plaintiff filed an Affidavit of Attorneys' Fees and Costs dated March 22, 2011, which was not contested, therefore, I find as fact herein the amounts due as stated therein. Having considered the nature, extent and difficulty of the services rendered, the fees customarily charged for such services, the time involved, the standing of counsel, and the beneficial results obtained by counsel for the Plaintiff, I find that the sum of \$16,334.50 is a reasonable attorneys' fee to allow under the Note and Mortgage for the services rendered and performed and anticipated to be performed until the final adjudication of this action. Further, I find costs of \$1,369.19 are due, as stated in the Affidavit of Attorneys' Fees and Costs.

25. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, is as follows:

(a)	Prinoipal Balance as of March 22, 2011	\$1,574,188.52
	(Per Diem Rate of \$183.30)	
(b)	Interest (to 3/22/11)	\$ 83,851.66
(c)	Appraisal Fee	\$ 1,050.00
(d)	Costs of Collection	\$ 1,369.10

(e) Attorneys' Fees \$ 16,334.50

TOTAL DEBT due as of
March 22, 2011 secured by the
Note and Mortgage, including
interest to date shown \$1,676,793.78

26. Interest for the period from March 22, 2011 through the date of this judgment, at the stated rate of \$183.30 per diem, shall be added to the above stated "Total Debt" to comprise the amount of the Judgment debt to be entered herein. Interest after the date of Judgment at the rate allowed by law, shall be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

27. Florida Citizens Bank is seeking foreclosure of the Mortgage and specifically demands a deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, pursuant to S.C. Code Ann. Section 29-3-660 (1976) for any deficiency in this action remaining after the sale of the Property.

28. Defendants reserve any rights they have pursuant to Sections 29-3-680 through - 780 (1976).

29. The Plaintiff should have a judgment of foreclosure of its Mortgage; and the mortgaged Property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. AS TO THE FORECLOSURE

1. There is due to the Plaintiff on the Note and Mortgage the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78) representing the "Total Debt" due to Plaintiff as set out in Paragraph 25, *supra*, together with interest at the daily rate stated in Paragraph 26 from the date aforesaid to the date this Judgment is filed.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in the findings of fact, *supra*, and later accrued interest and costs) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the statutory rate.

3. The Defendants liable for the aforesaid debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney, the amount of the Plaintiff's total debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

4. That on default of payment at or before the time herein indicated, the Property described in the Complaint, as hereinafter described, together with any furniture, fixtures, equipment and other Collateral located thereon shall be sold by the undersigned Master-in-Equity, or his agent under the direction of the Master-in-Equity, at public auction at the Charleston County Courthouse, Charleston, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

- a. FOR CASH: The undersigned Master-in-Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) to be paid on the date of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within thirty (30) days, same to be forfeited without further hearing and applied to the costs and Plaintiff's debt.
- b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.5 percent (7.5%) per annum.
- c. The sale shall be subject to taxes, assessments, existing easements and restrictions, and easements and restrictions of record.
- d. This Mortgage constitutes the first lien on the Property.
- e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes.

5. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master-in-Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness. No deposit shall be due if Plaintiff is the successful bidder.

6. A deficiency judgment having been demanded, the sale shall reopen for additional bids on the 30th day after the date of sale; however, Plaintiff may waive any of its rights, including withdrawing its demand for a deficiency judgment prior to sale.

7. The undersigned Master-in-Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the undersigned Master-in-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured. To the extent that Notice of Sale is published prior to the entry of this order such publication is ratified nunc pro tunc.

8. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the Property shall not be sold, and in the event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

9. That the undersigned Master-in-Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under the Order of Court;

NEXT: To the payment of the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on same; and

NEXT: Any surplus will be held pending further Order of this Court.

10. IT IS FURTHER ORDERED, ADJUGED AND DECREED that Plaintiff have deficiency judgment against the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, pursuant to S.C. Code Ann. Section 29-3-660 (1976), should the proceeds of sale fail to pay the total debt owed to the Plaintiff, together with the costs and expenses of this action and the costs of sale, which judgment shall be entered without further notice or hearing.

11. IT IS FURTHER ORDERED, ADJUGED AND DECREED that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon (except the tangible collateral sold with the premises) and put the successful bidder or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

12. IT IS FURTHER ORDERED, ADJUGED AND DECREED that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the Property or have been ejected from the Property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said Property, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not

subject to the lien of Plaintiff's Mortgage, which personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

13. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendants named herein and all persons whosoever claiming under him, them, or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

14. IT IS FURTHER ORDERED that pursuant to S.C. Code Ann § 30-9-31, the deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the Property at the time of filing of the notice of pendency of the within action, and the name of the grantee(s), and the Register of Deeds is authorized to omit from the indices pertaining to such conveyances the names of all parties not contained in said Deed.

15. IT IS FURTHER ORDERED that the undersigned Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds.

16. Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject Property.

17. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Sustainable Building Solutions, Inc. on February 14, 2005, and recorded in Book M526 at Page 278 on February 22, 2005, in the Office of the RMC for Charleston County, as modified by the Modification of Mortgage executed by Sustainable Building Solutions, Inc. on March 6, 2006, and recorded in Book B576 at Page 181 on March 13, 2006 in the Office of the RMC for Charleston County.

18. The following is a description of the Premises herein ordered to be sold:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

B. AS TO THE SUIT ON THE GUARANTY

1. The Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, each executed a valid and enforceable unconditional guaranty guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens Bank, agreeing to all terms of the Note, and promising to pay the debt in the full amount stated therein.

2. Under the terms of the Guaranties, Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, are personally obliged to pay all debts, liabilities, and obligations owing from Sustainable Building Solutions, Inc. to Plaintiff.

3. As stated above, there is due and owing to Plaintiff the amount of \$1,676,793.78.

4. By not paying the amounts due under the terms and conditions of these Guaranties, the Defendants John P. Porretto, Sr., and Sue A. Porretto have breached the terms and conditions thereof and are personally liable to Plaintiff, both jointly and severally, for the amounts stated herein.

5. As a direct and proximate result of the breach of the Guaranties, the Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, have an unlimited liability to Plaintiff in the amount of \$1,676,793.78 and for which sums they are truly indebted to Plaintiff, and, therefore,

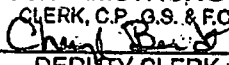
IT IS ORDERED that the Plaintiff Florida Citizens Bank be awarded a judgment against the individual Defendants John P. Porretto, Sr., and Sue A. Porretto, jointly and severally, the sum of One Million Six Hundred Seventy-Six Thousand Seven Hundred Ninety-Three and 78/100's Dollars (\$1,676,793.78).

AND IT IS SO ORDERED!


The Honorable Mikel R. Scarborough
Charleston County Master-in-Equity

Charleston, South Carolina

4/11, 2011

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., O.S. & F.C.
By 
DEPUTY CLERK

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

FLORIDA CITIZENS BANK,)

Plaintiff,)

vs.)

SUSTAINABLE BUILDING)
SOLUTIONS, INC., JOHN P.)
PORRETTO, SR., SUE A. PORRETTO,)
THE COUNTY OF CHARLESTON)
AND ISLAND PRESERVATION)
PARTNERSHIP,)

Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

AFFIDAVIT OF TESTIMONY

FILED
2011 APR 13 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT

This case having been referred and heard on March 22, 2011, at the Charleston County Courthouse, Charleston, South Carolina, and which was attended by Catherine H. Bryan, attorney for the Plaintiff, and who is authorized to testify and makes part of this record the following:

1. I am an attorney employed by Lyles & Lyles, LLC, the firm which represents the Plaintiff in the above-captioned matter.
2. The Plaintiff Florida Citizens Bank (hereinafter the "Plaintiff" or "Florida Citizens") is a corporation organized under the laws of the State of Florida which does business in Charleston County, South Carolina, and is the lender on the loan that is the subject of this action.
3. This foreclosure action involves a commercial loan.
4. The Defendant Sustainable Building Solutions, Inc. is the owner of the Property described in paragraph 19 below, is the borrower on the loan that is the subject of this action, and is subject to the jurisdiction of this court.

5. The Defendant John P. Porretto, Sr. is a resident of the State of Texas who personally guaranteed a loan for real property located in Charleston County, South Carolina.

6. The Defendant Sue A. Porretto is a resident of Texas who personally guaranteed a loan for real property located in Charleston County, South Carolina.

7. Island Preservation Partnership was made a party to this action upon the belief that it may have some right or claim in the property identified in Paragraph 19 below as "Lot 124", by virtue of that certain mortgage recorded October 1, 2001 in the Charleston County RMC Office in Book T383 at Page 354. The mortgage has been satisfied and Island Preservation Partnership is no longer a party to this action, as evidenced by the Notice of Dismissal as to Island Preservation Partnership Only, dated March 22, 2011, which has been filed by the Plaintiff.

8. This is an action brought by the Plaintiff to foreclose on a mortgage on real property located in Charleston County, South Carolina, which is more specifically described in the Complaint and Lis Pendens filed in this case.

9. The Lis Pendens was filed on April 28, 2010.

10. The Summons and Complaint were filed on April 30, 2010.

11. Defendants above-named were served with the Lis Pendens; Summons; verified Complaint, including Exhibits A, B, C and D; and Fair Debt Collection Notice, via process server on May 14, 2010 as evidenced by the Affidavits of Service filed on May 19, 2010.

12. Counsel for Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto filed an Answer on behalf of same on July 13, 2010.

13. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr. and Sue A. Porretto, through their attorney of record, were notified of the time, date and place of the hearing in this matter as demonstrated by the Notice of Hearing filed February 24, 2011.

14. At the time of the filing of this action, the Property was titled in the name of Sustainable Building Solutions, Inc.

15. On or about March 6, 2006, Defendant Sustainable Building Solutions, Inc., did execute and deliver to Plaintiff a promissory note (the "March 2006 Note") and promised to pay to Plaintiff the sum of One Million Four Hundred Twenty-Five Thousand and 00/100 Dollars, (\$1,425,000.00) together with interest as provided therein.

16. On or about June 15, 2006, Sustainable Building Solutions, Inc. did execute and deliver a promissory note (the "June 2006 Note") and promised to pay to Plaintiff the sum of One Hundred Seventy-Five Thousand Six Hundred Twelve and 50/100s Dollars (\$175,612.50), together with interest as provided therein.

17. The March 2006 Note and June 2006 Note were paid by renewal or consolidation to loan number 20060003509 which is evidenced by the promissory note in the principal amount of One Million Six Hundred Thousand Six Hundred Twelve and 50/100s Dollars (\$1,600,612.50), with interest as provided therein, as renewed by certain promissory notes dated April 15, 2008 and April 15, 2009, and modified by the Debt Modification Agreement dated July 15, 2009, together with certain fees and charges. The above referenced notes and debt modification agreement are collectively referred to as the "Note," true copies of which are attached to the Complaint as Exhibit "A."

18. On or about February 14, 2005, in order to secure the payment of the Note and indebtedness, Sustainable Building Solutions, Inc. made, executed and delivered to Plaintiff a mortgage covering real property located in Charleston County, South Carolina, which was recorded on February 22, 2005, in the RMC Office for Charleston County in Book M-526 at Page 278, as modified by the Modification of Mortgage which was recorded on March 13, 2006

in the RMC Office for Charleston County in Book B-576 at Page 181. The mortgage and Modification of Mortgage are hereinafter collectively referred to as the "Mortgage," true copies of which are attached to the Complaint as Exhibit "B."

19. The real property encumbered by the Mortgage (hereinafter referred to as the "Property") is more fully described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as Lot 95 on a plat entitled, "DEWEES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA, FINAL PLAT OF LOTS 88-188 & 133-37, (TOTAL COMBINED ACREAGE INCLUDING 7.60 AC. RIGHT OF WAY 76.85 AC.)", made by E.M. Seabrook, Jr., Surveyor, dated August 5, 1997, and recorded in the RMC Office for Charleston County in Plat Book EC, Pages 165, 166, and 167.

Said lot having such size, shape, metes, buttings and boundings as will by referenced to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Bank of America, N.A., dated July 20, 2004 and recorded July 22, 2004 in Book X502 at Page 124 in the RMC Office for Charleston County, South Carolina.

TMS # 608-11-00-017

ALSO

All that certain lot, piece or parcel of land, situate, lying and being in the County of Charleston, State of South Carolina, being known and designated as "LOT 124" on a plat entitled, "DEWEES ISLAND CHARLESTON COUNTY, SOUTH CAROLINA FINAL PLAT OF LOTS 119-192, 128A, 129-132, AND THE PUBLIC WORKS LOT" by E.M. Seabrook, Jr., Surveyor, dated April 8, 1995 and recorded in the RMC Office for Charleston County in Plat Book EA at Page 820.

SAID lot having such size, shape, metes, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to the Mortgagor herein by deed of Island Preservation Partnership, dated September 27, 2001 and recorded October 1, 2001 in Book R383 at Page 182 in the RMC Office for Charleston County, South Carolina.

TMS # 608-09-00-012

20. The Mortgage constitutes a first priority lien on the Property.
21. The Defendant John P. Porretto, Sr., individually, is made a party to this action by virtue of the unconditional guarantee he signed on or about April 15, 2009, guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens. A true copy of the Guaranty is attached as Exhibit "C" to the Complaint filed in this action.
22. Defendant Sue A. Porretto, individually, is made a party to this action by virtue of the unconditional guarantee she signed on April 15, 2009, guaranteeing Sustainable Building Solutions, Inc.'s debt to Florida Citizens. A true copy of the Guaranty is attached as Exhibit "D" to the Complaint filed in this action.
23. According to the terms and conditions of the Note and Mortgage, it is provided that if an event of default occurs, or in the event of non-payment of the Note in full at maturity, the entire unpaid balance of the Note shall, at the option of Florida Citizens, become immediately due and payable, without notice or demand.
24. Further, under the terms and conditions of the Mortgage, it was agreed that in the event the mortgagor failed to pay all taxes and assessments upon the Property when the same shall first become payable, then the mortgagee may cause the same to be paid, together with all penalties and costs incurred thereon, which amount, together with interest thereon, would be secured by the Property.
25. The payments due on the Note and Mortgage are in default and the conditions of the Note and Mortgage have been breached.

26. Pursuant to the terms of the Note, Mortgage, and Guaranties, Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto were obligated to pay to Florida Citizens the sums due and owing thereunder.

27. Despite demand, no payment has been made by the Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., or Sue A. Porretto, and Florida Citizens filed this action to foreclose on the property.

28. The Plaintiff demands a deficiency judgment against Sustainable Building Solutions, Inc., John P. Porretto, Sr., and Sue A. Porretto as demonstrated by the Complaint.

29. As demonstrated by the Complaint, with respect to the suit on the Guaranties, Plaintiff also seeks a judgment against Defendants John P. Porretto, Sr., individually, and Sue A. Porretto, individually, jointly and severally, for the entire amount due to Plaintiff.

30. Defendants Sustainable Building Solutions, Inc., John P. Porretto, Sr., individually, and Sue A. Porretto, individually, are delinquent in the amount due to the Plaintiff which, not including attorneys' fees and costs, is \$1,659,090.18, consisting of:

Principal Balance	\$ 1,574,188.52
Interest through 3/22/11	\$ 83,851.66
Appraisal Fee	\$ 1,050.00
Per Diem Rate	\$ 183.30

31. As provided in the Note, Mortgage and Guaranties, the attorneys' fees, legal expenses, and costs of this action will need to be added to the above referenced amounts for the total amount due in this action.

FURTHER AFFIANT SAYETH NOT.

LYLES & LYLES, LLC

Catherine H. Bryan

By: Catherine H. Bryan

SWORN to before me
this 22nd day of March, 2011

Brenda Rederman

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 1-10-2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,
Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

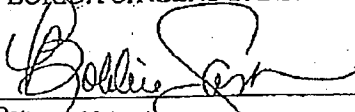
Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

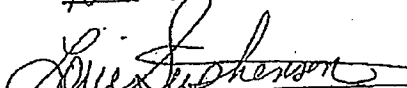
AUTHORIZATION TO TESTIFY

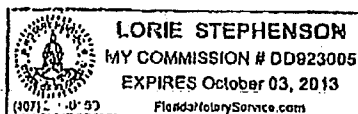
The undersigned, a duly authorized officer of Florida Citizens Bank, authorizes Robert T. Lyles, Jr., Catherine H. Bryan, and Lyles & Lyles, LLC, or its representative, to testify on behalf of Florida Citizens Bank in the above referenced foreclosure action.

FLORIDA CITIZENS BANK


By: Bobbie Gaston
Its: Loan Operations Officer

SWORN to before me
this 18th day of March, 2011


NOTARY PUBLIC FOR FLORIDA
My Commission Expires:



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

AFFIDAVIT OF ROBERT T. LYLES, JR.

FILED
2011 APR 13 PM 4:28
JULIE J. KIRKSTROM
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME the undersigned, Robert T. Lyles, Jr., who,
being first duly sworn, deposes and says:

1. I am over the age of twenty-one years, and I make this Affidavit on my own personal knowledge.
2. I am an attorney with Lyles & Lyles, LLC, attorneys for the Plaintiff in the above referenced foreclosure action.
3. That as part of the above referenced suit on foreclosure, Plaintiff has placed the following documents in the hands of Lyles & Lyles, LLC:
 - a. Note dated March 6, 2006, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,425,000.00.
 - b. Note dated June 15, 2006, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$175,612.50.

- c. Note dated April 15, 2007, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,600,612.50.
 - d. Note dated April 15, 2008, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the principal amount of \$1,600,612.50.
 - e. Note dated April 15, 2009, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, in the principal amount of \$1,540,612.50.
 - f. Debt Modification Agreement dated July 15, 2009, executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc.
 - g. Mortgage in the amount of \$1,000,000.00 executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff, filed February 22, 2005, in Book M526 at Page 278.
 - h. Modification of Mortgage executed by Defendant John P. Porretto as President of Defendant Sustainable Building Solutions, Inc. in favor of Plaintiff in the amount of \$1,425,000.00, filed March 13, 2006 in Book BS76 at Page 181.
 - i. Guaranty executed by Defendant John P. Porretto for the benefit of Plaintiff dated April 15, 2009.
 - j. Guaranty executed by Defendant Sue A. Porretto for the benefit of Plaintiff dated April 15, 2009.
4. Plaintiff's attorneys' fees, legal expenses and court costs are recoverable under the terms of the notes, guaranties, and mortgage securing the notes (referenced above).
5. The Defendants are in default under the terms of said note, mortgage and guaranties, and Plaintiff is entitled to reimbursement for the reasonable attorneys' fees, costs and expenses incurred in the prosecution of this action.
6. There are six factors to consider in determining the reasonableness of an award of attorneys fees as set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 SE2d 659 (1993):
- a. Nature, extent and difficulty of the legal services rendered. In this instance, a Note in the amount of \$1,540,612.50 which is in default and was secured by a parcel of property

located in Charleston County is being foreclosed. The principal, interest, late charges, and other expenses, upon information and belief, total \$1,659,090.18. Services provided by Lyles & Lyles, LLC included the review of relevant loan documents; review of public records, specifically Charleston County RMC lien searches; preparation of pleadings and motions necessary to complete the lawsuit on the promissory notes; preparation for, attendance at, and other actions pursuant to the foreclosure proceedings, including the Motion and Order of Reference, hearing notices and hearing for final judgment.

In addition to the foreclosure action, there were services rendered in connection with potential compromise resolution of this action, including communicating with counsel for the Porretto Defendants and Defendant Sustainable Building Solutions, Inc. and communicating with Plaintiff.

Additional services will be rendered and costs incurred in connection with preparation for and attendance at the hearing for final Order and Judgment on March 22, 2011, and in connection with matters following the final hearing and sale, including preparation of documents in connection with same. Moreover, depending upon the interest shown by the Defendants, third parties, or counsel for Defendants and the inherent negotiations required thereby, other time will likely be committed to the completion of this case.

b. Time and Labor Devoted to Case. The time and labor devoted in this matter is outlined in the following summary of billable hours and rates as of March 21, 2011:

Litigation Attorney/ Legal Staff	Hours	Rate/Hour	Billed Amount
R. Lyles, Jr., Esq.	20.3	\$250.00	5,075.00
C. Bryan, Esq.	53.3	\$175.00	9,327.50
D. Welzig	5.4	\$80.00	432.00
		Total	14,834.50

Fees for Professional Services (incurred through 3/21/11)	\$ 14,834.50
Disbursements (incurred through 3/21/11) (Costs which include postage, copies, long distance telephone Calls, research, filing fees, non-legal professional services, courier, and service of documents)	\$ 1,219.19
Total Billing as of 03/21/11	\$ 16,053.69
Estimated fees from 3/21/11 to conclusion of action	\$ 1,500.00
Estimated Disbursements from 3/21/11 to conclusion of action	\$ 150.00
TOTAL BILLING including estimated billing to conclusion of action	\$ 17,703.69

c. Professional Standing of Counsel and Staff. I graduated from the University of South Carolina School of Law, was admitted to practice in the State of South Carolina in 1987 and have remained in good standing since that time. I am licensed to practice in the State Courts of South Carolina, the United States District Court of South Carolina, the Fourth Circuit Court of Appeals, and the Supreme Court of the United States of America. Catherine H. Bryan is an associate of Lyles & Lyles, LLC. She graduated from the University of South Carolina School of Law in 2007, was admitted to practice in the State of South Carolina in 2007, and has remained in good standing since that time. She has been an associate with Lyles & Lyles, LLC since February of 2008. She is licensed to practice in the State Courts of South Carolina and the United States District Court of South Carolina. Danelle A. Welzig is a litigation paralegal and has provided assistance in the preparation of pleadings, tax and lien research, and follow up scheduling for the final hearing. She has been a paralegal with Lyles & Lyles, LLC since June of 2002. She is a graduate of the College of Charleston and an ABA accredited Paralegal Certification program. The attorneys and other professionals involved in handling this matter have the requisite experience and professional standing in the community to provide the services rendered in this matter.

d. Contingency of Compensation. The compensation was to be paid on an hourly basis, which is the normal method of payment for mortgage foreclosures.

e. Fees Customarily Charged in the Locality for Similar Services. Upon information and belief, the hourly rates charged by the attorneys working on the matter are customary for those involved in providing similar services in this community.

f. Beneficial Results Obtained. The results have yet to be determined as a hearing on the merits and damages hearing has been set for March 22, 2011.

6. The Mortgage provides that all costs and expenses incurred by the mortgagee, including a reasonable counsel fee of not less than ten percent (10%) of the amount due, shall be added to the total debt secured by the mortgage. The total amount due is \$1,659,090.18. The total billing (including estimated billing to conclusion of this action) as set forth in Paragraph 6(b), above is \$16,334.50. Therefore, I believe that attorneys fees of \$16,334.50 are reasonable and should be added, along with the costs and expenses which are \$1,369.19, to the debt secured by the mortgage.

FURTHER AFFIANT SAYETH NOT.

Lyles & Lyles, LLC

By: Robert T. Lyles, Jr.

SWORN to before me
this 22 day of March, 2011

Kendra Godeman
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1-10-2015

20150025881
01/21/2015 RF1 \$16.00

ABSTRACT OF JUDGMENT

CAUSE NO. 2014-63525

RECEIPT NO. 1220083

FLORIDA CITIZENS BANK

VS.

JOHN P. PORRETTO, SR. and
SUE A. PORRETTO

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
129TH JUDICIAL DISTRICT

I, CHRIS DANIEL, DISTRICT CLERK of Harris County, Texas, do hereby certify that the following and foregoing is a true and correct Abstract of the Judgment rendered in the 129TH DISTRICT COURT on the 28TH day of OCTOBER, 2014 in Cause No. 2014-63525 (And enforced in the Court of Common Pleas, Ninth Judicial Circuit, County of Charleston, in the State of South Carolina, Civil Action No. 2010-CP-10-3586 on April 11, 2011) in favor of FLORIDA CITIZENS BANK, Judgment Creditor(s), in Judgment, vs. 107.

JUDGMENT DEBTOR(S)

JOHN P. PORRETTO, SR. and
SUE A. PORRETTO, jointly and severally
2640 ARBUCKLE STREET
HOUSTON TX 77006

<u>DOB</u>	<u>TDL</u>	<u>SS#</u>
UNKNOWN	UNKNOWN	UNKNOWN
UNKNOWN	UNKNOWN	UNKNOWN

 2125

Judgment debtor(s) in said Judgment, as appears of record in my office in Image No. 63442581 for the 129TH Judicial District Court of Harris County, Texas.

Amount of Judgment: \$1,676,793.78
Amount of Cost: No Costs Allocated;
Amount of Credits: 1,157,026.25;
Amount Due: Full Amount, less credit;

Given under my hand and seal of said Court at Houston, Texas this 22ND day of DECEMBER, 2014, A.D.

Issued at the request of:
JAMES F KOVACH
MCELVANEY & KOVACH LLP
170 WESTCOTT STREET
HOUSTON TEXAS 77007

CHRIS DANIEL District Clerk
HARRIS COUNTY, TEXAS

Bar No.: 11694585

BY Khuela Jackson, Deputy
KHIELA JACKSON

Judgment Creditor(s) Address:
170 WESTCOTT STREET
HOUSTON TEXAS 77007



000371

10 - 3586

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Plaintiff's Supplemental Memorandum of Law in Opposition to Defendant John Porretto and Sue Porretto's Motion for Relief from Judgment** in the above-referenced matter has been served on the following named persons by placing a copy of the same in the United States mail with proper postage affixed thereto or via electronic mail on this 18 day of February, 2016:

Via Electronic Mail and U.S. Mail:

Paul E. Tinkler, Esquire
Law Offices of Paul E. Tinkler
154 King Street, Third Floor
Charleston, SC 29402
*Attorneys for Sustainable Building
Solutions, Inc., John P. Porretto, Sr., and
Sue A. Porretto*

LYLES & LYLES, LLC.

Brooke Trewino

Charleston, South Carolina

FILED
2016 FEB 19 PM 12:13
JULIE J. ARMSTRONG
CLERK OF COURT

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

February 18, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

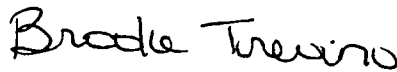
Dear Ms. Armstrong:

Enclosed please find the original and one (1) copy of Plaintiff's Supplemental Memorandum in Opposition to Defendants' Motion for Relief of Judgment. Please file the original and return the file stamped copy to me via the enclosed self-addressed stamped envelope. Thank you in advance for your professional assistance.

By copy of this correspondence and as indicated on the Certificate of Service, I am hereby serving all parties and/or counsel with a copy of the enclosed notice. With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC



Brooke Trevino

/bt
Enclosures

000373

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON

4 Florida Citizens Bank,

5 Plaintiff,

6 vs.

7 CASE NO. 2010-CP-10-3586

8 Sustainable Building Solutions, Inc.,
9 John P. Porretto, Sr., Sue A. Porretto,
10 The County of Charleston and
11 Island Preservation Partnership,

12 Defendants.

13
14 Hearing before the Honorable Mikell R.
15 Scarborough, reported by Christine A. Smith, Court
16 Reporter and Notary Public, at 2:20 p.m. on
17 January 19, 2016 at 100 Broad Street, Charleston,
18 South Carolina.

19 **COPY**

20
21 Christine A. Smith, Court Reporter

22 Master-in-Equity

23 P.O. Box 30276

24 Charleston, South Carolina, 29417

25 (843) 958-5071

casmith@charlestoncounty.org

000374

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF:

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4 Lyles & Lyles, LLC
5 P.O. Box 773
6 Charleston, SC 29402
(843) 577-7730
Rtl@lylesfirm.com

7 ATTORNEYS FOR THE DEFENDANT:

8 Paul E. Tinkler, Esq.
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10 154 King Street
11 Third Floor
12 Charleston, SC 29401
13 (843) 853-5203
14 Paultinkler@tinklerlaw.com
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P R O C E E D I N G S

THE COURT: This is the case of Florida
Citizens Bank versus Sustainable Building Solutions?

MR. TINKLER: It is, Your Honor.

THE COURT: And Mr. Lyles, your client is
Florida Citizens Bank.

MR. LYLES: Yes, Your Honor.

MR. TINKLER: I became aware of this situation
in October of last year, and I conferred with
Mr. Bundy, who was the lawyer involved earlier,
because we thought prompt action needed to take
place. I agreed with that so I filed this motion.
That's why I'm here today. I'm representing the
Porrettos.

THE COURT: Very good. And the motion is for
relief from the judgment?

MR. LYLES: It is, Your Honor.

THE COURT: Default judgment?

MR. LYLES: Yes, sir. They did not appear.
We presented canned testimony. They answered but did
not appear to defend the hearing.

THE COURT: At the hearing itself?

MR. LYLES: At the hearing itself. It is not
a default judgment. They did not contest it, and we

1 offered canned testimony.

2 THE COURT: I've got it. Okay. Mr. Tinkler,
3 go ahead.

4 MR. TINKLER: Thank you, Your Honor. As I
5 say, I'm a little bit hampered because I was not the
6 lawyer originally involved in this case, but I am
7 going to do the best I can to piece together what has
8 happened, and Counsel can correct me if I'm wrong.

9 Your Honor entered a judgment in this case on
10 April 11th, 2011, and it was a judgment both on the
11 underlying debt against Sustainable Building
12 Solutions and a judgment as a result of the guaranty
13 by John and Susan Porretto who owned Sustainable
14 Building Solutions.

15 The judgment goes into the fact that the
16 Defendants, plural, will have their rights pursuant
17 to 29-3-680, Rights of Appraisal, and then the order
18 of judgment -- and I have a copy of most of these
19 pertinent documents if we need to refer to them
20 during this proceeding today.

21 The Order also pointed out that the Plaintiff
22 may waive the deficiency, waive any of his rights,
23 including a demand for the deficiency judgment. As I
24 say, that judgment was entered on April 11, 2011, and
25 it was for approximately \$1.6 million. It was a

1 foreclosure case, of course.

2 In fact, Counsel did file on April 26, 2011, a
3 Waiver of Deficiency Judgment. It didn't say a
4 Waiver of Deficiency Judgment against Sustainable
5 Building Solutions. It said a waiver of any
6 deficiency judgment.

7 The next thing I see in the file that is
8 pertinent to this is a notice of master's sale that I
9 believe was filed in June of 2011. In that notice of
10 sale, which was filed by the associate of Mr. Lyles,
11 also representing the Plaintiff, it said there is no
12 waiver of deficiency judgment, so we have a little
13 problem there, and I don't understand how that came
14 about.

15 The next thing I see that happened is the sale
16 took place. Sales, I should say, because there were
17 two properties. One was a house, a house with a lot
18 on it, and one was just a lot. Both of those were
19 sold by Master's Deed on July 8, 2011.

20 Now, the next thing that I see that is
21 pertinent in the file is Mr. Bundy filed a petition
22 for appraisal, and I believe that took place on
23 July 27th, if I'm not mistaken. I don't have the
24 date of that noted, but I'm trying to go in
25 chronological order.

1 The next thing Counsel provided for me
2 today -- I had not seen that before, at least I don't
3 think I had. There is a letter from his associate to
4 Mr. Bundy dated August 3rd, and I believe this is
5 attached to the return to the motion --

6 MR. LYLES: We didn't attach the letter.

7 MR. TINKLER: In any event there's a letter
8 dated August 3, 2011, in which Catherine Bryan
9 informs Mr. Bundy, I am in receipt of the petition
10 for order of appraisal. Because by then, of course,
11 Mr. Bundy had filed a petition, and Julie Armstrong
12 had issued an order of appraisal and appointed Tommy
13 Hartnett as one of the appraisers. Ms. Bryan writes
14 to Mr. Bundy and says, I am in receipt of the
15 petition for order of appraisal.

16 You may recall that in the guaranty the
17 Porrettos agreed to pay all costs and expenses
18 including attorney's fees. She said, Unless your
19 client withdraws the petition, Florida Citizens Bank
20 will ask the Judge to add to its judgment against the
21 Porrettos all attorneys' fees and costs incurred in
22 connection with protecting the bank's rights with
23 respect to the appraisal.

24 She continues, If the Porrettos are judgment
25 proof, as you have repeatedly indicated to me, and

7
1 most recently on July 25th, the amount of the
2 judgment against them is of no consequence. If the
3 Porrettos are judgment proof further action under the
4 appraisal statute serves no proper purpose. Please
5 ask your clients to withdraw the petition so this
6 matter can be finally resolved.

7 Mr. Bundy responded by an e-mail that same
8 day, August 3, 2011: Catherine, in our opinion the
9 reduction of the current deficiency will be
10 significantly greater than any reasonable attorneys'
11 fees or costs. She ends it by saying, Your request
12 to withdraw the petition is declined. We will only
13 withdraw the petition if the bank waives any
14 deficiency judgment against the Porrettos.

15 Then on August 15, 2011, the bank issued a
16 1099-C, which is attached to my motion. The
17 1099-C -- I mean, I agree that it's directed to
18 Sustainable Building Solutions because they had been
19 the ones who had incurred the debt, but the 1099-C
20 says, Cancellation of debt, \$412,320.

21 The reason -- I assume -- I haven't done all
22 the math, but they received \$1,075,000, I guess from
23 the foreclosure sale of the house because that was
24 deeded as of July 8th, to Duncan and Brooks. Then
25 the bank itself bought that foreclosure for \$90,000

1 in consideration, the lot. The bank had subsequently
2 sold the lot. That sale took place on October 11,
3 2012.

4 In any event, under these facts -- I can't
5 tell whether there were phone conversations or
6 somebody informed the Court of something, but the
7 appraisal process was aborted. The third appraiser
8 was never appointed. The return of the appraisers
9 was never filed. The thing sat like that for four
10 years.

11 Then the bank filed its judgment in Texas, and
12 there's a proceeding in Texas to discover assets and
13 all that stuff.

14 THE COURT: The first step was to domesticate
15 it. I assume they domesticated the judgment in the
16 State of Texas?

17 MR. TINKLER: That's correct.

18 THE COURT: And then pursued what we call
19 supplemental proceedings? I have no idea what they
20 call it there.

21 MR. TINKLER: That's correct. The same idea.
22 Mr. Porretto informed me like the next day -- he had
23 to appear before some commission or something and be
24 questioned, which he did. He's got counsel in Texas.
25 His counsel in Texas said, You need a South Carolina

1 lawyer to deal with this, and that's why he called me
2 and I jumped in, filed this motion, and Mr. Lyles and
3 I have been conferring a little bit since then.

4 In the meantime, his Texas lawyer conferred
5 with a lawyer from Florida who represented the bank,
6 and he was giving his legal justification for all
7 this in an e-mail, and he cited a case called C&S
8 Bank versus Lanford. I brought a copy of that case
9 if you need it.

10 In the return that Mr. Lyles has filed he
11 wants to make sure that we all understand that a
12 guaranty is a different contract from the underlying
13 bid. We all understand that. We all understand
14 that. But in the Lanford case where the same issue
15 was being discussed, the Court went to pains to point
16 out, this isn't a foreclosure case, that it follows
17 the rights under the deficiency judgment, under the
18 appraisal rights statute, 29-36-80 it says.

19 This is one such case. This is a case where
20 this Court, in an order that's not been appealed,
21 said that the Defendants, that's plural, have the
22 appraisal rights unless the Plaintiff waives
23 deficiency. Then Mr. Lyles waived it. He didn't
24 say, I waive it as to one party. He said, All
25 deficiency -- any and all deficiency judgments.

1 I just -- I write this off to a mistake. I
2 think his associate, a month or two later, filed a
3 notice of sale and simply said, Because we haven't
4 waived deficiency, et cetera, et cetera -- and that's
5 when Bundy jumped in and filed this petition.

6 THE COURT: His own petition, right?

7 MR. TINKLER: So I'm piecing some of this
8 together from what I can see, but I think clearly
9 what we have is a total waiver of deficiency judgment
10 against all. I think we -- it's indicated by
11 obviously initial waiver in writing, on the record,
12 in this case. It's indicated by their forgiveness of
13 a debt, and it's indicated by the fact that once
14 Mr. Bundy received that letter from Plaintiff's
15 Counsel, he said, I'm going to insist on my appraisal
16 rights unless you waive it as to the Porrettos.

17 He's being criticized in the return for not
18 pursuing the appraisal rights. One infers from the
19 whole process that he concluded, well, they had
20 waived. And so that's why he did not insist on it.
21 As I understand -- when I read the law -- it's not
22 Mr. Bundy's -- these things are shelved. Once that
23 petition is filed and the Clerk orders that the
24 appraisal statute be followed -- certain time
25 limits -- 30 days here, 30 days there, returns shall

1 be filed. The third appraiser shall be appointed and
2 so forth.

3 So it wasn't up to Mr. Bundy to pursue that.
4 So I inferred that something happened to abort that
5 process. Given all the facts of this, including
6 judicial estoppel, latches, all kinds of things -- I
7 can't go back and reconstruct all the history of this
8 case four years down the road and Mr. and
9 Ms. Porretto have relying on the fact in conducting
10 their lives for the last four years after having
11 received on August 15th a document that says,
12 Cancellation of debt.

13 So unless the Court has any questions that
14 would be my presentation.

15 THE COURT: Okay. Very good. Mr. Lyles?

16 MR. LYLES: Yes, sir. To try to borrow a
17 little bit from Mr. Tinkler, Catherine Bryan in my
18 office was primarily responsible for the handling of
19 this case, and she dealt, as Mr. Tinkler has already
20 told you, with Mr. Bundy with respect to this issue.

21 So I, too, when I got the call from Mr. Bundy
22 back in October --

23 THE COURT: Let me stop you.

24 MR. LYLES: Yes, sir.

25 THE COURT: I'm looking at a letter addressed

1 to the Honorable Judy Dawkins. She would be glad to
2 hear that. We call her Judge Judy around here, but
3 she works for me. This is via e-mail and is dated
4 June 21 of '11 signed by Catherine Bryan in your
5 office. We were preparing the second sale because
6 originally there was a deficiency sought.

7 I'm in the middle of the first paragraph. I'm
8 writing to bring your attention to the waiver of
9 deficiency judgment dated and filed April 26, 2011,
10 which I'm now holding in my right hand. While a
11 master's sale correctly notes the Plaintiff did not
12 waive its right for a deficiency judgment in the
13 Complaint, Plaintiff expressly waived its right to
14 any deficiency in the waiver of deficiency judgment
15 filed April 26, 2011.

16 Accordingly, I would ask that the sale not be
17 reopened on August 4th. Therefore, there was no
18 second sale, which would be required in a deficiency
19 judgment case, and when I read the waiver of
20 deficiency judgment filed April 26, 2011 it reads in
21 one simple sentence, Plaintiff hereby waives its
22 right to any deficiency judgment in this action.

23 MR. LYLES: Correct. We absolutely believe
24 that a deficiency judgment was waived. That judgment
25 is separate and apart from the judgment with the

1 guaranty that was obtained by the bank.

2 THE COURT: Where is the order of judgment
3 entered against the Porrettos in this case?

4 MR. LYLES: It is ordered in your original
5 order of foreclosure and judgment dated April 13th.

6 THE COURT: You can't get both. You have to
7 have a guaranty, I think.

8 MR. LYLES: I do.

9 THE COURT: I think so. Let's take a look.

10 MR. TINKLER: I have a copy of that if we need
11 it, Your Honor.

12 MR. LYLES: We sent it over to the Court. I
13 have a copy I can hand up to you. May I approach the
14 bench?

15 THE COURT: Go ahead. Yes. Is there a
16 separate cause of action then for that?

17 MR. LYLES: Yes, sir. There is a separate
18 cause of action, and a separate award of judgment in
19 the order.

20 THE COURT: Paragraph 27, Florida Citizens
21 Bank is seeking foreclosure of the mortgage and
22 specifically demands a deficiency judgment against
23 the Defendant, Sustainable Building; John Porretto,
24 individually; and Sue Porretto, individually,
25 pursuant to 29-3-difference for any deficiency in

1 this action remaining after the sale of the property.

2 MR. LYLES: Yes, sir. And on Page 13 you have
3 a separate part that says, As to the suit on the
4 guaranty.

5 THE COURT: All right. That's the guaranty.
6 All right. Was that perfected in the form of a
7 Form 4 or not at that time; do you know?

8 MR. LYLES: Your Honor, I do not know the
9 answer to that question. I don't have it in the
10 materials I brought with me.

11 THE COURT: Was the obligor the corporation,
12 Sustainable Building?

13 MR. LYLES: On the mortgage, yes, sir. They
14 were the --

15 THE COURT: The obligors to the debt and the
16 guarantors were the Porrettos?

17 MR. LYLES: The Porrettos, yes.

18 THE COURT: All right then. It looks like we
19 have to go back and resell it. Is that what you-all
20 want to do?

21 MR. LYLES: Well --

22 THE COURT: You have to have at least -- we've
23 established the debt under the judgment, but in order
24 to establish the deficiency your argument is going to
25 be -- the guaranty is totally separate and apart from

1 that. I'm not going to buy that one. Okay? The
2 guaranty is what it is, but any application of the
3 debt is going to have to be done. That second sale
4 should have taken place. It would have determined
5 what the amount of the debt was remaining after the
6 application of the proceeds. I don't know who owns
7 the property today, but if it isn't the bank we're
8 going to have a real problem.

9 MR. LYLES: Well, it's not the bank, and I
10 think the appraisal process is what is intended to
11 address this issue because South Carolina recognizes
12 that guarantors have the right after --

13 THE COURT: After the second sale, I agree
14 with you.

15 MR. LYLES: That is what did not happen here
16 for whatever reason. I don't know why it didn't
17 happen here either.

18 THE COURT: Because you-all pulled it back.

19 MR. LYLES: The other thing I would tell Your
20 Honor, with all due respect to Mr. Tinkler, I have
21 researched this issue, and I don't think that
22 Rule 60(b)(5) is the proper mechanism for doing this.
23 I think that this is over and done with. There is
24 actually --

25 THE COURT: Well, they filed their petition,

1 right?

2 MR. LYLES: Which petition?

3 THE COURT: For the appraisal?

4 MR. LYLES: They did, and we responded to
5 that. Mr. Tinkler didn't mention that, but we did
6 respond formally, named an appraiser, and then the
7 process stopped four and a half years ago. No appeal
8 was taken. No clarification was sought under your
9 order. Nothing happened until this occurred.

10 THE COURT: I agree. The question is whether
11 or not -- my first reaction was whether or not it was
12 timely or not, but if there was no second sale of the
13 property -- I don't know how these people -- are
14 you-all pursuing them for the \$1.6 million?

15 MR. LYLES: No, sir, just the difference. The
16 difference between the sale price which was a little
17 over a million and the judgment amount.

18 THE COURT: I think therein lies the problem.
19 I think they're entitled to their appraisal. Do
20 you-all want a third appraiser? We can get that and
21 go from there.

22 MR. LYLES: That seems to me to be all they
23 would be entitled to, if anything. I would object to
24 that only because I don't think a Rule 60(b)(5)
25 motion is the proper mechanism for that, but I do

1 think that if they can seek that relief that would be
2 the resolution.

3 MR. TINKLER: Your Honor, I -- Counsel says
4 that perhaps the proper vehicle, the Motion to
5 Clarify -- if that's what you want to call -- that's
6 what I'm trying to do. I'm trying to clarify for
7 purposes of this proceeding in Texas. I want the
8 Court in South Carolina to clarify that this judgment
9 has been satisfied by virtue of the sale and the
10 waiver of deficiency. That's what I'm doing.

11 Rule 60(b)(5) specifically allows the Court to
12 declare that a judgment has been satisfied, and I
13 believe that because of the conduct of the bank in --
14 I didn't even know about this letter that the Court
15 has just read now where Counsel was obviously trying
16 to get the Court to go forward without proceeding
17 with the deficiency.

18 I can only infer that the Court ultimately
19 concluded that that is what all happened. There is a
20 waiver. I don't see any specific order in the file
21 to that effect, but the fact that the third appraiser
22 was never appointed and so forth. The process got
23 aborted and then the bank subsequently followed up
24 with a document that says, Forgiveness of debt or
25 some such -- cancellation of debt, and so I think

1 they're estopped. I think what needs to be issued
2 from this order right now in this Court is an order
3 clarifying that the underlying judgment against the
4 Porrettos has been satisfied.

5 I don't know how you can go back at this
6 point -- I would have to give it some thought. But I
7 don't know how you can go back at this point and do
8 the appraisal rights. It seems to me that it would
9 be a very difficult thing to do four years after the
10 sale.

11 THE COURT: Those appraisers can do all kinds
12 of miracles.

13 MR. TINKLER: Yes. I've seen some of them.

14 THE COURT: Did these guys ever get around to
15 doing their appraisals? It looked like maybe one was
16 attached to one of those motions.

17 MR. TINKLER: I don't think anybody ever did
18 an appraisal.

19 MR. LYLES: Not that I know of, Your Honor.

20 THE COURT: All right.

21 MR. TINKLER: I presume that Plaintiff's
22 Counsel prepared this order of judgment, Your Honor.
23 That says -- it says -- I think it's in Paragraph
24 20(d) that the Defendants, plural, have their
25 appraisal rights. Then they waived their deficiency

1 without limitations.

2 THE COURT: Mr. Lyles, I think that by not
3 allowing the second sale to go forward, that the
4 language that the Plaintiff waives his right to any
5 deficiency judgment in this action would be any
6 deficiency judgment whether that be as to the
7 guarantor or as to the obligor. What I would allow
8 you-all to do if you would like is to do some more
9 research on this. I've not had this problem.
10 Unfortunately, for some reason, this is ringing a bad
11 bell in the back of my head that this happened in
12 2011, but the, my understanding of the law is that in
13 any foreclosure action a deficiency judgment is
14 considered to be sought. It's only when it's waived
15 that it can be waived. There's a relatively recent
16 case on that. I can't remember the name of it, but
17 it's out of Spartanburg. That was Judge Gordon
18 Cooper's case. So unless it's specifically waived,
19 you're entitled to a deficiency judgment. In this
20 case it appears that -- right in big, bold language,
21 there was a waiver of a deficiency judgment filed in
22 April of '11.

23 It was because of that waiver of deficiency
24 judgment that the second sale establishing the debt
25 of the judgment debtors, would have been set. The

1 difference between what it sells for ultimately --
2 not just to the Plaintiff but ultimately -- I'm
3 assuming that -- going back and looking at these
4 dates -- the waiver -- it's April and the sale
5 doesn't take place until July, so clearly there was
6 only one sale.

7 If memory serves me right -- I would have to
8 check with Judy Dawkins in my office, but if memory
9 serves me right we were going forward with the second
10 sale until we got that letter that I made reference
11 to -- and Mr. Tinkler I'm happy to provide you with a
12 copy of that. That was the June 21 letter, or the
13 July 21 letter I made reference to a minute ago.

14 MR. TINKLER: Yes, sir.

15 THE COURT: And it was because we thought you
16 were, in fact, seeking a deficiency judgment. Based
17 upon that we didn't have the second sale, and
18 therefore no deficiency judgment was ever entered.
19 This gets back into that Form 4(c). Sometimes we
20 were entering them and sometimes we weren't. No
21 Form 4 has ever been entered and today the Court
22 enters a Form 4 judgment in the event a monetary
23 judgment is sought. I do not enter a Form 4 in a
24 typical foreclosure action where a deficiency has
25 been waived.

1 So there's no real judgment that has been
2 entered in this case that I can see for the
3 Plaintiff's to be pursuing in the State of Texas
4 right now. I don't know how the judgment got
5 enrolled down there. You-all would really have to
6 look into that question for me.

7 MR. LYLES: I don't know the answer to that
8 either.

9 THE COURT: Yes. We're chasing some rabbits,
10 and it doesn't look like -- if the property has gone
11 into the stream of commerce, and I'm assuming you
12 have some defense of bona fide purchaser for value
13 there. I don't know that you want to be bringing
14 those people into this case.

15 So that's the problems I see. It somehow got
16 aborted in the process. I would typically come back
17 after the sale and enter a judgment saying that the
18 judgment against whoever -- the guarantor, the
19 debtor, whatever it would be would be X number of
20 dollars, that's never been done in this case.

21 MR. LYLES: Reduced after the sale?

22 THE COURT: Right.

23 MR. LYLES: Yes, sir.

24 THE COURT: That's never been done which
25 brings the question of finality to the whole process,

1 which I guess is what got us here today.

2 MR. LYLES: Yes, sir. And from our
3 perspective, the judgment against the Porrettos as
4 guarantors is not a deficiency judgment even though
5 that judgment was reduced by the sale of proceeds.

6 THE COURT: That's where I'm going to ask
7 you-all to do me some research. Okay?

8 MR. LYLES: Yes, sir. Again, with respect
9 to --

10 THE COURT: Again, I did not enter -- neither
11 did I enter a Form 4 judgment.

12 MR. LYLES: With respect to the argument and
13 the circumstances of Catherine's letter of June, it
14 was after that that the Porrettos, as I believe
15 guarantors, exercised their rights to the appraisal
16 statute.

17 MR. TINKLER: May I see that letter that we're
18 talking about, that June letter?

19 THE COURT: It looks like Bundy was copied on
20 it, but anyway, that's that.

21 MR. TINKLER: To me it looks like they waived
22 it twice. Frankly, it looks like Bundy was -- he may
23 have been mistaken in asking for the appraisal rights
24 to begin with. If the sale was going to go forward
25 based on that letter -- maybe he concluded that he

1 was mistaken in filing the petition to begin with,
2 and that's why the process never went anywhere. The
3 point is that it didn't.

4 THE COURT: I've never had this problem before
5 so this is an unusual situation.

6 MR. TINKLER: Yes, sir. I haven't either,
7 Judge.

8 THE COURT: I think your starting point is
9 Perpetual Building and Loan versus Braun, B-R-A-U-N.
10 This is under -- I'm looking at the notes under the
11 deficiency judgment Statute 660 is what we're talking
12 about, right? 680 gets you to the appraisal statute,
13 but 660 is what gets your started. That's Perpetual
14 Building, and I think that's probably the leading
15 case in that. We can bring that forward. Let me see
16 if I can find Judge Cooper's order.

17 I don't know why nothing got done, but I think
18 the presumption was the waiver of any deficiency
19 judgment -- when it does that -- waiver of any
20 deficiency judgment. Judge Cooper's case is American
21 General Finance versus Brown. That's in the notes as
22 well.

23 MR. TINKLER: Your Honor, to learn at your
24 practice and also to issue a Form 4 for the
25 difference after a sale that persuades me even

1 further that it was always intended that this
2 judgment be marked satisfied. We'll research -- I'll
3 be happy to research the matter and get back to the
4 Court.

5 MR. LYLES: Again, Your Honor, we think the
6 difficulty with that, even though it seems logical
7 and it's very appealing to the Porrettos, it doesn't
8 explain why they filed a petition for appraisal in
9 late July.

10 THE COURT: Except out of an abundance of
11 caution. The question for the Court is, has the
12 Plaintiff waived its right to a deficiency judgment
13 such that there would be no deficiency as a result of
14 this foreclosure action and the guaranty. I think
15 that's two questions. Then the other one we've got
16 is the petition for the appraisal, is that timely
17 although it's been four years after the fact? And I
18 would tend to think on the latter one because there's
19 been no finality to that unless there is some waiver,
20 estoppel, laches, something like that. I think
21 there's probably not. The question is, what is it?
22 Okay? Let me give you those. I've asked
23 Mr. Ferguson to make copies of a June 21st letter and
24 whatever it was at the time the property was sold and
25 closed. Okay?

1 MR. LYLES: The last think I wanted to hand up
2 to Your Honor -- we cited the law in our memorandum,
3 but we didn't cite the case.

4 THE COURT: Okay.

5 MR. LYLES: There's a case that we found out
6 of the Eighth Circuit. It's related to Rule 60(b)(5)

7 THE COURT: The Eighth Circuit?

8 MR. LYLES: The Eighth Circuit.

9 THE COURT: All right. Tell me about it.

10 MR. LYLES: Actually, what it says is that
11 Rule 60(b)(5), the equitable leg of Rule 60(b)(5)
12 cannot be invoked to modify, vacate, or discharge a
13 money judgment so I just throw this up to the Court.

14 THE COURT: At the point in time I'm not sure
15 a money judgment has been rendered. That's what I'm
16 asking. That's what I'm saying. Okay?

17 MR. LYLES: Yes, sir. Actually, I just gave
18 you a copy with a bunch of notes on the back.

19 THE COURT: All right, Mr. Lyles. 15 days?
20 30 days? How much time do you-all want?

21 MR. LYLES: 30 days would be great if that's
22 okay.

23 THE COURT: I'm happy to do that. You-all
24 send me something. You-all just send me a memorandum
25 within 30 days with some case law in there.

1 MR. TINKLER: And specifically the issues you
2 would like us to address are, number one, whether
3 there has been, in fact, a waiver, and number two,
4 the second question was what?

5 THE COURT: If there's a waiver, and if not
6 what are we going to do about it because I don't
7 think -- my gut tells me the judgment has not yet
8 been rendered. If the judgment hasn't been rendered
9 then certainly it's not too late to file a petition.

10 I don't know what happened here. The clerk
11 signed off on this. This is the second time today
12 I've had something that was here that the clerk
13 signed off on. I don't know what's going on.

14 MR. LYLES: All right. Thank you, Judge.

15 MR. TINKLER: Thank you.

16 (The proceedings were concluded at 2:58 p.m.)
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State of South Carolina)
County of Charleston.) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete record.

I further certify that I am neither related to
nor counsel for any party to the cause pending or
interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 8th day of June, 2016 at
Charleston, Charleston County, South Carolina.

Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

LYLES & LYLES, LLC
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Catherine H. Bryan.
Associate

Direct: (843) 735-5563
E-mail: chb@lylesfirm.com

June 21, 2011
Via Electronic Mail Only

The Honorable Judy H. Dawkins
Clerk of Equity Court
Charleston County Master in Equity
100 Broad Street, Suite 266
Charleston, SC 29401
jdawkins@charlestoncounty.org

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

Dear Ms. Dawkins:

I am in receipt of the Master's Sale notice regarding the property that was the subject of the above-referenced action. Robert Lyles and I represent Plaintiff, Florida Citizens Bank, in this matter. The Master's Sale notice indicates that the sale, which is scheduled for July 5, 2011, will be re-opened for final bidding on August 4, 2011. I am writing to bring your attention to the Waiver of Deficiency Judgment dated and filed April 26, 2011. (A copy of the Waiver of Deficiency Judgment is attached for your convenience.) While the Master's Sale notice correctly notes that Plaintiff did not waive its right for a deficiency judgment in the Complaint, Plaintiff expressly waived its right to any deficiency in the Waiver of Deficiency Judgment filed April 26, 2011. Accordingly, I would ask that the sale not be re-opened on August 4.

The Waiver of Deficiency Judgment was made and filed with the understanding that Plaintiff was entitled to waive its right to the deficiency judgment at any time prior to the sale and that with such a waiver, the sale would not reopen. If this is not correct, please let me know.

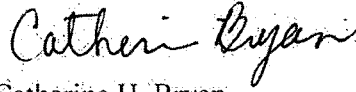
Please confirm whether the final sale can be held on July 5. Thank you in advance for your attention to this matter. With kind regards, I remain

000401

Ms. Dawkins
June 21, 2011
Page 2

Sincerely,

LYLES & LYLES, LLC

A handwritten signature in cursive script that reads "Catherine Bryan".

Catherine H. Bryan

CHB

Enclosure

cc: Carl Walls
W. H. Bundy, Jr., Esquire

000402

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FLORIDA CITIZENS BANK,

Plaintiff,

vs.

SUSTAINABLE BUILDING
SOLUTIONS, INC., JOHN P.
PORRETTO, SR., SUE A. PORRETTO,
THE COUNTY OF CHARLESTON
AND ISLAND PRESERVATION
PARTNERSHIP,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-3586

WAIVER OF DEFICIENCY JUDGMENT

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiff hereby waives its right to any deficiency judgment in this action.

LYLES & LYLES, LLC

By: Catherine H. Bryan
Robert T. Lyles, Jr., Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
P.O. Box 773 (29402)
Charleston, SC 29401
(843)577-7730

Attorney for Plaintiff
Florida Citizens Bank

Charleston, South Carolina

April 26, 2011

000403

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Waiver of Deficiency Judgment** in the above-referenced matter has been served on the following named persons by placing a copy of the same in the United States mail with proper postage affixed thereto or via electronic mail on this 26th day of April, 2011:

Via U.S. Mail & Electronic Mail:

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464
***Attorneys for Sustainable Building
Solutions, Inc., John P. Porretto, Sr., and
Sue A. Porretto***

FILED
2011 APR 26 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

LYLES & LYLES, LLC.



Charleston, South Carolina

LYLES & LYLES, LLC
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Catherine H. Bryan
Associate

Direct: (843) 735-5563
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August 3, 2011

Via U.S. Mail and Electronic Mail

W. H. Bundy, Jr., Esquire
Smith Bundy Bybee & Barnett
1037 Chuck Dawley Blvd.
Building F, Suite 100
Mt. Pleasant, S.C. 29464
bundyw@bellsouth.net

Re: *Florida Citizens Bank vs. Sustainable Building Solutions, Inc., et al.*
Case No. 2010-CP-10-3586

Dear Bill:

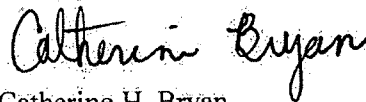
I am in receipt of the Petition for Order of Appraisal. You may recall that in the guaranties signed by the Porrettos, the Porrettos agreed to pay all costs and expenses, including attorneys' fees, incurred by the Bank in connection with collection or protection of its rights under the Guaranty or other loan documents. Accordingly, unless your client withdraws the Petition, Florida Citizens Bank will ask the judge to add to its judgment against the Porrettos all attorney's fees and costs incurred in connection with protecting the Bank's rights with respect to the appraisal.

If the Porrettos are judgment proof, as you have repeatedly indicated to me and most recently on July 25, the amount of the judgment against them is of no consequence. If the Porrettos are judgment-proof, further action under the appraisal statute serves no proper purpose. Please ask your clients to withdraw the petition so this matter can be finally resolved.

If you have any questions, please feel free to give me a call. With kindest regards, I remain

Sincerely,

LYLES & LYLES, LLC



Catherine H. Bryan

000405

From: Bill Bundy [bundyw@bellsouth.net]
Sent: Wednesday, August 03, 2011 10:57 AM
To: chb@lylesfirm.com
Cc: Sarah Foster
Subject: Porretto Appraisal rights, Your letter of 8/3/2011

Catherine

In our opinion, the reduction of the current deficiency judgment will be significantly greater than any reasonable attorneys' fees and or costs that your client may be entitled to add to the final deficiency judgment (if any) as a result of my clients availing themselves of the rights of appraisal guaranteed to them by statute.

Your request to withdraw the petition is declined. We will only withdraw the petition if the bank waives any deficiency judgment against the Porrettos.

Regards
Bill

Jim Keenan

RECEIVED

OCT 12 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master In Equity

Case No. 2016-000971

Florida Citizens Bank, Appellant,

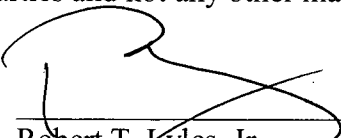
v.

Sustainable Building Solutions, Inc., John Porretto, Sr., Sue A. Porretto, The County of Charleston, and Island Preservation Partnership, Defendants

Of Whom John Porretto, Sr. and Sue Porretto are the Respondents.

CERTIFICATE OF COUNSEL

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



Robert T. Lyles, Jr.
S. C. Bar No. 10299
Lyles & Lyles, LLC
342 East Bay Street
Charleston, SC 29402
Phone: (843) 577-7730
Attorney for Appellant

October 4, 2016