

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAR 21 2018

SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
The Hon. Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2016-002193
Civil Action No. 2014-CP-18-0358
Civil Action No. 2014-CP-18-1792
Civil Action No. 2014-CP-18-1793

Bank of North Carolina..... Respondent,

v.

Anthony M. Whitfield and Cindy Whitfield..... Defendants.

Of whom Anthony M. Whitfield is the Appellant and Cindy Whitfield is a Respondent.

Anthony M. Whitfield Appellant,

v.

David Swanson Respondent.

AMENDED RECORD ON APPEAL

ALL COUNSEL of RECORD:

FOR THE APPELLANT
ANTHONY M. WHITFIELD:

Andrew J. McCumber, Esquire
Daniel S. Slotchiver, Esquire
SLOTCHIVER & SLOTCHIVER, LLP
44 State Street
Charleston, SC 29401
Telephone: (843) 577-6531

Brent S. Halversen, Esquire
HALVERSEN & ASSOCIATES, LLC
171 Church Street, Suite 330
Charleston, SC 29401
Telephone: (843) 284-5790

FOR RESPONDENT
DAVID SWANSON:

Steven Kropski, Esquire
Mike McCall, Esquire
David Overstreet, Esquire
EARHART OVERSTREET, LLC
Post Office Box 22528
Charleston, SC 29413
Telephone: (843) 972-9400

FOR RESPONDENT
CINDY WHITFIELD:

Paul B. Ferrara, III, Esquire
FERRARA LAW FIRM, PLLC
2300 Otranto Road
North Charleston, SC 29406
Telephone: (843) 569-5911

FOR RESPONDENT
BANK OF NORTH CAROLINA:

Brian C. Duffy, Esquire
Blake A. McKie, Esquire
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, SC 29401
Telephone: (843) 720-2044

INDEX

Table of Contents	<i>i</i>
Order Granting Motion to Dismiss of July 15, 2016 (2014-CP-18-0358).....	1
Order Granting Motion to Dismiss of July 15, 2016 (2014-CP-18-1792).....	7
Order Granting Motion to Dismiss of July 15, 2016 (2014-CP-18-1793).....	13
Order Denying Motion to Alter/Amend of September 29, 2016 (2014-CP-18-0358).....	19
Order Denying Motion to Alter/Amend of September 29, 2016 (2014-CP-18-1792).....	23
Order Denying Motion to Alter/Amend of September 29, 2016 (2014-CP-18-1793).....	27
Consent Order on Motion to Amend Answer of February 9, 2016 (2014-CP-18-0358)	31
Consent Order on Motion to Amend Answer of February 9, 2016 (2014-CP-18-1792)	55
Consent Order on Motion to Amend Answer of February 9, 2016 (2014-CP-18-1793)	80
Summons & Complaint (2014-CP-18-0358).....	105
Summons & Complaint (2014-CP-18-1792).....	135
Summons & Complaint (2014-CP-18-1793).....	163
Defendant’s Anthony Whitfield’s Amended Answer, Affirmative Defenses and Counterclaims (2014-CP-18-0358).....	219
Defendant’s Anthony Whitfield’s Fourth Amended Answer, Affirmative Defenses and Counterclaims (2014-CP-18-1792).....	240
Defendant’s Anthony Whitfield’s Fourth Amended Answer, Affirmative Defenses and Counterclaims (2014-CP-18-1793).....	262
Plaintiff’s Reply to Defendant’s Amended Answer, Affirmative Defenses and Counterclaims (2014-CP-18-0358).....	284
Plaintiff’s Reply to Defendant’s Fourth Amended Answer, Affirmative Defenses and Counterclaims (2014-CP-18-1792).....	300
Plaintiff’s Reply to Defendant’s Fourth Amended Answer, Affirmative Defenses and Counterclaims (2014-CP-18-1793).....	316
Summons & Complaint (2014-CP-10-5887)	332

Plaintiff's Reply to Defendant's Third Amended Answer, Affirmative Defenses and Counterclaims (2014-CP-10-5887).....	364
Defendant's Anthony Whitfield's Fifth Amended Answer, Affirmative Defenses and Counterclaims (2014-CP-10-5887).....	375
Defendant's Anthony Whitfield's Fourth Amended Answer, Affirmative Defenses and Counterclaims (2012-CP-08-2618).....	400
Defendant's Anthony Whitfield's Fourth Amended Answer, Affirmative Defenses and Counterclaims (2012-CP-08-3478).....	415
Third Party Defendant Swanson's Answer to Defendant / Third Party Plaintiff's Amended Answer, Affirmative Defenses, Counterclaim and Third Party Complaint (2014-CP-18-0358).....	438
Third Party Defendant Swanson's Answer to Defendant / Third Party Plaintiff's Fourth Amended Answer, Affirmative Defenses, Counterclaim and Third Party Complaint (2014-CP-18-1792)	446
Third Party Defendant Swanson's Answer to Defendant / Third Party Plaintiff's Fourth Amended Answer, Affirmative Defenses, Counterclaim and Third Party Complaint (2014-CP-18-1793)	454
Third Party Defendant David Swanson's Motion to Strike or Dismiss Defendant / Third Party Plaintiff's Complaint (2014-CP-18-0358)	462
Third Party Defendant David Swanson's Motion to Strike or Dismiss Defendant / Third Party Plaintiff's Complaint (2014-CP-18-1792)	469
Third Party Defendant David Swanson's Motion to Strike or Dismiss Defendant / Third Party Plaintiff's Complaint (2014-CP-18-1793)	476
Defendant Anthony M. Whitfield's Motion to Alter / Amend (2014-CP-18-0358)	483
Defendant Anthony M. Whitfield's Motion to Amend Answer (2014-CP-18-1792)	494
Defendant Anthony M. Whitfield's Motion to Amend Answer (2014-CP-18-1793)	505
Defendant Anthony M. Whitfield's Motion to Amend Answer (2014-CP-18-0358)	516
Defendant Anthony M. Whitfield's Motion to Amend Answer (2014-CP-18-1792)	530
Defendant Anthony M. Whitfield's Motion to Amend Answer (2014-CP-18-1793)	544
Notice of Appeal (2014-CP-18-0358)	558
Notice of Appeal (2014-CP-18-1792)	572
Notice of Appeal (2014-CP-18-1793)	586

Transcript of Proceedings (2014-CP-18-0358, 2014-CP-18-01792 & 2014-CP-18-1793) (August 25, 2016)	600
Transcript of Proceedings (2014-CP-18-0358, 2014-CP-18-01792 & 2014-CP-18-1793) (August 25, 2016)	619
Certificate of Counsel.....	658

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS
) IN THE FIRST JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-18-0358

Bank of North Carolina,
Plaintiff,

vs.

Anthony Whitfield and Cindy Whitfield,
Defendants,

Anthony Whitfield,
Third Party Plaintiff,

vs.

✓ David Swanson,
Third Party Defendant.

**ORDER GRANTING MOTION TO
DISMISS THIRD-PARTY COMPLAINT**

2015 JUL 15 AM 9:35
RECORDED
CLERK OF COUNTY
DORCHESTER

This matter comes before the Court on Third-Party Defendant David Swanson's motion to dismiss the Third-Party Complaint. A hearing was held on June 1, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant/Third-Party Plaintiff Anthony Whitfield, and Third-Party Defendant David Swanson were present. For the reasons set forth herein, Third-Party Defendant's motion is granted.

Introduction

This lawsuit is one of six foreclosure actions filed by Bank of North Carolina against Anthony Whitfield. Three actions are pending in Dorchester County: Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793; two are pending in Berkeley County: Case Nos. 2012-CP-08-2618, and 2012-CP-08-3478; and one is pending in Charleston County: Case No. 2012-CP-10-5887. In each of the six foreclosure actions, Defendant/Third Party Plaintiff has asserted

identical third-party claims against David Swanson alleging causes of action for abuse of process and civil conspiracy.

Third-Party Defendant David Swanson is an attorney at Haynsworth Sinkler Boyd, P.A. The third-party claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Third Party Plaintiff alleges that Mr. Swanson never actually provided the advice to the bank, and that he and the bank lied about providing the advice in order to fabricate a defense to Third Party Plaintiff's counterclaims against the bank.

Third-Party Defendant Swanson has moved to dismiss in this action pursuant to Rules 12(b)(8), 12(f) and 14(a) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim, and that the claims against him are not the proper subject of third-party claims because they do not allege derivative liability.

Findings and Conclusions

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that a defendant may seek dismissal of an action when "another action is pending between the same parties for the same claim." In considering a motion to dismiss under Rule 12(b)(8), courts must consider both the identity of the parties and the identity of the claims. Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Cl. App. 2010). In order to warrant dismissal pursuant to Rule 12(b)(8), "the claim must be precisely or substantially the same in both proceedings. . . ." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 532 (Cl. App. 2009); *see also* Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40, 45 (2012).

In support of this motion, Third-Party Defendant presented the Court with a copy of the pleadings in the related Charleston County action that is the subject of the Black Rush Property. The

Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRPC.

Based on this Court's review of the pleadings in this action and the Charleston County action, the Court finds that the parties to the third-party claims are identical in both actions, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings. *Compare* Def.'s Am. Answer and Third Party Compl., Dorchester Co. Case No. 2014-CP-18-0358, ¶¶ 55-72 *with* Def.'s Am. Answer and Third Party Compl., Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. Accordingly, the Court finds that dismissal of the Third-Party Complaint in this action against David Swanson is warranted pursuant to Rule 12(b)(8), SCRPC.

Alternatively, Third-Party Defendant moves to dismiss the third-party claim pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure. Rule 14(a) permits a defendant to assert claims as a third-party plaintiff against a person who is not a party to the action, but only where the third party "*is or may be liable to him or all or part of the plaintiff's claim against him.*" (emphasis added). In other words, it is not whether the third-party claim is somehow related to the original action, but whether the defendant has a claim against a third party for all or part of the original claim that would shift liability for the original claim from the defendant to the third-party.

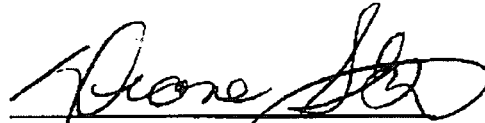
Here, the original action is a foreclosure action initiated by Bank of North Carolina against Anthony Whitfield. Regardless of whether the third-party claims are somehow related to the foreclosure action, Defendant's third-party claims for abuse of process and civil conspiracy do not seek to and cannot shift any liability he may have to the bank in the original foreclosure action to David Swanson. Accordingly, the Court finds that the claims in the Third-Party

Complaint are not premised on derivative liability, and therefore the Third-Party Complaint should be dismissed pursuant to Rule 14(a), SCRPC.


Accordingly, Third-Part Defendant's motion to dismiss is GRANTED.

IT IS SO ORDERED.

This 7 day of July, 2016



Diane S. Goodstein
Circuit Court Judge

, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP1800358

Bank of North Carolina
 Seth Warren Whitaker

Anthony M Whitfield
 Cindy Whitfield

BNC Bancorp
 David Swanson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
- 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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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)

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

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.

Diane S. Goodstein
 Circuit Court Judge

2112
 Judge Code

7/15/2016
 Date

For Clerk of Court Office Use Only

This judgment was entered on 7/15/2016, and a copy mailed first class or placed in the appropriate attorney's box on 7/15/2016, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Alan Bernstein PO Box 20519 Charleston, SC
29413-0519
Brian C Duffy/Seth Warren Whitaker 96 Broad Street
Charleston, SC 29401

Brent Souther Halversen 171 Church Street Suite 330
Charleston, SC 29401
Daniel Scott Slotchiver/Andrew Joseph McCumber 44
State Street Charleston, SC 29401-2810
Paul B. Ferrara III 2300 Otranto Rd. N. Charleston, SC
29406-9603
David W. Overstreet/Michael B. McCall/Steven Raymond
Kropski PO Box 22528 Charleston, SC 29413

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS
) IN THE FIRST JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-18-1792

Bank of North Carolina,

Plaintiff,

vs.

Anthony Whitfield and Cindy Whitfield,

Defendants,

Anthony Whitfield,

Third Party Plaintiff,

vs.

✓ David Swanson,

Third Party Defendant.

**ORDER GRANTING MOTION TO
DISMISS THIRD-PARTY COMPLAINT**

2016 JUL 15 AM 9:35
RECORDED
CLERK OF COURT
DORCHESTER COUNTY

This matter comes before the Court on Third-Party Defendant David Swanson's motion to dismiss the Third-Party Complaint. A hearing was held on June 1, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant/Third-Party Plaintiff Anthony Whitfield, and Third-Party Defendant David Swanson were present. For the reasons set forth herein, Third-Party Defendant's motion is granted.

Introduction

This lawsuit is one of six foreclosure actions filed by Bank of North Carolina against Anthony Whitfield. Three actions are pending in Dorchester County: Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793; two are pending in Berkeley County: Case Nos. 2012-CP-08-2618, and 2012-CP-08-3478; and one is pending in Charleston County: Case No. 2012-CP-10-5887. In each of the six foreclosure actions, Defendant/Third Party Plaintiff has asserted

identical third-party claims against David Swanson alleging causes of action for abuse of process and civil conspiracy.

Third-Party Defendant David Swanson is an attorney at Haynsworth Sinkler Boyd, P.A. The third-party claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Third Party Plaintiff alleges that Mr. Swanson never actually provided the advice to the bank, and that he and the bank lied about providing the advice in order to fabricate a defense to Third Party Plaintiff's counterclaims against the bank.

Third-Party Defendant Swanson has moved to dismiss in this action pursuant to Rules 12(b)(8), 12(f) and 14(a) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim, and that the claims against him are not the proper subject of third-party claims because they do not allege derivative liability.

Findings and Conclusions

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that a defendant may seek dismissal of an action when "another action is pending between the same parties for the same claim." In considering a motion to dismiss under Rule 12(b)(8), courts must consider both the identity of the parties and the identity of the claims. Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010). In order to warrant dismissal pursuant to Rule 12(b)(8), "the claim must be precisely or substantially the same in both proceedings. . . ." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 532 (Ct. App. 2009); *see also* Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40, 45 (2012).

In support of this motion, Third-Party Defendant presented the Court with a copy of the pleadings in the related Charleston County action that is the subject of the Black Rush Property. The

Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRPC.

Based on this Court's review of the pleadings in this action and the Charleston County action, the Court finds that the parties to the third-party claims are identical in both actions, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings. *Compare* Def.'s Am. Answer and Third Party Compl., Dorchester Co. Case No. 2014-CP-18-1729, ¶¶ 55-72 *with* Def.'s Am. Answer and Third Party Compl., Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. Accordingly, the Court finds that dismissal of the Third-Party Complaint in this action against David Swanson is warranted pursuant to Rule 12(b)(8), SCRPC.

Alternatively, Third-Party Defendant moves to dismiss the third-party claim pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure. Rule 14(a) permits a defendant to assert claims as a third-party plaintiff against a person who is not a party to the action, but only where the third party "*is or may be liable to him or all or part of the plaintiff's claim against him.*" (emphasis added). In other words, it is not whether the third-party claim is somehow related to the original action, but whether the defendant has a claim against a third party for all or part of the original claim that would shift liability for the original claim from the defendant to the third-party.

Here, the original action is a foreclosure action initiated by Bank of North Carolina against Anthony Whitfield. Regardless of whether the third-party claims are somehow related to the foreclosure action, Defendant's third-party claims for abuse of process and civil conspiracy do not seek to and cannot shift any liability he may have to the bank in the original foreclosure action to David Swanson. Accordingly, the Court finds that the claims in the Third-Party

Complaint are not premised on derivative liability, and therefore the Third-Party Complaint should be dismissed pursuant to Rule 14(a), SCRCP.

Accordingly, Third-Part Defendant's motion to dismiss is GRANTED.

IT IS SO ORDERED.

This 7 day of July, 2016


Diane S. Goodstein
Circuit Court Judge


South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP1801792

Bank of North Carolina Seth Warren Whitaker	Anthony M Whitfield	Anthony M Whitfield BNC Bancorp	Cindy Whitfield David Swanson
--	---------------------	------------------------------------	----------------------------------

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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. See Page 2 for additional information.
- 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; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

2016 JUL 15 AM 9:35
 CLERK OF COURT
 DORCHESTER COUNTY
 RECORDED

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.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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)

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

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.

Diane S. Goodstein
 Circuit Court Judge

2112
 Judge Code

7/15/2016
 Date

For Clerk of Court Office Use Only

This judgment was entered on 7/15/2016, and a copy mailed first class or placed in the appropriate attorney's box on 7/15/2016, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Alan Bernstein/P.O. Box 20519 Charleston, SC 29413-0519
Brian C Duffy/Seth Warren Whitaker/Thomas Ashley Limehouse Jr. 96 Broad Street Charleston, SC 29401

Brent Souther Halversen 171 Church Street Suite 330 Charleston, SC 29401
Daniel Scott Slotchiver/Andrew Joseph McCumber 44 State Street Charleston, SC 29401-2810
Paul B. Ferrara III 2300 Otranto Rd. N. Charleston, SC 29406-9603
David W. Overstreet/Michael B. McCall/Steven Raymond Kropski PO Box 22528 Charleston, SC 29413

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
Bank of North Carolina,)
Plaintiff,)
vs.)
Anthony Whitfield and Cindy Whitfield,)
Defendants,)
Anthony Whitfield,)
Third Party Plaintiff,)
vs.)
✓ David Swanson,)
Third Party Defendant.)

) IN THE COURT OF COMMON PLEAS
) IN THE FIRST JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-18-1793

ORDER GRANTING MOTION TO DISMISS THIRD-PARTY COMPLAINT

2016 JUL 15 AM 9:34
RECORDED
CLERK OF COURT
DORCHESTER COUNTY

This matter comes before the Court on Third-Party Defendant David Swanson's motion to dismiss the Third-Party Complaint. A hearing was held on June 1, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant/Third-Party Plaintiff Anthony Whitfield, and Third-Party Defendant David Swanson were present. For the reasons set forth herein, Third-Party Defendant's motion is granted.

Introduction

This lawsuit is one of six foreclosure actions filed by Bank of North Carolina against Anthony Whitfield. Three actions are pending in Dorchester County: Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793; two are pending in Berkeley County: Case Nos. 2012-CP-08-2618, and 2012-CP-08-3478; and one is pending in Charleston County: Case No. 2012-CP-10-5887. In each of the six foreclosure actions, Defendant/Third Party Plaintiff has asserted

identical third-party claims against David Swanson alleging causes of action for abuse of process and civil conspiracy.

Third-Party Defendant David Swanson is an attorney at Haynsworth Sinkler Boyd, P.A. The third-party claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Third Party Plaintiff alleges that Mr. Swanson never actually provided the advice to the bank, and that he and the bank lied about providing the advice in order to fabricate a defense to Third Party Plaintiff's counterclaims against the bank.

Third-Party Defendant Swanson has moved to dismiss in this action pursuant to Rules 12(b)(8), 12(f) and 14(a) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim, and that the claims against him are not the proper subject of third-party claims because they do not allege derivative liability.

Findings and Conclusions

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that a defendant may seek dismissal of an action when "another action is pending between the same parties for the same claim." In considering a motion to dismiss under Rule 12(b)(8), courts must consider both the identity of the parties and the identity of the claims. Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010). In order to warrant dismissal pursuant to Rule 12(b)(8), "the claim must be precisely or substantially the same in both proceedings. . . ." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 532 (Ct. App. 2009); *see also* Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40, 45 (2012).

In support of this motion, Third-Party Defendant presented the Court with a copy of the pleadings in the related Charleston County action that is the subject of the Black Rush Property. The

Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRPC.

Based on this Court's review of the pleadings in this action and the Charleston County action, the Court finds that the parties to the third-party claims are identical in both actions, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings. *Compare* Def.'s Am. Answer and Third Party Compl., Dorchester Co. Case No. 2014-CP-18-1793, ¶¶ 55-72 *with* Def.'s Am. Answer and Third Party Compl., Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. Accordingly, the Court finds that dismissal of the Third-Party Complaint in this action against David Swanson is warranted pursuant to Rule 12(b)(8), SCRPC.

Alternatively, Third-Party Defendant moves to dismiss the third-party claim pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure. Rule 14(a) permits a defendant to assert claims as a third-party plaintiff against a person who is not a party to the action, but only where the third party "*is or may be liable to him or all or part of the plaintiff's claim against him.*" (emphasis added). In other words, it is not whether the third-party claim is somehow related to the original action, but whether the defendant has a claim against a third party for all or part of the original claim that would shift liability for the original claim from the defendant to the third-party.

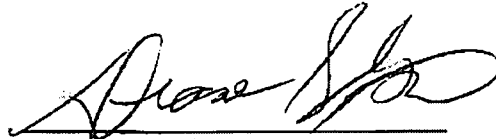
Here, the original action is a foreclosure action initiated by Bank of North Carolina against Anthony Whitfield. Regardless of whether the third-party claims are somehow related to the foreclosure action, Defendant's third-party claims for abuse of process and civil conspiracy do not seek to and cannot shift any liability he may have to the bank in the original foreclosure action to David Swanson. Accordingly, the Court finds that the claims in the Third-Party

Complaint are not premised on derivative liability, and therefore the Third-Party Complaint should be dismissed pursuant to Rule 14(a), SCRPC.


Accordingly, Third-Part Defendant's motion to dismiss is GRANTED.

IT IS SO ORDERED.

This 7 day of June, 2016



Diane S. Goodstein
Circuit Court Judge



South Carolina

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP1801793**

Bank of North Carolina Seth Warren Whitaker	Anthony M Whitefield	Anthony M Whitfield BNC Bancorp	Cindy Whitfield David Swanson
--	----------------------	------------------------------------	----------------------------------

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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. See Page 2 for additional information.
- 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; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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)

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

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.

Diane S. Goodstein Circuit Court Judge	2112 Judge Code	7/15/2016 Date
---	--------------------	-------------------

2016 JUL 15 AM 9:34
 CLERK OF COURT
 DORCHESTER COUNTY

For Clerk of Court Office Use Only

This judgment was entered on 7/15/2016, and a copy mailed first class or placed in the appropriate attorney's box on 7/15/2016, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Alan Bernstein PO Box 20519 Charleston, SC
29413-0519
Brian C Duffy/Seth Warren Whitaker/Thomas Ashley
Limehouse Jr. 96 Broad Street Charleston, SC 29401

Brent Souther Halversen 171 Church Street Suite 330
Charleston, SC 29401
Daniel Scott Slotchiver/Andrew Joseph McCumber 44
State Street Charleston, SC 29401-2810
David W. Overstreet/Michael B. McCall/Steven Raymond
Kropki PO Box 22528 Charleston, SC 29413

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP1800358

Bank of North Carolina Seth Warren Whitaker	2016 SEP 29 PM 12:17	Anthony M Whitfield	BNC Bancorp
--	----------------------	---------------------	-------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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. See Page 2 for additional information.
- 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:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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)

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

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.

Diane S. Goodstein	2112	9/29/2016
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on 9/29/2016, and a copy mailed first class or placed in the appropriate attorney's box on 9/29/2016, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Alan Bernstein PO Box 20519 Charleston, SC
29413-0519

Brian C Duffy/Stephen Jenkins Bell 96 Broad Street
Charleston, SC 29401

Seth Warren Whitaker 192 East Bay Street, Suite 200
Charleston, SC 29401

Brent Souther Halversen 171 Church Street Suite 330
Charleston, SC 29401

Daniel Scott Slotchiver/Andrew Joseph McCumber 44
State Street Charleston, SC 29401-2810

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
Bank of North Carolina,)
Plaintiff,)
vs.)
Anthony Whitfield and Cindy Whitfield,)
Defendants,)
Anthony Whitfield,)
Third Party Plaintiff,)
vs.)
David Swanson,)
Third Party Defendant.)

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2014-CP-18-0358

**ORDER DENYING
MOTION TO RECONSIDER**

2016 SEP 29 PM 12:17

This matter comes before the Court on Defendant/Third-Party Plaintiff Anthony Whitfield’s motion to reconsider filed on July 25, 2016 pursuant to Rule 59(e), SCRPC. Defendant/Third-Party Plaintiff Whitfield’s motion to reconsider asks the Court to alter or amend its ruling in the order dated July 15, 2016, which granted Third-Party Defendant David Swanson’s motion to dismiss. A hearing was held on August 26, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant/Third-Party Plaintiff Anthony Whitfield, and Third-Party Defendant David Swanson were present.

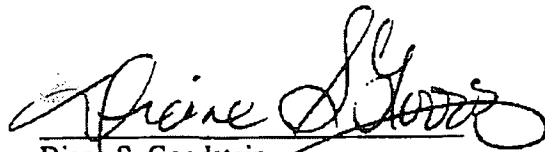
“The purpose of Rule 59(e), SCRPC, to alter or amend the judgment[,] is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’” Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505, 511 (2006) (quoting Arnold v. State, 309 S.C. 157, 420 S.E.2d 834, 842 (1992)). A party may request that a trial court reconsider its prior ruling where

the party believes the trial court misunderstood, failed to fully consider, or overlooked an argument or issue. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, 780 (2004).

The Court has again reviewed and considered the parties' arguments and submissions, the pleadings in this action and the related foreclosure actions, and the applicable law regarding the motion to dismiss. The Court finds that the order dated July 15, 2016 properly granted Third-Party Defendant Swanson's motion to dismiss. Accordingly, Defendant/Third-Party Plaintiff Whitfield's motion to reconsider is respectfully DENIED.

IT IS SO ORDERED.

This 14 day of September, 2016


Diane S. Goodstein
Circuit Court Judge

St. George, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP1801792

Bank of North Carolina Seth Warren Whitaker	Anthony M Whitfield	Anthony M Whitfield	BNC Bancorp
--	---------------------	---------------------	-------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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. See Page 2 for additional information.
- 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;

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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)

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

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.

Diane S. Goodstein	2112	9/29/2016
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on 9/29/2016, and a copy mailed first class or placed in the appropriate attorney's box on 9/29/2016, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Alan Bernstein PO Box 20519 Charleston, SC
29413-0519

Brian C Duffy/Thomas Ashley Limehouse Jr. 96 Broad
Street Charleston, SC 29401

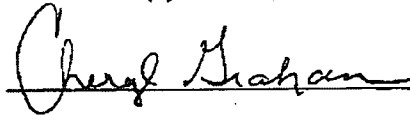
Seth Warren Whitaker 192 East Bay Street, Suite 200
Charleston, SC 29401

Brent Souther Halversen 171 Church Street Suite 330
Charleston, SC 29401

Daniel Scott Slotchiver/Andrew Joseph McCumber 44
State Street Charleston, SC 29401-2810

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
 Bank of North Carolina,)
 Plaintiff,)
 vs.)
 Anthony Whitfield and Cindy Whitfield,)
 Defendants,)
 Anthony Whitfield,)
 Third Party Plaintiff,)
 vs.)
 David Swanson,)
 Third Party Defendant.)

IN THE COURT OF COMMON PLEAS
 IN THE FIRST JUDICIAL CIRCUIT
 CASE NO.: 2014-CP-18-1792

**ORDER DENYING
 MOTION TO RECONSIDER**

2016 SEP 29 PM 12:19

This matter comes before the Court on Defendant/Third-Party Plaintiff Anthony Whitfield’s motion to reconsider filed on July 25, 2016 pursuant to Rule 59(e), SCRPC. Defendant/Third-Party Plaintiff Whitfield’s motion to reconsider asks the Court to alter or amend its ruling in the order dated July 15, 2016, which granted Third-Party Defendant David Swanson’s motion to dismiss. A hearing was held on August 26, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant/Third-Party Plaintiff Anthony Whitfield, and Third-Party Defendant David Swanson were present.

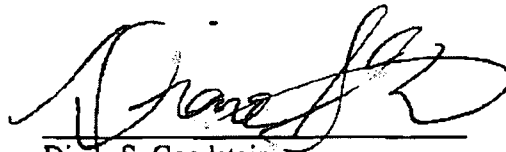
“The purpose of Rule 59(e), SCRPC, to alter or amend the judgment[,] is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’” Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505, 511 (2006) (quoting Arnold v. State, 309 S.C. 157, 420 S.E.2d 834, 842 (1992)). A party may request that a trial court reconsider its prior ruling where

the party believes the trial court misunderstood, failed to fully consider, or overlooked an argument or issue. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, 780 (2004).

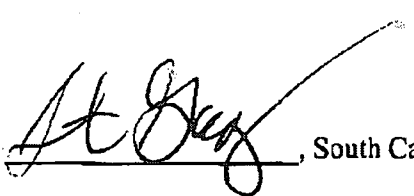
The Court has again reviewed and considered the parties' arguments and submissions, the pleadings in this action and the related foreclosure actions, and the applicable law regarding the motion to dismiss. The Court finds that the order dated July 15, 2016 properly granted Third-Party Defendant Swanson's motion to dismiss. Accordingly, Defendant/Third-Party Plaintiff Whitfield's motion to reconsider is respectfully DENIED.

IT IS SO ORDERED.

This 23 day of September, 2016



Diane S. Goodstein
Circuit Court Judge


_____, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP1801793

Bank of North Carolina
 Seth Warren Whitaker

2016 SEP 29 PM 12:17

Anthony M Whitfield

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
- 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:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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)

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

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.

Diane S. Goodstein
 Circuit Court Judge

2112
 Judge Code

9/29/2016
 Date

For Clerk of Court Office Use Only

This judgment was entered on 9/29/2016, and a copy mailed first class or placed in the appropriate attorney's box on 9/29/2016, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Alan Bernstein PO Box 20519 Charleston, SC
29413-0519

Brian C Duffy/Thomas Ashley Limehouse Jr. 96 Broad
Street Charleston, SC 29401

Seth Warren Whitaker 192 East Bay Street, Suite 200
Charleston, SC 29401

Brent Souther Halversen 171 Church Street Suite 330
Charleston, SC 29401

Daniel Scott Slotchiver/Andrew Joseph McCumber 44
State Street Charleston, SC 29401-2810

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
Bank of North Carolina,)
Plaintiff,)
vs.)
Anthony Whitfield and Cindy Whitfield,)
Defendants,)
Anthony Whitfield,)
Third Party Plaintiff,)
vs.)
David Swanson,)
Third Party Defendant.)

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2014-CP-18-1793

**ORDER DENYING
MOTION TO RECONSIDER**

2016 SEP 29 PM 12:18
CLERK'S OFFICE

This matter comes before the Court on Defendant/Third-Party Plaintiff Anthony Whitfield's motion to reconsider filed on July 25, 2016 pursuant to Rule 59(e), SCRPC. Defendant/Third-Party Plaintiff Whitfield's motion to reconsider asks the Court to alter or amend its ruling in the order dated July 15, 2016, which granted Third-Party Defendant David Swanson's motion to dismiss. A hearing was held on August 26, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant/Third-Party Plaintiff Anthony Whitfield, and Third-Party Defendant David Swanson were present.

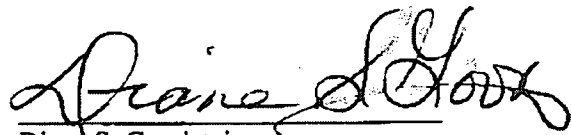
"The purpose of Rule 59(e), SCRPC, to alter or amend the judgment[,] is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505, 511 (2006) (quoting Arnold v. State, 309 S.C. 157, 420 S.E.2d 834, 842 (1992)). A party may request that a trial court reconsider its prior ruling where

the party believes the trial court misunderstood, failed to fully consider, or overlooked an argument or issue. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, 780 (2004).

The Court has again reviewed and considered the parties' arguments and submissions, the pleadings in this action and the related foreclosure actions, and the applicable law regarding the motion to dismiss. The Court finds that the order dated July 15, 2016 properly granted Third-Party Defendant Swanson's motion to dismiss. Accordingly, Defendant/Third-Party Plaintiff Whitfield's motion to reconsider is respectfully DENIED.

IT IS SO ORDERED.

This 23 day of September, 2016


Diane S. Goodstein
Circuit Court Judge


St. Gray, South Carolina

FILED - RECORDS

2016 FEB -9 PM 4:14

STATE OF SOUTH CAROLINA

CLERK OF COURT
DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

DORCHESTER COUNTY

CASE NO. 2014-CP-18-358

~~HARBOR NATIONAL BANK,~~
Bank of North Carolina
Plaintiff,

vs.

✓ ANTHONY M. WHITFIELD

Defendant.

CONSENT ORDER ON MOTION TO
AMEND FILED JUNE 25, 2015

This matter comes before the Court on Defendant's Motion to Amend his Answer and Counterclaims, filed on or about June 25, 2015. It appearing that the parties have negotiated and agreed to the filing of an amended pleading denying certain claims, and, allowing others. Now, therefore, it is

ORDERED that Defendant's Motion to Amend is granted in part and denied in part as stated herein. Defendant may file and serve an Amended Answer in the form attached hereto as Exhibit "1".

AND IT IS SO ORDERED.

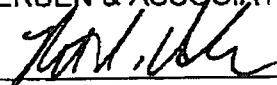
Maité Murphy

Hon. Maité Murphy
First Judicial Circuit

This 25 day of Jan., 2016.
Charleston ~~Orangeburg~~, South Carolina
WE SO MOVE.

1 of 3

HALVERSEN & ASSOCIATES, LLC

By: 

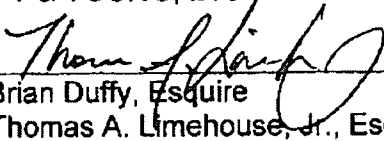
Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Attorney for the Plaintiff

January 13th, 2016
Charleston, South Carolina

WE SO CONSENT.

DUFFY & YOUNG, LLC

By: 
Brian Duffy, Esquire
Thomas A. Limehouse, Jr., Esquire
96 Broad Street
Charleston, SC 29401

January __, 2016
Charleston, South Carolina

313

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

FILED - RECORDED
2014 FEB - 9 PM 4:14
CHERYL J. ...
CLERK OF COURT
DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-18-358

Bank of North Carolina
~~HARBOR NATIONAL BANK,~~

Plaintiff,

vs.

ANTHONY WHITFIELD, CINDY
WHITFIELD, AND DAVID SWANSON

Defendants.

**DEFENDANT'S AMENDED
ANSWER, AFFIRMATIVE
DEFENSES AND
COUNTERCLAIMS**

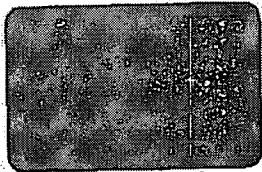
(Breach of Contract, Negligent
Misrepresentation, Fraud in the
Inducement, Unfair Trade Practices,
Promissory Estoppel, Interference with
Prospective Contractual Relations, and
Breach of Contract Accompanied by
Fraudulent Act, Abuse of Process, Civil
Conspiracy, and Equitable Indemnity)

(Jury Trial Demanded)

TO: BRIAN DUFFY AND SETH WHITAKER, ATTORNEYS FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter "Mr. Whitfield") and responds to
the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 6, 8, 14, 15,
16,17, 18 and 25.
2. Mr. Whitfield denies, the allegations of Paragraphs 13 and 23 to the extent such
Paragraphs reference previous allegations which are herein denied.
3. Mr. Whitfield admits the allegations of Paragraph 5, but denies that he
chose the stated interest rate and alleges that at all material times Plaintiff represented the
maturity date of the loan would be automatically extended by Plaintiff.



4. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 24, 26 and 29.

5. Mr. Whitfield denies Paragraphs 1, 4, 7, 9, 10, 11, 12, 19, 20, 21, 22, 27, 28 and 29.

6. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

7. Plaintiff's claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as required under the Note and was told by Plaintiff numerous times that the October 16, 2013 maturity date as referenced in the Note would be automatically extended, and in fact agreed orally and in writing to renew the loan.

SECOND AFFIRMATIVE DEFENSE

8. Plaintiff's claims in equity are barred by the doctrine of unclean hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

9. Plaintiff's action should be barred by the doctrine of unconscionability, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

10. Upon information and belief, the subject note attempted to be foreclosed upon is not the original note and therefore Plaintiff does not have standing to pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

11. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

12. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a % point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

13. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the property at 98 Willow Lane, Ladson, SC 29456 (hereinafter, "the Subject Property").

14. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ % (See Exhibit.A" attached hereto).

15. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ %, Mr. Whitfield was provided the higher 7.25% rate as opposed to the lower floating rate of prime minus

¼ %.

16. Despite being provided documents at the closing with an October 16, 2013 maturity date on the loan, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

17. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject property from the origination of the loan every month until the renewal date.

18. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals.". On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The following day, Ms. Bell informed Harbor National Bank personnel (but not Mr. Whitfield) that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never told Mr. Whitfield that he needed to move the loans- at any point in time.

Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

19. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

20. Despite making assurances his loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity of the April 13, 2012 maturities; and (g) credit Mr. Whitfield's overpayment of interest.

21. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed

new loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 20 (d) herein).

22. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for one of the properties that Cindy Whitfield resided in (hereinafter, the "Black Rush Property")¹. At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties - Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

23. Despite Harbor National Bank's representations that a title endorsement was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor National Bank failed to renew any of the loans listed in the June 26, 2012 commitment letter despite agreeing to do so, willfully breaching their agreements, and causing Mr.

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in a fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM

(Breach of Contract)

24. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

25. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property would be automatically renewed.

26. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

27. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION

(Negligent Misrepresentation)

28. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

29. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus 0%. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

30. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

31. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

32. At or about the time of the initial loan originations, Plaintiff made

affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus $\frac{1}{4}$ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

33. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

34. These false representations were made to induce the Mr. Whitfield to enter a high cost loan, and were made by the Plaintiff with the knowledge of their falsity.

35. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr. Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

36. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral

mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

37. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.25%. The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FOURTH CAUSE OF ACTION

(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(As made applicable through SC Code §39-5-10 et.seq.)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

40. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

41. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material. In this case, Plaintiff's actions were deceptive because Plaintiff clearly misrepresented that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION

(Promissory Estoppel/ Detrimental Reliance)

42. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

43. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

44. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

45. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

46. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION

(Tortious Interference with Prospective Contractual Relations)

47. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

48. The acts of Plaintiff described herein constituted an interference with Mr. Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing

these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent the subject property.

49. As a result of Plaintiffs actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of the subject property. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of their property in the eyes of third parties, loss of income and loss of profits.

50. Plaintiffs actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell the subject property to third parties who met requirements for sale and/or rental of the subject property; b) foreclosure proceedings having been instituted on the subject property; c) a diminished value of the subject property in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges, f) financial damage for his inability to sell the subject property following filing of the lis pendens and lawsuit, g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit, i) emotional distress to Mr. Whitfield, j) injury to his health and mental pain and suffering.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

51. Mr. Whitfield hereby incorporates the allegations of the

foregoing paragraphs as if fully restated herein.

52. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

53. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

54. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent Scott Warren)

55. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

56. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

57. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

58. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr.

David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

59. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact evidence shows it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

60. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

61. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

62. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given. The acts described above and herein have caused damage to Mr. Whitfield by incurring actual damages, both mental and pecuniary, including by way of example only and without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will

continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent Scott Warren)

63. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

64. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

65. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

66. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

67. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

68. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the

advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

69. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

70. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

71. Mr. David Swanson's actions described above and herein were made for his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

72. The actions of David Swanson and Scott Warren as alleged above and herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION
(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

75. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing¹ and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

76. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr.

¹ Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

Whitfield, including but not limited to consequential and special damages, and the imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

77. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:

- a. Actual damages;
- b. Statutory damages;
- c. Compensatory damages
- d. Special damages
- e. Treble Damages

- f. Disgorgement of profits;
- g. Restitution;
- h. Rescission;
- g. Injunctive relief; and
- h. Attorneys' fees and costs

DEMAND FOR JURY TRIAL

Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994)

HALVERSEN & ASSOCIATES, LLC

By: _____
Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

_____, 2016.
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Amended Answer by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this _____ day of January, 2016.

HALVERSEN & ASSOCIATES, LLC

By: _____

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Charleston, SC
_____, 2016.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER)

CASE NO. 2014-CP-18-1792

Bank of North Carolina
HARBOR NATIONAL BANK,

Plaintiff,

vs.

**CONSENT ORDER ON MOTION TO
AMEND FILED JUNE 25, 2015**

✓ ANTHONY M. WHITFIELD

Defendant.

FILED - RECEIVED
2016 FEB -9 PM 4:14
CLERK OF COURT
DORCHESTER COUNTY

This matter comes before the Court on Defendant's Motion to Amend his Answer and Counterclaims, filed on or about June 25, 2015. It appearing that the parties have negotiated and agreed to the filing of an amended pleading denying certain claims, and, allowing others. Now, therefore, it is

ORDERED that Defendant's Motion to Amend is granted in part and denied in part as stated herein. Defendant may file and serve an Amended Answer in the form attached hereto as Exhibit "1".

AND IT IS SO ORDERED.

Maité Murphy

Hon. Maité Murphy
First Judicial Circuit

Charleston This 25 day of Jan, 2016.
~~Orangeburg~~, South Carolina
WE SO MOVE.

HALVERSEN & ASSOCIATES, LLC

By: *Brent S. Halversen*

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Attorney for the Plaintiff

January 13th, 2016
Charleston, South Carolina

WE SO CONSENT.

DUFFY & YOUNG, LLC

By: 

Brian Duffy, Esquire
Thomas A. Limehouse, Jr., Esquire
96 Broad Street
Charleston, SC 29401

January __, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
2014 FEB -9 PM 4:14
CASE NO. 2014-CP-18-1792
CLERK OF COURT
DORCHESTER COUNTY

Bank of North Carolina
HARBOR NATIONAL BANK,

Plaintiff,

vs.

ANTHONY WHITFIELD, CINDY
WHITFIELD, AND DAVID SWANSON

Defendants.

**DEFENDANT'S FOURTH AMENDED
ANSWER, AFFIRMATIVE DEFENSES,
CROSSCLAIM AND COUNTERCLAIMS**

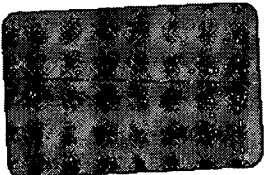
(Breach of Contract, Negligent
Misrepresentation, Fraud in the
Inducement, Unfair Trade Practices,
Promissory Estoppel, Tortious
Interference with Prospective Contractual
Relations, and Breach of Contract
Accompanied by Fraudulent Act, Abuse
of Process, Civil Conspiracy, and
Equitable Indemnification)

(Jury Trial Demanded)

TO: ROBERT A. BERNSTEIN, ATTORNEY FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter, "Mr. Whitfield") and responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 8, 14, 15, 16, 17, 18, 25; 33, 39, 40, 41, 42, 43 and 50.
2. Mr. Whitfield denies, the allegations of Paragraphs 13, 23, 38 and 48 to the extent such Paragraphs reference previous allegations which are herein denied.
3. Mr. Whitfield admits the allegations of Paragraph 5 and 30, but denies that he chose the stated interest rate and alleges that at all material times Plaintiff represented the maturity date of the loan would be automatically extended by Plaintiff.



4. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 24, 26, 29, 49, 51 and 54.

5. Mr. Whitfield denies Paragraphs 1, 4, 6, 7, 9, 10, 11, 12, 19, 20, 21, 22, 27, 28, 31, 32, 34, 35, 36, 37, 44, 45, 46, 47, 52 and 53.

6. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

7. Plaintiff's claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as was required under the Note and was told by Plaintiff numerous times that the October 13, 2012 maturity date as referenced in the Note would be automatically extended.

SECOND AFFIRMATIVE DEFENSE

8. Plaintiff's claims in equity are barred by the doctrine of unclean hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

9. Plaintiff's action should be barred by the doctrine of unconscionability, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

10. Upon information and belief, the subject notes attempted to be foreclosed upon are not the original notes and therefore Plaintiff does not have standing pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

11. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

12. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a ½ point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

13. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the property at 9708 Jamison Road and 131 Tyron Road (hereinafter, "the Subject Property").

14. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ % (See Exhibit "A" attached hereto).

15. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ %, Mr. Whitfield was provided the higher 7.5% rate as opposed to the lower floating rate of prime minus

¼ %.

16. Despite being provided documents at the closing with a April 13, 2012 maturity date on some of the loans, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

17. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject properties from the origination of the loan every month until the renewal date.

18. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals." On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The following day, Ms. Bell informed Harbor National Bank personnel (but not Mr. Whitfield) that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never told Mr. Whitfield that he needed to move the loans- at any point in time. Had Mr. Whitfield

known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

19. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

20. Despite making assurances the loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity of the April 13, 2012 maturities; and (g) credit Mr. Whitfield's overpayment of interest.

21. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed new

loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 18 (d) herein).

22. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for one of the properties that Cindy Whitfield resided in (hereinafter, the "Black Rush Property")¹. At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties -Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

23. Despite Harbor National Bank's representations that a title endorsement was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor National Bank failed to renew any of the loans listed in the June 26, 2012 commitment

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in a fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

letter despite agreeing to do so, willfully breaching their agreements, and causing Mr. Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM
(Breach of Contract)

24. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

25. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property would be automatically renewed.

26. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

27. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

28. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

29. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

30. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

31. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

32. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

33. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

34. These false representations were made to induce the Mr. Whitfield to enter a high cost loan, and were made by the Plaintiff with the knowledge of their falsity.

35. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr.

Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

36. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

37. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.5%. The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(As made applicable through SC Code §39-5-10 et.seq.)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

40. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

41. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material. In this case, Plaintiff's actions were deceptive because Plaintiff clearly misrepresented that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor

National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Promissory Estoppel / Detrimental Reliance)

42. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

43. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

44. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

45. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

46. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations)

47. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

48. The acts of Plaintiff described herein constituted an interference with Mr.

Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent the subject properties.

49. As a result of Plaintiff's actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of the subject properties. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of his properties in the eyes of third parties, loss of income and loss of profits.

50. Plaintiff's actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell the subject properties to third parties who met requirements for sale and/or rental of the subject properties; b) foreclosure proceedings having been instituted on the subject properties; c) a diminished value of the subject properties in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges, f) financial damage for his inability to sell the subject properties following filing of the lis pendens and lawsuit, g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit, i) emotional distress to Mr. Whitfield, j) injury to his health and mental pain and suffering.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

51. Mr. Whitfield hereby incorporates the allegations of the foregoing

paragraphs as if fully restated herein.

52. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

53. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

54. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

55. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

56. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

57. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

58. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012

closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

59. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact evidence shows it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

60. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

61. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

62. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given. The acts described above and herein have caused damage to Mr. Whitfield by incurring

actual damages, both mental and pecuniary, including by way of example only and without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

63. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

64. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

65. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

66. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

67. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

68. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

69. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

70. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

71. Mr. David Swanson's actions described above and herein were made for his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

72. The actions of David Swanson and Scott Warren as alleged above and

herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION

(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

75. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy

Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing² and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

76. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr. Whitfield, including but not limited to consequential and special damages, and the imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

77. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled

² Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:

- a. Actual damages;
- b. Compensatory damages
- c. Special damages;
- d. Statutory damages;
- e. Treble Damages
- f. Disgorgement of profits;
- g. Restitution;
- h. Rescission;
- i. Injunctive relief; and
- j. Attorneys' fees and costs

DEMAND FOR JURY TRIAL

Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994)

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: _____

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
Attorneys for the Defendant

_____, 2014.
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Fourth Amended Answer, Affirmative Defenses Crossclaim and Counterclaims upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this _____ day of January, 2016.

HALVERSEN & ASSOCIATES, LLC

By: _____

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Charleston, SC
January ____, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

Bank of North Carolina
HARBOR NATIONAL BANK)

Plaintiff,)

vs.)

✓ ANTHONY M. WHITFIELD)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-18-1793

**CONSENT ORDER ON MOTION TO
AMEND FILED JUNE 25, 2015**

FILED - RECORDS
2016 FEB -9 PM 4:13
CLERK OF COURT
DORCHESTER COUNTY

This matter comes before the Court on Defendant's Motion to Amend his Answer and Counterclaims, filed on or about June 25, 2015. It appearing that the parties have negotiated and agreed to the filing of an amended pleading denying certain claims, and, allowing others. Now, therefore, it is

ORDERED that Defendant's Motion to Amend is granted in part and denied in part as stated herein. Defendant may file and serve an Amended Answer in the form attached hereto as Exhibit "1".

AND IT IS SO ORDERED.

Maité Murphy

Hon. Maité Murphy
First Judicial Circuit

This 25 day of Jan, 2016.
Charleston ~~Orangeburg~~, South Carolina
WE SO MOVE.

HALVERSEN & ASSOCIATES, LLC

By: 

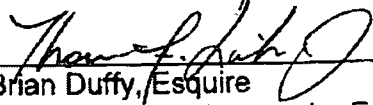
Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Attorney for the Plaintiff

January 13 2016
Charleston, South Carolina

WE SO CONSENT.

DUFFY & YOUNG, LLC

By: 
Brian Duffy, Esquire
Thomas A. Limehouse, Jr., Esquire
96 Broad Street
Charleston, SC 29401

January __, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

Bank of North Carolina
HARBOR NATIONAL BANK,)

Plaintiff,)

vs.)

ANTHONY WHITFIELD, CINDY)
WHITFIELD, AND DAVID SWANSON)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-18-1003

FILED - RECORDED
2014 FEB -9 PM 4:13
CLERK OF COURT
DORCHESTER COUNTY

DEFENDANT'S FOURTH AMENDED ANSWER, AFFIRMATIVE DEFENSES, CROSSCLAIM AND COUNTERCLAIM

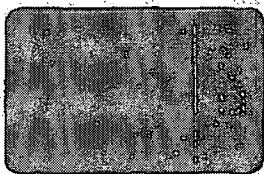
(Breach of Contract, Negligent Misrepresentation, Fraud in the Inducement, Unfair Trade Practices, Promissory Estoppel, Interference with Prospective Contractual Relations, and Breach of Contract Accompanied by Fraudulent Act, Abuse of Process, Civil Conspiracy, and Equitable Indemnity)

(Jury Trial Demanded)

TO: ROBERT A. BERNSTEIN, ATTORNEY FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter, "Mr. Whitfield") and responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 8, 14, 15, 16, 17, 18 and 25.
2. Mr. Whitfield denies, the allegations of Paragraphs 13 and 23 to the extent such Paragraphs reference previous allegations which are herein denied.
3. Mr. Whitfield admits the allegations of Paragraph 5, but denies that he chose the stated interest rate and alleges that at all material times Plaintiff represented the maturity date of the loan would be automatically extended by Plaintiff.



4. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 24, 26 and 29.

5. Mr. Whitfield denies Paragraphs 1, 4, 6, 7, 9, 10, 11, 12, 19, 20, 21, 22, 27 and 28.

6. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

7. Plaintiff's claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as was required under the Note and was told by Plaintiff numerous times that the April 13, 2012 maturity date as referenced in the Note would be automatically extended.

SECOND AFFIRMATIVE DEFENSE

8. Plaintiff's claims in equity are barred by the doctrine of unclean hands hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

9. Plaintiff's action should be barred by the doctrine of unconscionability, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

10. Upon information and belief, the subject note attempted to be foreclosed upon is not the original note and therefore Plaintiff does not have standing pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

11. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

12. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a ½ point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

13. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the property at 732 Gahagan Drive, Summerville, SC 29485 (hereinafter, "the Subject Property").

14. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ % (See Exhibit "A" attached hereto).

15. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ %, Mr. Whitfield

was provided the higher 7.5% rate as opposed to the lower floating rate of prime minus $\frac{1}{4}$ %.

16. Despite being provided documents at the closing with a April 13, 2012 maturity date on some of the loans, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

17. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject property from the origination of the loan every month until the renewal date.

18. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals." On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The following day, Ms. Bell informed Harbor National Bank personnel (but not Mr. Whitfield) that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never

told Mr. Whitfield that he needed to move the loans- at any point in time. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

19. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

20. Despite making assurances the loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity of the April 13, 2012 maturities; and (g) credit Mr. Whitfield's overpayment of interest.

21. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the

renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed new loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 20 (d) herein).

22. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for one of the properties that Cindy Whitfield resided in (hereinafter, the "Black Rush Property")¹. At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties - Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

23. Despite Harbor National Bank's representations that a title endorsement was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in a fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

National Bank failed to renew any of the loans listed in the June 26, 2012 commitment letter despite agreeing to do so, willfully breaching their agreements, and causing Mr. Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM
(Breach of Contract)

24. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

25. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property would be automatically renewed.

26. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

27. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

28. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

29. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus $\frac{1}{4}$ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

30. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

31. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

32. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus $\frac{1}{4}$ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

33. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

34. These false representations were made to induce the Mr. Whitfield to enter a high cost loan, and were made by the Plaintiff with the knowledge of their falsity.

35. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr.

Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

36. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

37. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.5%. The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(As made applicable through SC Code §39-5-10 et.seq.)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

40. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

41. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material. In this case, Plaintiff's actions were deceptive because Plaintiff clearly misrepresented that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor

National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Promissory Estoppel / Detrimental Reliance)

42. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

43. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

44. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

45. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

46. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations)

47. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

48. The acts of Plaintiff described herein constituted an interference with Mr.

Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent the subject property.

49. As a result of Plaintiff's actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of the subject property. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of their property in the eyes of third parties, loss of income and loss of profits.

50. Plaintiff's actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell the subject property to third parties who met requirements for sale and/or rental of the subject property; b) foreclosure proceedings having been instituted on the subject property; c) a diminished value of the subject property in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges, f) financial damage for his inability to sell the subject property following filing of the lis pendens and lawsuit, g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit, i) emotional distress to Mr. Whitfield, j) injury to his health and mental pain and suffering.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

51. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

52. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

53. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

54. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

55. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

56. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

57. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

58. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr.

David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

59. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact evidence shows it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

60. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

61. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

62. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given. The acts described above and herein have caused damage to Mr. Whitfield by incurring actual damages, both mental and pecuniary, including by way of example only and

without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

63. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

64. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

65. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

66. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

67. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

68. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

69. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

70. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

71. Mr. David Swanson's actions described above and herein were made for his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

72. The actions of David Swanson and Scott Warren as alleged above and

herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION

(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

75. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy

Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing² and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

76. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr. Whitfield, including but not limited to consequential and special damages, and the imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

77. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled

² Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:

- a. Actual damages;
- b. Compensatory damages
- c. Special damages;
- d. Statutory damages;
- e. Treble Damages
- f. Disgorgement of profits;
- g. Restitution;
- h. Rescission;
- i. Injunctive relief; and
- j. Attorneys' fees and costs

DEMAND FOR JURY TRIAL

Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994)

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: _____

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
Attorneys for the Defendant

_____, 2014.
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Fourth Amended Answer, Affirmative Defenses and Counterclaims upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this _____ day of April, 2014.

HALVERSEN & ASSOCIATES, LLC

By: _____

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Charleston, SC
April 23, 2014

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Harbor National Bank,

Plaintiff,

v.

Anthony M. Whitfield,

Defendant.

) IN THE COURT OF COMMON PLEAS

) CASE NUMBER: 2014-CP-18-

358

) **COMPLAINT**
) (Foreclosure of Real Estate)
) (Action On Note)

) (Non-Jury)

CERTIFIED COPY
2014 MAR -4 PM 5:01
Clerk of Court
DORCHESTER COUNTY

The Plaintiff, complaining of the Defendant above-named, would respectfully show unto this Court:

1. The Plaintiff is a national banking organization organized and existing pursuant to the laws of the United States of America, with its principal place of business located in South Carolina.
2. Defendant Anthony M. Whitfield is a citizen and resident of the County of Charleston, State of South Carolina.
3. The real property hereinafter described, which is the subject of this action, is situated and located in Dorchester County, South Carolina.
4. All parties hereto and all matters herein are within the jurisdiction of this Court.

RAS
#1

FOR A FIRST CAUSE OF ACTION
(Action on Note)

5. Heretofore, on or about October 6, 2008, for value received the Defendant Anthony M. Whitfield executed and delivered to Harbor National Bank, a certain Promissory Note, Loan No. 400076000 a copy of which is attached hereto as Exhibit "A" to this Complaint and made a part hereof by reference, by which, according to the terms and conditions set out therein, Anthony M.

Whitfield promised to pay to Harbor National Bank the sum of One Hundred One Thousand and no/100 (\$101,000.00) Dollars, together with interest thereon at the rate of 7.25 % per annum on the unpaid balance, with a maturity date of October 16, 2013.

6. On October 16, 2008, the Defendant executed a Commercial Debt Modification, a true and correct copy of which is attached hereto as a copy of which is attached hereto as Exhibit "B" to this Complaint and made a part hereof by reference.

7. The payment due under the Note and Modification herein referred to is in default, and the conditions of said Note have been broken.

8. The Plaintiff has made demand upon Defendant Anthony M. Whitfield to pay the entire amount due under the Note, but the said Defendant has failed and refused to make such payment.

9. The failure of Defendant Anthony M. Whitfield to make payment of the balance due constitutes a breach of the Note.

10. Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note as of February 28, 2014, the principal sum of Ninety-Six Thousand, Ninety-Seven and 38/100 (\$96,097.38) Dollars, accumulated interest of Four Thousand, Six Hundred Twenty-Five and 93/100 (\$4,625.93) Dollars, and interest continuing to accumulate at the current rate of \$34.81 per diem from February 28, 2014 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

11. Plaintiff has retained and employed attorneys for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

RAB
#2

12. By reason of the aforesaid breach of contract, the Plaintiff has suffered damages in the amount of the principal sum of Ninety-Six Thousand, Ninety-Seven and 38/100 (\$96,097.38) Dollars, accumulated interest of Four Thousand, Six Hundred Twenty-Five and 93/100 (\$4,625.93) Dollars, and interest continuing to accumulate at the current rate of \$34.81 per diem from February 28, 2014 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

FOR A SECOND CAUSE OF ACTION
(Mortgage Foreclosure)

13. The allegations of paragraphs One (1) through Twelve (12) of this Complaint are realleged as if repeated herein verbatim.

14. To further secure his obligation under the aforesaid Promissory Note, on October 6, 2008, Anthony M. Whitfield executed a Real Estate Mortgage, whereby to secure the liability under the Promissory Note and any further advances thereof, a mortgage was granted to and upon the following described property, to wit:

All that certain piece, parcel, lot or tract of land, with the buildings and improvements thereon, situate, lying and being in the County of Dorchester, State of South Carolina, and being known and designated as Lot 6, Block K, Oakmont Subdivision, as shown on a plat entitled 'A Plat Showing Block H, Lots 1-6, Block K, Lots 1-6, Block J, Lots 7 & 8, Oakmont Subdivision, Dorchester County, South Carolina' duly recorded in the Dorchester County RMC office in Plat Book 22 at page 126. Said parcel having such size, shape metes, bounds, location and dimensions as shown on the aforesaid plat to which reference is hereby made.

Being the same property conveyed to Anthony M. Whitfield by deed of Wells Fargo Bank, N.A., as Trustee for Option One Mortgage Loan Trust 2005-4, Asset-Backed Certificates, Series 2005-4, dated April 18, 2008, and recorded in Book 6597 at page 103 in the Register of Deeds Office for Dorchester County.

TMS #484-14-01-001

ARS
#3

Address: 98 Willow Lane, Ladson, SC 29456

(hereinafter referred to as the PROPERTY); a true and correct copy of the said Mortgage is attached hereto as Exhibit "C" to this Complaint and made a part hereof by reference.

15. On October 20, 2008, the said Mortgage was recorded in the Office of the Register of Deeds for Dorchester County in Book 6832, at Pages 268-277.

16. According to the terms and conditions of the aforesaid Real Estate Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable without notice, at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all cost of collection, including a reasonable attorney's fees, shall become an obligation of the Defendant Anthony M. Whitfield, to be secured by the said mortgage as part of the debt secured thereby.

17. Further, under the terms and conditions of the said Mortgages, it was agreed that the mortgagor would pay all taxes, assessments, water rates, other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if the mortgagor failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

18. According to the terms of the said Mortgages, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default thereunder, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the debt secured

by said mortgage.

19. The payments due under said Note is due and has been in default since October 16, 2013, and the conditions of said mortgage have been broken.

20. The entire balance of said indebtedness due and payable, and that there is due on said note as of February 28, 2014, the principal sum of Ninety-Six Thousand, Ninety-Seven and 38/100 (\$96,097.38) Dollars, accumulated interest of Four Thousand, Six Hundred Twenty-Five and 93/100 (\$4,625.93) Dollars, and interest continuing to accumulate at the current rate of \$34.81 per diem from February 28, 2014 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

21. Plaintiff has retained and employed counsel for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

22. The Plaintiff is entitled to an Order foreclosing the mortgage upon the PROPERTY, and the proceeds of the said foreclosure to be distributed first to the costs and expenses of the sale thereof, second to be applied against accrued principal and interest under the Note and mortgage, third to payment of the costs, expenses and reasonable attorneys fees incurred by the Plaintiff in prosecuting this foreclosure action, and the Court should thereafter pay any excess proceeds of sale to such claimants in such priorities as their interests may appear.

AS
#5

FOR A THIRD CAUSE OF ACTION
(Appointment of Receiver)

23. The allegations of paragraphs One (1) through Twenty-Two (22) of this Complaint are realleged as if repeated herein verbatim.

24. To further secure his obligation under the aforesaid Promissory Note, on October 6, 2008, Anthony M. Whitfield executed an Assignment of Leases and Rents, whereby to secure the liability under the Promissory Note and any further advances thereof, the Defendant assigned all leases and rents from the subject PROPERTY to the Plaintiff; a true and correct copy of the said Assignment of Leases and Rents is attached hereto as Exhibit "D" to this Complaint and made a part hereof by reference.

25. On October 20, 2008, the said Assignment of Leases and Rents was recorded in the Office of the Register of Deeds for Dorchester County in Book 6832, at Pages 278-186.

26. According to the terms of the said Assignment of Leases and Rents, and as additional security, the Defendant assigned all rents, issues and profits of the PROPERTY from and after any default thereunder, and should legal proceedings be instituted pursuant to said Assignment of Leases and Rents, the Plaintiff were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the secured debt.

27. The payment due under said Note is due and has been in default since October 16, 2013, and the conditions of said Note have been broken.

28. The entire balance of said indebtedness due and payable, and that there is due on said Note as of February 16, 2014, the principal sum of Ninety-Six Thousand, Ninety-Seven and 38/100 (\$96,097.38) Dollars, accumulated interest of Four Thousand, Six Hundred Twenty-Five and 93/100 (\$4,625.93) Dollars, and interest continuing to accumulate at the current rate of \$34.81 per diem from February 28, 2014 until paid in full, together with late charges, the costs and disbursements of

this action, and attorney's fees.

29. The Plaintiff is entitled to have a Receiver appointed for the PROPERTY to collect all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt hereunder.

WHEREFORE, the Plaintiff prays for judgment as follows:

(1) Under the First Cause of Action, for judgment against Defendant Anthony M. Whitfield in the principal sum of Ninety-Six Thousand, Ninety-Seven and 38/100 (\$96,097.38) Dollars, accumulated interest of Four Thousand, Six Hundred Twenty-Five and 93/100 (\$4,625.93) Dollars, and interest continuing to accumulate at the current rate of \$34.81 per diem from February 28, 2014 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees;

(2) Under the Second Cause of Action, that

(a) That the amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys fees and the costs of this action.

(b) That the Plaintiff's Mortgage be declared a first lien and that Plaintiff has judgment of foreclosure for the amount found to be due and owing under the promissory note, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and the costs of this action.

(c) That the PROPERTY be sold under the direction of this Court, the equities of redemption are barred, and that the proceeds of sale are applied as follows:

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

Second, to the payment and discharge of the amount due on the Plaintiff's Note and Mortgage, with the costs and disbursements of this action together with attorneys' fees, and

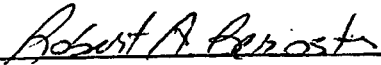
Third, the surplus, if any, be distributed according to law;

RAB
#7


3) Under the Third Cause of Action, for the Appointment of a Receiver to collect all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt; and

4) For such other and further relief as may be just and proper.

BERNSTEIN & BERNSTEIN, P.A.


Robert A. Bernstein
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111; (843) 529-0035 (fax)

DUFFY & YOUNG, LLC


Brian C. Duffy
Seth W. Whitaker
96 Broad Street
Charleston, SC 29401
(843) 720-2044; (843) 720-2047 (fax)
ATTORNEYS FOR THE PLAINTIFF

#8
February 28, 2014
Charleston, South Carolina

ANTHONY N WHITFIELD 2141 DORCHESTER ROAD NORTH CHARLESTON, SC 29405 BORROWER'S NAME AND ADDRESS <small>"I" includes each borrower above, jointly and severally.</small>	Harbor National Bank 1503 Old Towne Road Charleston, SC 29407 LENDER'S NAME AND ADDRESS <small>"You" means the lender, its successors and assigns.</small>	247-86-7213 Loan Number <u>400076000</u> Date <u>10/16/2008</u> Maturity Date <u>10/16/2013</u> Loan Amount \$ <u>101,000.00</u> Renewal Of _____
---	--	--

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of One Hundred One Thousand Dollars Dollars \$ 101,000.00

Single Advance: I will receive all of this principal sum on 10/16/2008. No additional advances are contemplated under this note.
 Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.
 Conditions: The conditions for future advances are _____

Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____
 Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 10/16/2008 at the rate of 7.250 % per year until Maturity

Variable Rate: This rate may then change as stated below.
 Index Rate: The future rate will be _____ the following index rate: _____

No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.
 Frequency and Timing: The rate on this note may change as often as _____
 A change in the interest rate will take effect _____
 Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.
 Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:
 The amount of each scheduled payment will change. The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a Actual/360 basis.
 POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:
 on the same fixed or variable rate basis in effect before maturity (as indicated above).
 at a rate equal to 14.000%

LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the payment amount with a minimum of \$20.00
 ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which are are not included in the principal amount above: ORIGINATION FEE \$305.00, APPRAISAL FEE \$350.00, FLOOD CERTIFICATION FEE \$15.00, CREDIT REPORT \$15.00

PAYMENTS: I agree to pay this note as follows:
 Interest: I agree to pay accrued interest _____
 Principal: I agree to pay the principal _____

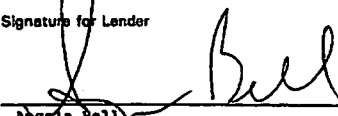
Installments: I agree to pay this note in 60 payments. The first payment will be in the amount of \$ 696.20 and will be due 11/16/2008. A payment of \$ 696.20 will be due on the same day of each Month thereafter. The final payment of the entire unpaid balance of principal and interest will be due October 16, 2013

ADDITIONAL TERMS:

SECURITY: This note is separately secured by (describe separate document by type and date):
MORTGAGE, ASSIGNMENT OF LEASES & RENTS OF EVEN DATE - 98 WILLOW LAKE, LADSON, SC 29456
(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

PURPOSE: The purpose of this loan is TO REFINANCE RENTAL PROPERTY - 98 WILLOW LAKE, LADSON, SC

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

Signature for Lender

 Abigail Bell
 Commercial Lender


 ANTHONY N WHITFIELD

2014 MAR -4 PM 5:01
 CERTIFIED COPY
 Clerk of Court
 DORCHESTER COUNTY
Abigail Bell

BORROWER NAME AND ADDRESS

ANTHONY N WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

LENDER NAME AND ADDRESS

Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

LOAN DESCRIPTION

Number 40076000

Amount \$101,000.00

Date 10/16/2008

Refer to the attached Signature Addendum, incorporated herein, for additional Borrowers and their signatures.

COMMERCIAL DEBT MODIFICATION AGREEMENT

DATE AND PARTIES. The date of this Debt Modification Agreement (Modification) is 10/06/2009

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

Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Modification, individually and together with their heirs, executors, administrators, successors, and assigns. "You" and "your" refer to the Lender, with its participants or syndicators, successors and assigns, or any person or entity that acquires an interest in this Modification or Prior Obligation.

Prior Obligation. "Prior Obligation" refers to my previous agreement governing my promise to pay you money, including any loan agreement, note, or document that evidences my indebtedness, and any extensions, renewals, modifications, and substitutions.

BACKGROUND. You and I have entered into a Prior Obligation which is evidenced by MORTGAGE DORCHESTER CTY BOOK 6832 PAGE 268

dated 10/16/2008 in the original principal amount of / with a maximum possible principal amount of \$ 101,000.00
payable on demand. / payable on demand but if no demand is made, by the maturity date of / with a maturity date of 10/16/2013

As of the date of this Modification, the amount remaining due is / current amount outstanding on the Prior Obligation is \$ 100,606.01
principal (Principal) plus \$ 405.30 accrued interest, for a total of \$ 101,011.31

MODIFICATION. For value received, you and I agree to modify the Prior Obligation as follows.

- INTEREST RATE MODIFICATION.
INTEREST RATE.

Maximum Interest Amount. Any amount assessed or collected as interest will be limited to the maximum lawful amount of interest allowed by state or federal law. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid principal balance. Any remainder will be refunded to me.
Post-Maturity/Default Interest Rate.

Compounding. This Modification provides for the compounding of interest.

PAYMENT MODIFICATION.
THE DUE DATE IS HEREBY CHANGED FROM THE 16TH OF EACH MONTH TO THE 13TH DAY OF EACH MONTH BEGINNING WITH THE NOVEMBER 2009 PAYMENT.

DRAW PERIOD MODIFICATION.

FEE AND CHARGES MODIFICATION.

ADDITIONAL TERMS.

ALL OTHER TERMS AND CONDITIONS WILL REMAIN THE SAME.

CONTINUATION OF TERMS. Except as specifically amended in this Modification, all terms of the Prior Obligation remain in effect.

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

VT only NOTICE TO BORROWER: THIS IS A DEMAND NOTE AND SO MAY BE COLLECTED BY THE LENDER AT ANY TIME. A NEW NOTE MUTUALLY AGREED UPON AND SUBSEQUENTLY ISSUED MAY CARRY A HIGHER OR LOWER RATE OF INTEREST.

ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THE CREDIT AGREEMENT. TO PROTECT YOU (BORROWER/DEBTOR) AND US (LENDER/SECURED PARTY) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT. BY SIGNING THIS MODIFICATION, THE PARTIES AFFIRM THAT NO UNWRITTEN ORAL AGREEMENT EXISTS BETWEEN THEM.

SIGNATURES. By signing under seal, Borrower agrees to the terms contained in this Note. Borrower also acknowledges receipt of a copy of this Note.
BORROWER:

Entity Name
Signature ANTHONY N WHITFIELD
Date 10/16/2008 (Seal)

Entity Name
Signature
Date (Seal)

LENDER:
Harbor National Bank
Entity Name
Signature Angela Bell
Date 10/16/2008 (Seal)

Signature
Date (Seal)

COMMERCIAL DEBT MODIFICATION AGREEMENT
EX-100 © 1999, 2001 Bankers Systems, Inc., St. Cloud, MN Form COMM-DMOD 7/1/2004

NOT TO BE USED FOR LOANS SUBJECT TO CONSUMER LENDING LAWS (page 1 of 1)

EXHIBIT "B" TO COMPLAINT

CLERK OF COURT
DORCHESTER COUNTY

2014 MAR -4 PM 5:01
CERTIFIED COPY



Recording Date: 10/20/2008 Instrument: 95 Book: 6832 Page: 268-277

FILED-RECORDED
RMC / ROD

2008 Oct 20 PM 1:55:01

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 15.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

CERTIFIED COPY
2014 MAR -4 PM 5:01
Margaret L. Bailey
CLERK OF COURT
DORCHESTER COUNTY



THIS PAGE IS HEREBY ATTACHED AND MADE PART OF THE PERMANENT RECORD OF THIS DOCUMENT. IT IS NOT TO BE DETACHED OR REMOVED AND MUST BE CITED AS THE FIRST PAGE OF THE RECORDED DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR RECORDING PURPOSES AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

15

This document was prepared by (name, address, phone):

Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 10/16/2008 and the parties and their addresses are as follows:

MORTGAGOR: ANTHONY M WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

FILED/RECORDED
October 20, 2008
DORCHESTER COUNTY
REGISTER OF DEEDS

Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

SEE ATTACHED EXHIBIT 'A'
TMS#484-14-01-001

The property is located in DORCHESTER at 98 WILLOW LANE
(County)

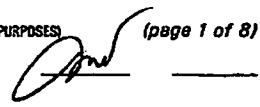
LADSON, South Carolina 29456
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT (NOT FOR FPMIA, FIDM/C, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES)

(page 1 of 8)

ExpensSM © 1994, 2001 Bankers Systems, Inc., St. Cloud, MN Form AGCO-RESI-SC 1/21/2003



John E. Romanosky, Esq.
53 Broad Street
Charleston, SC. 29401

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 101,000.00 . This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.
4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:
- A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., *borrower's name, note amount, interest rate, maturity date*):
One note of even date in the principal amount of 101,000.00 with final payment due 10/16/2013
 - B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
 - C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
 - D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
 - E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
- A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

10. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. ENTITY WARRANTIES AND REPRESENTATIONS. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. AUTHORITY TO PERFORM. If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

(page 3 of 8)

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

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

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

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

(page 4 of 8)

characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guarantied, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

- Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:


- Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**
- Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- Additional Terms.**


SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.


Actual authority was granted to the parties signing below by resolution signed and dated _____

Entity Name: _____

Entity Name: _____


 (Signature) ANTHONY A. WHITFIELD (Date) 10/26/2008 (Seal)


 (Signature) _____ (Date) _____ (Seal)

Signed, Sealed and delivered in the presence of:

 (Witness) _____


 (Witness) _____

Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

PROBATE:

STATE OF SC, COUNTY OF Charleston } ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 10/12/08 day

of [Signature]
Notary Public for South Carolina

[Signature]

My commission expires: 9-12-17

EXHIBIT "A"

All that certain piece, parcel, lot or tract of land, with the buildings and improvements thereon, situate, lying and being in the County of Dorchester, State of South Carolina, and being known and designated as Lot 6, Block K, Oakmont Subdivision, as shown on a plat entitled 'A Plat Showing Block H, Lots 1-6, Block K, Lots 1-6, Block J, Lots 7 & 8, Oakmont Subdivision, Dorchester County, South Carolina' duly recorded in the Dorchester County RMC office in Plat Book 22 at page 126. Said parcel having such size, shape metes, bounds, location and dimensions as shown on the aforesaid plat to which reference is hereby made.

Being the same property conveyed to Anthony M. Whitfield by deed of Wells Fargo Bank, N.A., as Trustee for Option One Mortgage Loan Trust 2005-4, Asset-Backed Certificates, Series 2005-4, dated April 18, 2008, and recorded in Book 6597 at page 103 in the RMC office for Dorchester County.



Recording Date: 10/20/2008 Instrument: 96 Book: 6832 Page: 278-286

FILED-RECORDED
RMC / ROD

2008 Oct 20 PM 1:55:30

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 14.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

2014 MAR -4 PM 5:01
CERTIFIED COPY
Clerk of Court
DORCHESTER COUNTY



THIS PAGE IS HEREBY ATTACHED AND MADE PART OF
THE PERMANENT RECORD OF THIS DOCUMENT. IT IS
NOT TO BE DETACHED OR REMOVED AND MUST BE
CITED AS THE FIRST PAGE OF THE RECORDED
DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR
RECORDING PURPOSES AND IS NOT TO BE USED FOR
ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

14

State of South Carolina _____ Space Above This Line For Recording Data _____

This document was prepared by (name, address, phone number): Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

(843) 852-6400

ASSIGNMENT OF LEASES AND RENTS

1. **DATE AND PARTIES.** The date of this Assignment of Leases and Rents (Assignment) is 10/16/2008. The parties and their addresses are:

ASSIGNOR: ANTHONY M WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

FILED/RECORDED
October 20, 2008
DORCHESTER COUNTY
REGISTER OF DEEDS

Refer to the Addendum that is attached and incorporated herein for additional Assignors.

LENDER: Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

2. **ASSIGNMENT OF LEASES AND RENTS.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Assignor's performance under this Assignment, Assignor irrevocably assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (all referred to as Property).


A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as Leases).

B. Rents, issues and profits (all referred to as Rents), including but not limited to security deposits, minimum rent, percentage rent, additional rent, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties; proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Assignor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property.

C. The term Property as used in this Assignment shall include the following described real property:

SEE ATTACHED EXHIBIT 'A'
TMS#484-14-01-001

SOUTH CAROLINA ASSIGNMENT OF LEASES AND RENTS
(NOT FOR FNMA, FHLMC, OR VA USE AND NOT FOR CONSUMER PURPOSES)
ExpensSM © 2001 Bankers Systems, Inc., St. Cloud, MN Form ASMT-RENT-SC 2/27/2002

 (page 1 of 7)

John E. Romanosky, Esq
53 Broad Street
Charleston, SC. 29401

The Property is located in DORCHESTER County at
98 WILLOW LANE LADSON, SC 29456 (Address, City, State,
ZIP Code).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Assignment at any one time will not exceed \$ 101,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Assignment. Also, this limitation does not apply to advances made under the terms of this Assignment to protect Lender's security and to perform any of the covenants contained in this Assignment. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.
4. **SECURED DEBTS.** This Assignment will secure the following Secured Debts:
- A. **Specific Debts.** The following debts and all extensions, renewals, refinancings, modifications and replacements. (Include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)
- One or more of the debts secured by this Assignment contains a future advance provision.
- B. **All Debts.** All present and future debts from Assignor and _____

to Lender, even if this Assignment is not specifically referenced or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Assignment, each agrees that it will secure debts incurred either individually or with others who may not sign this Assignment. Nothing in this Assignment constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide notice of the right of rescission, Lender waives any subsequent security interest in the Assignor's principal dwelling that is created by this Assignment. This Assignment will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Assignment will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. **Sums Advanced.** All sums advanced and expenses incurred by Lender under the terms of this Assignment.

5. **PAYMENTS.** Assignor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Assignment.
6. **COLLECTION OF RENTS.** Assignor may collect, receive, enjoy and use the Rents so long as Assignor is not in default. Assignor will not collect in advance any Rents due in future lease periods, unless Assignor first obtains Lender's written consent. Upon default, Assignor will receive any Rents in trust for Lender and Assignor will not commingle the Rents with any other funds. When Lender so directs, Assignor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Assignor agrees that this Assignment is immediately effective between Assignor and Lender and effective as to third parties on the recording of this Assignment.
7. **WARRANTIES AND REPRESENTATIONS.** To induce Lender to enter into the Loan, Assignor makes these representations and warranties for as long as this Assignment is in effect.
- A. **Power.** Assignor is duly organized, validly existing and in good standing under the laws in the jurisdiction where Assignor was organized and is duly qualified, validly existing and in good standing in all jurisdictions in which Assignor operates or Assignor owns or leases property. Assignor has the power and authority to enter into this transaction and to carry on Assignor's business or activity as now conducted.
- B. **Authority.** The execution, delivery and performance of this Assignment and the obligation evidenced by this Assignment: are within Assignor's duly authorized powers; has received all necessary governmental approval; will not violate any provision of law or order of court or governmental agency; and will not violate any agreement to which Assignor is a party or to which Assignor is or any of Assignor's property is subject.

- C. **Name and Place of Business.** Other than previously disclosed in writing to Lender, Assignor has not changed Assignor's name or principal place of business within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Assignor does not and will not use any other name and will preserve Assignor's existing name, trade names and franchises.
- D. **Ownership or Lease of Property.** Assignor owns or leases all property that Assignor needs to conduct Assignor's business and activities. All of Assignor's property is free and clear of all liens, security interests, encumbrances and other adverse claims and interests, except those Lender previously agreed to in writing.
- E. **Compliance with Laws.** Assignor is not violating any laws, regulations, rules, orders, judgments or decrees applicable to Assignor or Assignor's property, except for those that Assignor is challenging in good faith through proper proceedings after providing adequate reserves to fully pay the claim and its challenge should Assignor lose.
- F. **Title.** Assignor has good title to the Leases, Rents and Property and the right to assign, grant, bargain, convey and mortgage to Lender as additional security the Leases and Rents, and no other person has any right in the Leases and Rents.
- G. **Recordation.** Assignor has recorded the Leases as required by law or as otherwise prudent for the type and use of the Property.
- H. **Default.** No default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Assignor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Assignor or any party to the Lease defaults or fails to observe any applicable law, Assignor will promptly notify Lender.
- I. **Lease Modification.** Assignor has not sublet, modified, extended, canceled, or otherwise altered the Leases, or accepted the surrender of the Property covered by the Leases (unless the Leases so required).
- J. **Encumbrance.** Assignor has not assigned, compromised, subordinated or encumbered the Leases and Rents.
8. **COVENANTS.** Assignor agrees to the following covenants:
- A. **Rent Abatement and Insurance.** When any Lease provides for an abatement of Rents due to fire, flood or other casualty, Assignor will insure against this risk of loss with a policy satisfactory to Lender. Assignor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.
- B. **Copies of Leases.** Assignor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed.
- C. **Right to Rents.** Immediately after the execution of this Assignment, Assignor will notify all current and future tenants and others obligated under the Leases of Lender's right to the Leases and Rents, and will request that they immediately pay all future Rents directly to Lender when Assignor or Lender asks them to do so.
- D. **Accounting.** When Lender requests, Assignor will provide to Lender an accounting of Rents, prepared in a form acceptable to Lender, subject to generally accepted accounting principles and certified by Assignor or Assignor's accountant to be current, accurate and complete as of the date requested by Lender.
- E. **Lease Modification.** Assignor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so required) without Lender's written consent.
- F. **Encumbrance.** Assignor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent.
- G. **Future Leases.** Assignor will not enter into any future Leases without prior written consent from Lender. Assignor will execute and deliver such further assurances and assignments as to these future Leases as Lender requires from time to time.
- H. **Personal Property.** Assignor will not sell or remove any personal property on the Property, unless Assignor replaces this personal property with like kind for the same or better value.
- I. **Prosecution and Defense of Claims.** Assignor will appear in and prosecute its claims or defend its title to the Leases and Rents against any claims that would impair Assignor's interest under this Assignment and, on Lender's request, Assignor will also appear in any action or proceeding on behalf of Lender. Assignor agrees to assign to Lender, as requested by Lender, any right, claims or defenses which Assignor may have against parties who supply labor or materials to improve or maintain the leaseholds subject to the Leases and/or the Property.
- J. **Liability and Indemnification.** Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses or damages due to Lender's gross negligence or intentional torts to the extent permitted by law. Otherwise, Assignor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.
- K. **Leasehold Estate.** Assignor will not cause or permit the leasehold estate under the Leases to merge with Assignor's reversionary interest, and agrees that the Leases shall remain in full force and effect regardless of any merger of the Assignor's interests and of any merger of the interests of Assignor and any party obligated under the Leases.
- L. **Insolvency.** Lender will be the creditor of each tenant and of anyone else obligated under the Leases who is subject to an assignment for the benefit of creditors; an insolvency; a dissolution or a receivership proceeding; or a bankruptcy.

9. **TRANSFER OF AN INTEREST IN THE ASSIGNOR.** If Assignor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
- A. A beneficial interest in Assignor is sold or transferred.
 - B. There is a change in either the identity or number of members of a partnership or similar entity.
 - C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.
- However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Assignment.
10. **DEFAULT.** Assignor will be in default if any of the following occur with regard to the Secured Debts that are secured by this Assignment:
- A. **Payments.** Assignor fails to make a payment in full when due.
 - B. **Insolvency or Bankruptcy.** Assignor makes an assignment for the benefit of creditors or becomes insolvent, either because Assignor's liabilities exceed Assignor's assets or Assignor is unable to pay Assignor's debts as they become due; or Assignor petitions for protection under federal, state or local bankruptcy, insolvency or debtor relief laws, or is the subject of a petition or action under such laws and fails to have the petition or action dismissed within a reasonable period of time not to exceed 60 days.
 - C. **Death or Incompetency.** If Assignor is an individual, Assignor dies or is declared legally incompetent.
 - D. **Business Termination.** If Assignor is not an individual, Assignor merges, dissolves, reorganizes or ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.
 - E. **Failure to Perform.** Assignor fails to perform any condition or to keep any promise or covenant of this Assignment, any other document evidencing or pertaining to the Loan, or any other debt or agreement Assignor has with Lender.
 - F. **Misrepresentation.** Assignor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
 - G. **Property Transfer.** Assignor transfers all or a substantial part of Assignor's money or property.
 - H. **Property Value.** The value of the Property declines or is impaired.
 - I. **Name Change.** Assignor changes Assignor's name or assumes an additional name without notifying Lender before making such a change.
 - J. **Material Change.** Without first notifying Lender, there is a material change in Assignor's business, including ownership, management, and financial conditions.
 - K. **Insecurity.** Lender reasonably believes that Lender is insecure.
11. **REMEDIES.** After Assignor defaults, and after Lender gives any legally required notice and opportunity to cure the default, Lender may at Lender's option do any one or more of the following:
- A. **Acceleration.** Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due.
 - B. **Additional Security.** Lender may demand additional security or additional parties to be obligated to pay the Secured Debts.
 - C. **Sources.** Lender may use any and all remedies Lender has under the state law where the Property is located or federal law or in any instrument evidencing or pertaining to the Secured Debts.
 - D. **Insurance Benefits.** Lender may make a claim for any and all insurance benefits or refunds that may be available on Assignor's default.
 - E. **Payments Made On Assignor's Behalf.** Amounts advanced on Assignor's behalf will be immediately due and may be added to the Secured Debts.
 - F. **Rents.** Lender may terminate Assignor's right to collect Rents and directly collect and retain Rents in Lender's name without taking possession of the Property and to demand, collect, receive, and sue for the Rents, giving proper receipts and releases. In addition, after deducting all reasonable expenses of collection from any collected and retained Rents, Lender may apply the balance as provided for by the Secured Debts.
 - G. **Entry.** Lender may enter, take possession, manage and operate all or any part of the Property; make, modify, enforce or cancel or accept the surrender of any Leases; obtain or evict any tenants and licensees; increase or reduce Rents; decorate, clean and make repairs or do any other act or incur any other cost Lender deems proper to protect the Property as fully as Assignor could do. Any funds collected from the operation of the Property may be applied in such order as Lender may deem proper, including, but not limited to, payment of the following: operating expenses, management, brokerage, attorneys' and accountants' fees, the Secured Debts, and toward the maintenance of reserves for repair or replacement. Lender may take such action without regard to the adequacy of the security, with or without any action or proceeding, through any person or agent, or receiver to be appointed by a court, and irrespective of Assignor's possession. The collection and application of the Rents or the entry upon and taking possession of the Property as set out in this section shall not cure or waive any notice of default under the Secured Debts, this Assignment, or invalidate any act pursuant to such notice. The enforcement of such remedy by Lender, once exercised, shall continue for so long as Lender shall elect, notwithstanding that such collection and application of Rents may have cured the original default.

H. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up 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.

12. **APPOINTMENT OF A RECEIVER.** On or after an Assignor's default, Assignor agrees to Lender making an application to the court for an appointment of a receiver for the benefit of Lender to take possession of the Property and the Leases, with the power to receive, collect and apply the Rents. Any Rents collected will be applied as the court authorizes to pay taxes, to provide insurance, to make repairs and to pay costs or any other expenses relating to the Property, the Leases and Rents, and any remaining sums shall be applied to the Secured Debts. Assignor agrees that this appointment of a receiver may be without giving bond, without reference to the then-existing value of the Property, and without regard to the insolvency of any person liable for any of the Secured Debts.
13. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** To the extent permitted by law, Assignor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Assignment. Unless the applicable law that governs this Assignment is North Dakota, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. These expenses will bear interest from the date of payment until paid in full at the contract interest rate then in effect for the Loan. To the extent permitted by the United States Bankruptcy Code, Assignor agrees to pay the reasonable attorneys' fees Lender incurs to collect this Assignment as awarded by any court exercising jurisdiction under the Bankruptcy Code.
14. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste," "hazardous substance," or "regulated substances" under any Environmental Law.

Assignor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Assignor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Assignor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Assignor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Assignor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Assignor or any tenant of any Environmental Law. Assignor will immediately notify Lender in writing as soon as Assignor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Assignor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Assignor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Assignor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Assignor and any tenant are in compliance with applicable Environmental Law.


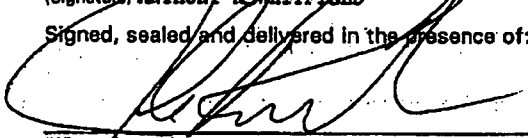
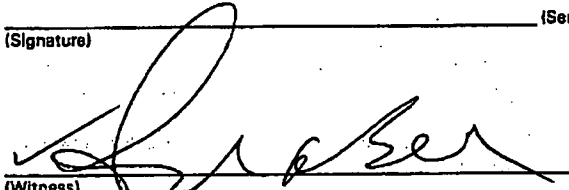
- I. Upon Lender's request and at any time, Assignor agrees, at Assignor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Assignor's obligations under this section at Assignor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Assignor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses to the extent permitted by law, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Assignment and in return Assignor will provide Lender with collateral of at least equal value to the Property secured by this Assignment without prejudice to any of Lender's rights under this Assignment.
- L. Notwithstanding any of the language contained in this Assignment to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Assignment regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.
15. **TERM.** This Assignment will remain in full force and effect until the Secured Debts are paid or otherwise discharged and Lender is no longer obligated to advance funds under any loan or credit agreement which is a part of the Secured Debts. If any or all payments of the Secured Debts are subsequently invalidated, declared void or voidable, or set aside and are required to be repaid to a trustee, custodian, receiver or any other party under any bankruptcy act or other state or federal law, then the Secured Debts will be revived and will continue in full force and effect as if this payment had not been made.
16. **CO-SIGNERS.** If Assignor signs this Assignment but does not sign the Secured Debts, Assignor does so only to assign Assignor's interest in the Property to secure payment of the Secured Debts and Assignor does not agree to be personally liable on the Secured Debts. If this Assignment secures a guaranty between Lender and Assignor, Assignor agrees to waive any rights that may prevent Lender from bringing any action or claim against Assignor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.
17. **WAIVERS.** Except to the extent prohibited by law, Assignor waives all homestead exemption rights relating to the Property.
18. **U.C.C. PROVISIONS.**
- Construction Loan.** This Assignment secures an obligation incurred for the construction of an improvement on the Property.
19. **OTHER TERMS.** If checked, the following are applicable to this Assignment:
- Line of Credit.** The Secured Debts include a revolving line of credit provision. Although the Secured Debts may be reduced to a zero balance, this Assignment will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.
- Additional Terms.**
20. **APPLICABLE LAW.** This Assignment is governed by the laws of South Carolina, except to the extent otherwise required by the laws of the jurisdiction where the Property is located, and the United States of America.
21. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** Each Assignor's obligations under this Assignment are independent of the obligations of any other Assignor. Lender may sue each Assignor individually or together with any other Assignor. Lender may release any part of the Property and Assignor will still be obligated under this Assignment for the remaining Property. The duties and benefits of this Assignment will bind and benefit the successors and assigns of Lender and Assignor.
22. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Assignment may not be amended or modified by oral agreement. No amendment or modification of this Assignment is effective unless made in writing and executed by Assignor and Lender. This Assignment is the complete and final expression of the agreement. If any provision of this

Assignment is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

23. **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 Assignment.

24. **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 and by registered or certified mail, return receipt requested, to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. Assignor will inform Lender in writing of any change in Assignor's name, address or other application information. Assignor will provide Lender any financial statements or information Lender requests. All financial statements and information Assignor gives Lender will be correct and complete. Assignor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Assignor's obligations under this Assignment and to confirm Lender's lien status on any Property. Time is of the essence.

25. **SIGNATURES.** By signing under seal, Assignor agrees to the terms and covenants contained in this Assignment. Assignor also acknowledges receipt of a copy of this Assignment.

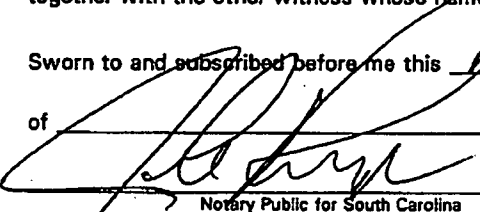
(Entity Name)

(Signature) ANTHONY M. WESTFIELD (Seal) _____ (Seal)
Signed, sealed and delivered in the presence of:

(Witness) _____ (Witness) 

PROBATE:
STATE OF SC COUNTY OF Charleston) ss.

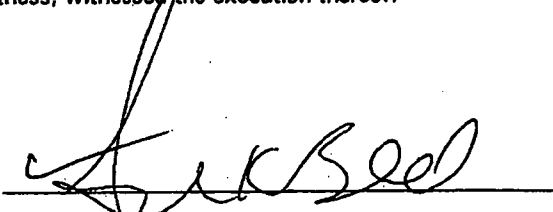
Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Assignor (and each Assignor if more than one) sign, seal and deliver the foregoing Assignment and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 16/1/08 day

of _____



Notary Public for South Carolina (Seal)



My commission expires: 9-12-11

EXHIBIT "A"

All that certain piece, parcel, lot or tract of land, with the buildings and improvements thereon, situate, lying and being in the County of Dorchester, State of South Carolina, and being known and designated as Lot 6, Block K, Oakmont Subdivision, as shown on a plat entitled 'A Plat Showing Block H, Lots 1-6, Block K, Lots 1-6, Block J, Lots 7 & 8, Oakmont Subdivision, Dorchester County, South Carolina' duly recorded in the Dorchester County RMC office in Plat Book 22 at page 126. Said parcel having such size, shape metes, bounds, location and dimensions as shown on the aforesaid plat to which reference is hereby made.

Being the same property conveyed to Anthony M. Whitfield by deed of Wells Fargo Bank, N.A., as Trustee for Option One Mortgage Loan Trust 2005-4, Asset-Backed Certificates, Series 2005-4, dated April 18, 2008, and recorded in Book 6597 at page 103 in the RMC office for Dorchester County.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)	CASE NUMBER: 2012-CP-18- 2119
Harbor National Bank,)	
)	
Plaintiff,)	
)	
v.)	
)	
Anthony M. Whitfield ,)	
)	
Defendant.)	

COMPLAINT
 (Foreclosure of Real Estate)
 (Action On Note)
 (Non-Jury)

2012 SEP - 7 PM 4: 20
 CERTIFIED COPY
 CLERK OF COURT
 CHARLESTON, SOUTH CAROLINA
Carol Whitfield

The Plaintiff, complaining of the Defendant above-named, would respectfully show unto this Court:

1. The Plaintiff is a national banking organization organized and existing pursuant to the laws of the United States of America, with its principal place of business located in South Carolina.
2. Defendant Anthony M. Whitfield is a citizen and resident of the County of Charleston, State of South Carolina.
3. The real property hereinafter described, which is the subject of this action, is situated and located in Dorchester County, South Carolina.
4. All parties hereto and all matters herein are within the jurisdiction of this Court.

RAB
#1

FOR A FIRST CAUSE OF ACTION
(Action on Note)

5. Heretofore, on or about April 13, 2007, for value received the Defendant Anthony M. Whitfield executed and delivered to Harbor National Bank, a certain Promissory Note, Loan No. 40031600 a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference, by which, according to the terms and conditions set out therein, Anthony M. Whitfield promised to pay

to Harbor National Bank the sum of One Hundred Forty Thousand and no/100 (\$140,000.00) Dollars, together with interest thereon at the rate of 7.5 % per annum on the unpaid balance, with a maturity date of April 13, 2012.

6. The payment due under the Note referred to in the preceding paragraph is in default, and the conditions of said Note have been broken.

7. Defendant Anthony M. Whitfield has committed an act of default under the aforesaid Note.

8. The Plaintiff has made demand upon Defendant Anthony M. Whitfield to pay the entire amount due under the Note, but the said Defendant has failed and refused to make such payment.

9. The failure of Defendant Anthony M. Whitfield to make payment of the balance due constitutes a breach of the Note.

10. Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note as August 17, 2012, the principal sum of One Hundred Thirty-Two Thousand, Six Hundred Forty-One and 57/100 (\$132,641.57) Dollars, accumulated interest of Three Thousand, Eighty-Three and 29/100 (\$3,083.56) Dollars, and interest continuing to accumulate at the current rate of \$51.58 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

11. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

12. By reason of the aforesaid breach of contract, the Plaintiff has suffered damages in

RAB
#2

the amount of One Hundred Thirty-Two Thousand, Six Hundred Forty-One and 57/100 (\$132,641.57) Dollars, accumulated interest of Three Thousand, Eighty-Three and 29/100 (\$3,083.56) Dollars, and interest continuing to accumulate at the current rate of \$51.58 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

FOR A SECOND CAUSE OF ACTION
(Mortgage Foreclosure)

13. The allegations of paragraphs One (1) through Twelve (12) of this Complaint are realleged as if repeated herein verbatim.

14. To further secure his obligation under the aforesaid Promissory Note, on April 13, 2007, Anthony M. Whitfield executed a Real Estate Mortgage, whereby to secure the liability under the Promissory Note and any further advances thereof, a mortgage was granted to and upon the following described property, to wit:

RAB #3
All that piece, parcel or lot of land, situate, lying and being in the County of Dorchester, State of South Carolina, and being shown and designated as Lot 48, Section two, Oak Knoll Estates, on a plat prepared by G. Robert George and Associates, Inc., entitled "Platt Showing a Portion of Oak Knoll Estates, Located in Dorchester County, South Carolina"; said plat being dated November, 1978, and being duly recorded in the Office of the Clerk of Court for Dorchester County on December 19, 1978, in Plat Book 26, Page 122 (Cabinet C, Slide 151). Reference to said plat is hereby craved for a more complete description reference to distances, courses, metes, and bounds.

BEING the same premises conveyed to Anthony M. Whitfield by deed of Patrick R. Watts, Master in Equity for Dorchester County, Dated October 2, 2006 and recorded in Book 5619, Page 131 in the RMC Office for Dorchester County.

TMS #145-07-05-048

Address: 732 Gahagan Drive, Summerville, SC 29485

(hereinafter referred to as the PROPERTY); a true and correct copy of the said Mortgage is attached hereto as Exhibit "B."

15. On May 1, 2007, the said Mortgage was recorded in the Office of the Register of Mesne Conveyances for Dorchester County in Book 5997, at Page 330

16. According to the terms and conditions of the aforesaid Real Estate Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable without notice, at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all cost of collection, including a reasonable attorney's fees, shall become an obligation of the Defendant Anthony M. Whitfield, to be secured by the said mortgage as part of the debt secured thereby.

17. Further, under the terms and conditions of the said Mortgages, it was agreed that the mortgagor would pay all taxes, assessments, water rates, other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if the mortgagor failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

RAB
#4

18. According to the terms of the said Mortgages, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default thereunder, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the debt secured by said mortgage.

19. The payments due under said Note is due and has been in default since April 13, 2012, 2012, and the conditions of said mortgage have been broken.

20. The entire balance of said indebtedness due and payable, and that there is due on said note as of August 17, 2012, the sum of One Hundred Thirty-Two Thousand, Six Hundred Forty-One and 57/100 (\$132,641.57) Dollars, accumulated interest of Three Thousand, Eighty-Three and 29/100 (\$3,083.56) Dollars, and interest continuing to accumulate at the current rate of \$51.58 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

21. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

22. The Plaintiff is entitled to an Order foreclosing the mortgage upon the PROPERTY, and the proceeds of the said foreclosure to be distributed first to the costs and expenses of the sale thereof, second to be applied against accrued principal and interest under the Note and mortgage, third to payment of the costs, expenses and reasonable attorneys fees incurred by the Plaintiff in prosecuting this foreclosure action, and the Court should thereafter pay any excess proceeds of sale to such claimants in such priorities as their interests may appear.

FOR A THIRD CAUSE OF ACTION
(Appointment of Receiver)

23. The allegations of paragraphs One (1) through Twenty-Two (22) of this Complaint are realleged as if repeated herein verbatim.

24. To further secure his obligation under the aforesaid Promissory Note, on April 13,

2007, Anthony M. Whitfield executed an Assignment of Leases and Rents, whereby to secure the liability under the Promissory Note and any further advances thereof, the Defendant assigned all leases and rents from the subject PROPERTY to the Plaintiff; a true and correct copy of the said Assignment of Leases and Rents is attached hereto as Exhibit "C."

25. On May 1, 2007, the said Assignment of Leases and Rents was recorded in the Office of the Register of Mesne Conveyances for Dorchester County in Book 5997, at Page 350.

26. According to the terms of the said Assignment of Leases and Rents, and as additional security, the Defendant assigned all rents, issues and profits of the PROPERTY from and after any default thereunder, and should legal proceedings be instituted pursuant to said Assignment of Leases and Rents, the Plaintiff were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the secured debt.

AAB
#16

27. The payments due under said Note is due and has been in default since April 13, 2012, and the conditions of said mortgage have been broken.

28. The entire balance of said indebtedness due and payable, and that there is due on said note as of August 17, 2012, the sum of One Hundred Thirty-Two Thousand, Six Hundred Forty-One and 57/100 (\$132,641.57) Dollars, accumulated interest of Three Thousand, Eighty-Three and 29/100 (\$3,083.56) Dollars, and interest continuing to accumulate at the current rate of \$51.58 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

29. The Plaintiff is entitled to have a Receiver appointed for the PROPERTY to collect

all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt hereunder.

WHEREFORE, the Plaintiff prays for judgment as follows:

(1) Under the First Cause of Action, for judgment against Defendant Anthony M. Whitfield in the amount of One Hundred Thirty-Two Thousand, Six Hundred Forty-One and 57/100 (\$132,641.57) Dollars, accumulated interest of Three Thousand, Eighty-Three and 29/100 (\$3,083.56) Dollars, with interest continuing to accumulate at the current rate of \$51.58 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees;

(2) Under the Second Cause of Action, that

(a) That the amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys fees and the costs of this action.

(b) That the Plaintiff's Mortgage be declared a first lien and that Plaintiff has judgment of foreclosure for the amount found to be due and owing under the promissory note, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and the costs of this action.

(c) That the PROPERTY be sold under the direction of this Court, the equities of redemption are barred, and that the proceeds of sale are applied as follows:

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

Second, to the payment and discharge of the amount due on the Plaintiff's Note and Mortgage, with the costs and disbursements of this action together with attorneys' fees, and

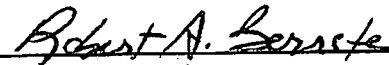
RAB
#2

- Third, the surplus, if any, be distributed according to law; and
- 3) Under the Third Cause of Action, for the Appointment of a Receiver to collect all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt
 - 4) For such other and further relief as may be just and proper.

#8

September 5, 2012
Charleston, South Carolina

BERNSTEIN & BERNSTEIN, P.A.



Robert A. Bernstein
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)
ATTORNEYS FOR THE PLAINTIFF

ANTHONY M. WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

247-86-7213
Loan Number 400031600
Date 04/13/2007
Maturity Date 04/13/2012
Loan Amount \$ 140,000.00
Renewal Of

2012-CP-18-2119

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of One Hundred Forty Thousand Dollars \$ 140,000.00
 Single Advance: I will receive all of this principal sum on 04/13/2007. No additional advances are contemplated under this note.
 Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.
Conditions: The conditions for future advances are _____

Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____
 Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).
INTEREST: I agree to pay interest on the outstanding principal balance from 04/13/2007 at the rate of 7.500% per year until Maturity
 Variable Rate: This rate may than change as stated below.
 Index Rate: The future rate will be _____ the following index rate: _____
 No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.
 Frequency and Timing: The rate on this note may change as often as _____
A change in the interest rate will take effect _____
 Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %
The rate may not change more than _____ % each _____
Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:
 The amount of each scheduled payment will change. The amount of the final payment will change.

ACCUAL METHOD: Interest will be calculated on a Actual/360 basis.
POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:
 on the same fixed or variable rate basis in effect before maturity (as indicated above).
 at a rate equal to 14.000%

LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the payment amount with a minimum of \$20.00
 ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which are are not included in the principal amount above: APPRAISAL FEE \$325, ORIGATION FEE \$700, CREDIT REPORT \$15 AND FLOOD SEARCH \$15

PAYMENTS: I agree to pay this note as follows:
 Interest: I agree to pay accrued interest _____
 Principal: I agree to pay the principal _____
 Installments: I agree to pay this note in 60 payments. The first payment will be in the amount of \$ 989.55 and will be due 05/13/2007. A payment of \$ 989.55 will be due on the 13th day of each Month thereafter. The final payment of the entire unpaid balance of principal and interest will be due April 13, 2012

ADDITIONAL TERMS:

SECURITY: This note is separately secured by (describe separate document by type and date):
TITLED INSURED 1ST REAL ESTATE MORTGAGE AND ASSIGNMENT OF LEASES & RENTS OF EVEN DATE ON 732 GARAGAN DRIVE, SUMMERVILLE, SC
(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

PURPOSE: The purpose of this loan is TO REFINANCE RENTAL PROPERTY LOCATED AT 732 GARAGAN DR. SUMMERVILLE, SC

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

Signature for Lender
Angela Bell
Commercial Lender

Anthony M. Whitfield
ANTHONY M. WHITFIELD

CERTIFIED COPY
2012 SEP -7 PM 1:20
Clerk of Court
Dorchester County

RETURN TO:
J. STANLEY CLAYPOOLE, PA
2155 NORTHPARK LANE
NORTH CHARLESTON, S.C. 29406

CERTIFIED COPY

2007 SEP - 7 PM 4: 20

CERTIFIED TO BE A TRUE COPY

Melissa Cole

This document was prepared by (name, address, phone):
Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 06/20/2015

State of South Carolina Space Above This Line For Recording Data

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. DATE AND PARTIES. The date of this Mortgage is 04/13/2007 and the parties and their addresses are as follows:

MORTGAGOR: ANTHONY M WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

2. MORTGAGE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

SEE ATTACHED EXHIBIT 'A'

The property is located in DORCHESTER at 732 GAHAGAN
(County)

DRIVE (Address) SUMMERVILLE (City), South Carolina 29485 (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

CERTIFIED COPY

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed 140,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., *borrower's name, note amount, interest rate, maturity date*):

One note of even date in the principal amount of 140,000.00 with final payment due 04/13/2012

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
- C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

(page 2 of 8)

CERTIFIED COPY

10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property):

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles; and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

(page 3 of 8)

CERTIFIED COPY

any Rents in trust for Lender and Mortgagee will not commingle the Rents with any other funds. When Lender so directs, Mortgagee will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagee agrees that this Security Instrument is immediately effective between Mortgagee and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagee warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagee, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagee or any party to the Lease defaults or fails to observe any applicable law, Mortgagee will promptly notify Lender. If Mortgagee neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagee will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagee will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagee will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagee will perform all of Mortgagee's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. DEFAULT. Mortgagee will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagee or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagee or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagee's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagee with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagee is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagee's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagee agrees to pay all of Lender's expenses if Mortgagee breaches any covenant in this Mortgage. Mortgagee will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagee agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagee agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

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

(page 4 of 8)

CERTIFIED COPY

characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

(page 5 of 8)

CERTIFIED COPY

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. **NO ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. **WAIVER OF HOMESTEAD.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. **U.C.C. PROVISIONS.** If checked, the following are applicable to, but do not limit, this Mortgage:

- Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

(page 6 of 8)

- Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**
- Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- Additional Terms.**

CERTIFIED COPY
 02 SEP - 7 PM 4:21
 Clerk of Court
 DOMESTIC INDUSTRY

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

Actual authority was granted to the parties signing below by resolution signed and dated _____.

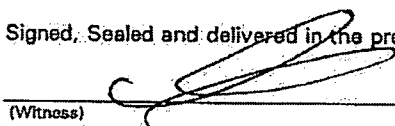
Entity Name: _____

Entity Name: _____


 (Signature) ANTHONY M. WHITFIELD (Date) 04/13/2007 (Seal)

_____ (Signature) _____ (Date) (Seal)

Signed, Sealed and delivered in the presence of:


 (Witness)


 (Witness)

Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

PROBATE:

STATE OF South Carolina COUNTY OF Charleston } ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 3rd day

of April, 2007

Melissa Cole

Notary Public for South Carolina



My commission expires: 06/20/2015

2012 SEP - 7 PM 4:21
CERTIFIED COPY
Charles M. ...
CLERK OF COURT
DORCHESTER COUNTY

Exhibit "A"

ALL that piece, parcel of lot of land, situate, lying and being in the County of Dorchester, State of South Carolina, and being shown and designated as Lot 48, Section Two, Oak Knoll Estates, on a plat prepared by G. Robert George and Associates, Inc., entitled "Plat Showing a Portion of Oak Knoll Estates, Located in Dorchester County, South Carolina"; said plat being dated November, 1978, and being duly recorded in the Office of the Clerk of Court for Dorchester County on December 19, 1978, in Plat Book 26, Page 122 (Cabinet C, Slide 151). Reference to said plat is hereby craved for a more complete description reference to distances, courses, metes, and bounds.

BEING the same premises as conveyed to the Mortgagor herein by deed of Patrick R. Watts, Master in Equity for Dorchester County, dated October 2, 2006 and recorded in Book 5619, Page 131 in the RMC Office for Dorchester County.

TMS # - 145-07-05-048

CLERK OF COURT
DORCHESTER COUNTY

Cheryl Williams

2012 SEP - 7 PM 4:21

CERTIFIED COPY

EXHIBIT B
Page 9 of 9

R. 153

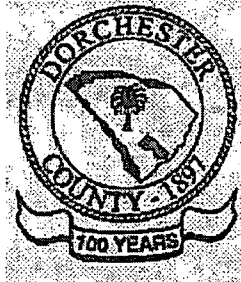
BK 5997PG350

FILED - RECORDED
RMC / ROD

2007 MAY -1 PM 2:30

MARGARET L. BAILEY
DORCHESTER COUNTY, SC

CERTIFIED COPY
2012 SEP -7 PM 4:21
Cheryl Williams
CLERK OF COURT
DORCHESTER COUNTY



THIS PAGE IS HEREBY ATTACHED AND MADE PART OF
THE PERMANENT RECORD OF THIS DOCUMENT. IT IS
NOT TO BE DETACHED OR REMOVED AND MUST BE
CITED AS THE FIRST PAGE OF THE RECORDED
DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR
RECORDING PURPOSES AND IS NOT TO BE USED FOR
ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

EXHIBIT C
Page 1 of 9 R. 154

Handwritten initials

RETURN TO:
J. STANLEY CLAYPOOLE, PA
2155 NORTHPARK LANE
NORTH CHARLESTON, S.C. 29406

State of South Carolina _____ Space Above This Line For Recording Data _____

This document was prepared by (name, address, phone number): Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

(843) 852-6400

ASSIGNMENT OF LEASES AND RENTS

1. DATE AND PARTIES. The date of this Assignment of Leases and Rents (Assignment) is 04/13/2007. The parties and their addresses are:

ASSIGNOR: ANTHONY M WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

Handwritten signature: Cheryl M. ...
2012 SEP - 7 PM 4:21
CERTIFIED COPY
DORCHESTER COUNTY CLERK OF COURTY

Refer to the Addendum that is attached and incorporated herein for additional Assignors.

LENDER: Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

2. ASSIGNMENT OF LEASES AND RENTS. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Assignor's performance under this Assignment, Assignor irrevocably assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (all referred to as Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as Leases).

B. Rents, issues and profits (all referred to as Rents), including but not limited to security deposits, minimum rent, percentage rent, additional rent, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Assignor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property.

C. The term Property as used in this Assignment shall include the following described real property:

SEE ATTACHED EXHIBIT 'A'

BK 5997PG352

The Property is located in DORCHESTER County at 732 GAHAGAN DRIVE SUMMERVILLE, SC 29485 (Address, City, State, ZIP Code).

In the event any Item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

- 3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Assignment at any one time will not exceed \$ 140,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Assignment. Also, this limitation does not apply to advances made under the terms of this Assignment to protect Lender's security and to perform any of the covenants contained in this Assignment. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.
- 4. **SECURED DEBTS.** This Assignment will secure the following Secured Debts:
 - A. **Specific Debts.** The following debts and all extensions, renewals, refinancings, modifications and replacements. (Include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)

CERTIFIED COPY
 2012 SEP - 7 PM 4:21
 Clerk/Recorder
 CLERK OF COURT
 DORCHESTER COUNTY

- One or more of the debts secured by this Assignment contains a future advance provision.
- B. **All Debts.** All present and future debts from Assignor and _____

to Lender, even if this Assignment is not specifically referenced or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Assignment, each agrees that it will secure debts incurred either individually or with others who may not sign this Assignment. Nothing in this Assignment constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide notice of the right of rescission, Lender waives any subsequent security interest in the Assignor's principal dwelling that is created by this Assignment. This Assignment will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Assignment will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

- C. **Sums Advanced.** All sums advanced and expenses incurred by Lender under the terms of this Assignment.
- 5. **PAYMENTS.** Assignor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Assignment.
- 6. **COLLECTION OF RENTS.** Assignor may collect, receive, enjoy and use the Rents so long as Assignor is not in default. Assignor will not collect in advance any Rents due in future lease periods, unless Assignor first obtains Lender's written consent. Upon default, Assignor will receive any Rents in trust for Lender and Assignor will not commingle the Rents with any other funds. When Lender so directs, Assignor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Assignor agrees that this Assignment is immediately effective between Assignor and Lender and effective as to third parties on the recording of this Assignment.
- 7. **WARRANTIES AND REPRESENTATIONS.** To induce Lender to enter into the Loan, Assignor makes these representations and warranties for as long as this Assignment is in effect.
 - A. **Power.** Assignor is duly organized, validly existing and in good standing under the laws in the jurisdiction where Assignor was organized and is duly qualified, validly existing and in good standing in all jurisdictions in which Assignor operates or Assignor owns or leases property. Assignor has the power and authority to enter into this transaction and to carry on Assignor's business or activity as now conducted.
 - B. **Authority.** The execution, delivery and performance of this Assignment and the obligation evidenced by this Assignment: are within Assignor's duly authorized powers; has received all necessary governmental approval; will not violate any provision of law or order of court or governmental agency; and will not violate any agreement to which Assignor is a party or to which Assignor is or any of Assignor's property is subject.

(page 2 of 7)

[Signature]

3 of 9

- C. **Name and Place of Business.** Other than previously disclosed in writing to Lender, Assignor has not changed Assignor's name or principal place of business within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Assignor does not and will not use any other name and will preserve Assignor's existing name, trade names and franchises.
- D. **Ownership or Lease of Property.** Assignor owns or leases all property that Assignor needs to conduct Assignor's business and activities. All of Assignor's property is free and clear of all liens, security interests, encumbrances and other adverse claims and interests, except those Lender previously agreed to in writing.
- E. **Compliance with Laws.** Assignor is not violating any laws, regulations, rules, orders, judgments or decrees applicable to Assignor or Assignor's property, except for those that Assignor is challenging in good faith through proper proceedings after providing adequate reserves to fully pay the claim and its challenge should Assignor lose.
- F. **Title.** Assignor has good title to the Leases, Rents and Property and the right to assign, grant, bargain, convey and mortgage to Lender as additional security the Leases and Rents, and no other person has any right in the Leases and Rents.
- G. **Recordation.** Assignor has recorded the Leases as required by law or as otherwise prudent for the type and use of the Property.
- H. **Default.** No default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Assignor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Assignor or any party to the Lease defaults or fails to observe any applicable law, Assignor will promptly notify Lender.
- I. **Lease Modification.** Assignor has not sublet, modified, extended, canceled, or otherwise altered the Leases, or accepted the surrender of the Property covered by the Leases (unless the Leases so required).
- J. **Encumbrance.** Assignor has not assigned, compromised, subordinated or encumbered the Leases and Rents.
8. **COVENANTS.** Assignor agrees to the following covenants:
- A. **Rent Abatement and Insurance.** When any Lease provides for an abatement of Rents due to fire, flood or other casualty, Assignor will insure against this risk of loss with a policy satisfactory to Lender. Assignor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.
- B. **Copies of Leases.** Assignor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed.
- C. **Right to Rents.** Immediately after the execution of this Assignment, Assignor will notify all current and future tenants and others obligated under the Leases of Lender's right to the Leases and Rents, and will request that they immediately pay all future Rents directly to Lender when Assignor or Lender asks them to do so.
- D. **Accounting.** When Lender requests, Assignor will provide to Lender an accounting of Rents, prepared in a form acceptable to Lender, subject to generally accepted accounting principles and certified by Assignor or Assignor's accountant to be current, accurate and complete as of the date requested by Lender.
- E. **Lease Modification.** Assignor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so required) without Lender's written consent.
- F. **Encumbrance.** Assignor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent.
- G. **Future Leases.** Assignor will not enter into any future Leases without prior written consent from Lender. Assignor will execute and deliver such further assurances and assignments as to these future Leases as Lender requires from time to time.
- H. **Personal Property.** Assignor will not sell or remove any personal property on the Property, unless Assignor replaces this personal property with like kind for the same or better value.
- I. **Prosecution and Defense of Claims.** Assignor will appear in and prosecute its claims or defend its title to the Leases and Rents against any claims that would impair Assignor's interest under this Assignment and, on Lender's request, Assignor will also appear in any action or proceeding on behalf of Lender. Assignor agrees to assign to Lender, as requested by Lender, any right, claims or defenses which Assignor may have against parties who supply labor or materials to improve or maintain the leaseholds subject to the Leases and/or the Property.
- J. **Liability and Indemnification.** Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses or damages due to Lender's gross negligence or intentional torts to the extent permitted by law. Otherwise, Assignor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.
- K. **Leasehold Estate.** Assignor will not cause or permit the leasehold estate under the Leases to merge with Assignor's reversionary interest, and agrees that the Leases shall remain in full force and effect regardless of any merger of the Assignor's interests and of any merger of the interests of Assignor and any party obligated under the Leases.
- L. **Insolvency.** Lender will be the creditor of each tenant and of anyone else obligated under the Leases who is subject to an assignment for the benefit of creditors, an insolvency, a dissolution or a receivership proceeding, or a bankruptcy.

(page 3 of 7)

9. **TRANSFER OF AN INTEREST IN THE ASSIGNOR.** If Assignor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
- A. A beneficial interest in Assignor is sold or transferred.
 - B. There is a change in either the identity or number of members of a partnership or similar entity.
 - C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.
- However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Assignment.
10. **DEFAULT.** Assignor will be in default if any of the following occur with regard to the Secured Debts that are secured by this Assignment:
- A. **Payments.** Assignor fails to make a payment in full when due.
 - B. **Insolvency or Bankruptcy.** Assignor makes an assignment for the benefit of creditors or becomes insolvent, either because Assignor's liabilities exceed Assignor's assets or Assignor is unable to pay Assignor's debts as they become due; or Assignor petitions for protection under federal, state or local bankruptcy, insolvency or debtor relief laws, or is the subject of a petition or action under such laws and fails to have the petition or action dismissed within a reasonable period of time not to exceed 60 days.
 - C. **Death or Incompetency.** If Assignor is an individual, Assignor dies or is declared legally incompetent.
 - D. **Business Termination.** If Assignor is not an individual, Assignor merges, dissolves, reorganizes or ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.
 - E. **Failure to Perform.** Assignor fails to perform any condition or to keep any promise or covenant of this Assignment, any other document evidencing or pertaining to the Loan, or any other debt or agreement Assignor has with Lender.
 - F. **Misrepresentation.** Assignor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
 - G. **Property Transfer.** Assignor transfers all or a substantial part of Assignor's money or property.
 - H. **Property Value.** The value of the Property declines or is impaired.
 - I. **Name Change.** Assignor changes Assignor's name or assumes an additional name without notifying Lender before making such a change.
 - J. **Material Change.** Without first notifying Lender, there is a material change in Assignor's business, including ownership, management, and financial conditions.
 - K. **Insecurity.** Lender reasonably believes that Lender is insecure.
11. **REMEDIES.** After Assignor defaults, and after Lender gives any legally required notice and opportunity to cure the default, Lender may at Lender's option do any one or more of the following:
- A. **Acceleration.** Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due.
 - B. **Additional Security.** Lender may demand additional security or additional parties to be obligated to pay the Secured Debts.
 - C. **Sources.** Lender may use any and all remedies Lender has under the state law where the Property is located or federal law or in any instrument evidencing or pertaining to the Secured Debts.
 - D. **Insurance Benefits.** Lender may make a claim for any and all insurance benefits or refunds that may be available on Assignor's default.
 - E. **Payments Made On Assignor's Behalf.** Amounts advanced on Assignor's behalf will be immediately due and may be added to the Secured Debts.
 - F. **Rents.** Lender may terminate Assignor's right to collect Rents and directly collect and retain Rents in Lender's name without taking possession of the Property and to demand, collect, receive, and sue for the Rents, giving proper receipts and releases. In addition, after deducting all reasonable expenses of collection from any collected and retained Rents, Lender may apply the balance as provided for by the Secured Debts.
 - G. **Entry.** Lender may enter, take possession, manage and operate all or any part of the Property; make, modify, enforce or cancel or accept the surrender of any Leases; obtain or evict any tenants and licensees; increase or reduce Rents; decorate, clean and make repairs or do any other act or incur any other cost Lender deems proper to protect the Property as fully as Assignor could do. Any funds collected from the operation of the Property may be applied in such order as Lender may deem proper, including, but not limited to, payment of the following: operating expenses, management, brokerage, attorneys' and accountants' fees, the Secured Debts, and toward the maintenance of reserves for repair or replacement. Lender may take such action without regard to the adequacy of the security, with or without any action or proceeding, through any person or agent, or receiver to be appointed by a court, and irrespective of Assignor's possession. The collection and application of the Rents or the entry upon and taking possession of the Property as set out in this section shall not cure or waive any notice of default under the Secured Debts, this Assignment, or invalidate any act pursuant to such notice. The enforcement of such remedy by Lender, once exercised, shall continue for so long as Lender shall elect, notwithstanding that such collection and application of Rents may have cured the original default.

(page 4 of 7)

- H. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up 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.
12. **APPOINTMENT OF A RECEIVER.** On or after an Assignor's default, Assignor agrees to Lender making an application to the court for an appointment of a receiver for the benefit of Lender to take possession of the Property and the Leases, with the power to receive, collect and apply the Rents. Any Rents collected will be applied as the court authorizes to pay taxes, to provide insurance, to make repairs and to pay costs or any other expenses relating to the Property, the Leases and Rents, and any remaining sums shall be applied to the Secured Debts. Assignor agrees that this appointment of a receiver may be without giving bond, without reference to the then-existing value of the Property, and without regard to the insolvency of any person liable for any of the Secured Debts.
13. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** To the extent permitted by law, Assignor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Assignment. Unless the applicable law that governs this Assignment is North Dakota, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. These expenses will bear interest from the date of payment until paid in full at the contract interest rate then in effect for the Loan. To the extent permitted by the United States Bankruptcy Code, Assignor agrees to pay the reasonable attorneys' fees Lender incurs to collect this Assignment as awarded by any court exercising jurisdiction under the Bankruptcy Code.
14. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste," "hazardous substance," or "regulated substances" under any Environmental Law.

Assignor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Assignor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Assignor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Assignor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Assignor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Assignor or any tenant of any Environmental Law. Assignor will immediately notify Lender in writing as soon as Assignor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Assignor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Assignor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Assignor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Assignor and any tenant are in compliance with applicable Environmental Law.

(page 6 of 7)

BK 5997PG356

- I. Upon Lender's request and at any time, Assignor agrees, at Assignor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Assignor's obligations under this section at Assignor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Assignor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses to the extent permitted by law, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Assignment and in return Assignor will provide Lender with collateral of at least equal value to the Property secured by this Assignment without prejudice to any of Lender's rights under this Assignment.
- L. Notwithstanding any of the language contained in this Assignment to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Assignment regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

15. **TERM.** This Assignment will remain in full force and effect until the Secured Debts are paid or otherwise discharged and Lender is no longer obligated to advance funds under any loan or credit agreement which is a part of the Secured Debts. If any or all payments of the Secured Debts are subsequently invalidated, declared void or voidable, or set aside and are required to be repaid to a trustee, custodian, receiver or any other party under any bankruptcy act or other state or federal law, then the Secured Debts will be revived and will continue in full force and effect as if this payment had not been made.

16. **CO-SIGNERS.** If Assignor signs this Assignment but does not sign the Secured Debts, Assignor does so only to assign Assignor's interest in the Property to secure payment of the Secured Debts and Assignor does not agree to be personally liable on the Secured Debts. If this Assignment secures a guaranty between Lender and Assignor, Assignor agrees to waive any rights that may prevent Lender from bringing any action or claim against Assignor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

17. **WAIVERS.** Except to the extent prohibited by law, Assignor waives all homestead exemption rights relating to the Property.

18. **U.C.C. PROVISIONS.**

Construction Loan. This Assignment secures an obligation incurred for the construction of an improvement on the Property.

19. **OTHER TERMS.** If checked, the following are applicable to this Assignment:

Line of Credit. The Secured Debts include a revolving line of credit provision. Although the Secured Debts may be reduced to a zero balance, this Assignment will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

Additional Terms.

CERTIFIED COPY
 2008 SEP - 7 PM 4: 22
 Clerk of Court
 RICHEY COUNTY
 [Signature]

20. **APPLICABLE LAW.** This Assignment is governed by the laws of South Carolina, except to the extent otherwise required by the laws of the jurisdiction where the Property is located, and the United States of America.

21. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** Each Assignor's obligations under this Assignment are independent of the obligations of any other Assignor. Lender may sue each Assignor individually or together with any other Assignor. Lender may release any part of the Property and Assignor will still be obligated under this Assignment for the remaining Property. The duties and benefits of this Assignment will bind and benefit the successors and assigns of Lender and Assignor.

22. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Assignment may not be amended or modified by oral agreement. No amendment or modification of this Assignment is effective unless made in writing and executed by Assignor and Lender. This Assignment is the complete and final expression of the agreement. If any provision of this

Assignment is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

- 23. 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 Assignment.
- 24. 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 and by registered or certified mail, return receipt requested, to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. Assignor will inform Lender in writing of any change in Assignor's name, address or other application information. Assignor will provide Lender any financial statements or information Lender requests. All financial statements and information Assignor gives Lender will be correct and complete. Assignor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Assignor's obligations under this Assignment and to confirm Lender's lien status on any Property. Time is of the essence.
- 25. SIGNATURES. By signing under seal, Assignor agrees to the terms and covenants contained in this Assignment. Assignor also acknowledges receipt of a copy of this Assignment.

CERTIFIED COPY
 SEP - 7 PM 11:22
 Clerk of Court
 DOMESTIC DISTRICT COURT

(Entity Name) _____

Anthony M. Whitfield (Seal)
 (Signature) ANTHONY M. WHITFIELD

(Signature) _____ (Seal)

Signed, sealed and delivered in the presence of:

[Signature]
 (Witness)

Melissa Cole
 (Witness)

PROBATE:

STATE OF South Carolina, COUNTY OF Charleston) ss:

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Assignor (and each Assignor if more than one) sign, seal and deliver the foregoing Assignment and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 13th day

of April, 2007

Melissa Cole (Seal)
 Notary Public for South Carolina

[Signature]

My commission expires: 06/20/2015

Exhibit "A"

ALL that piece, parcel of lot of land, situate, lying and being in the County of Dorchester, State of South Carolina, and being shown and designated as Lot 48, Section Two, Oak Knoll Estates, on a plat prepared by G. Robert George and Associates, Inc., entitled "Plat Showing a Portion of Oak Knoll Estates, Located in Dorchester County, South Carolina"; said plat being dated November, 1978, and being duly recorded in the Office of the Clerk of Court for Dorchester County on December 19, 1978, in Plat Book 26, Page 122 (Cabinet C, Slide 151). Reference to said plat is hereby craved for a more complete description reference to distances, courses, metes, and bounds.

BEING the same premises as conveyed to the Mortgagor herein by deed of Patrick R. Watts, Master in Equity for Dorchester County, dated October 2, 2006 and recorded in Book 5619, Page 131 in the RMC Office for Dorchester County.

TMS # - 145-07-05-048

George H. Williams
CLERK OF COURT
DORCHESTER COUNTY
2012 SEP - 7 PM 4: 22
CERTIFIED COPY

EXHIBIT C
Page 9 of 9

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF DORCHESTER)

CASE NUMBER: 2012-CP-18- 2738)

Harbor National Bank,)

Plaintiff,)

v.)

Anthony M. Whitfield ,)

Defendant.)

COMPLAINT
(Foreclosure of Real Estate)
(Action On Note)

(Non-Jury)

CERTIFIED COPY
2012 DEC -6 PM 3:11
CLERK OF COURT
DORCHESTER COUNTY

The Plaintiff, complaining of the Defendant above-named, would respectfully show unto this

Court:

1. The Plaintiff is a national banking organization organized and existing pursuant to the laws of the United States of America, with its principal place of business located in South Carolina.

2. Defendant Anthony M. Whitfield is a citizen and resident of the County of Charleston, State of South Carolina.

3. The real property hereinafter described, which is the subject of this action, is situated and located in Dorchester County, South Carolina.

4. All parties hereto and all matters herein are within the jurisdiction of this Court.

FOR A FIRST CAUSE OF ACTION
(Action on Note)

5. Heretofore, on or about October 9, 2007, for value received the Defendant Anthony M. Whitfield executed and delivered to Harbor National Bank, a certain Promissory Note, Loan No. 40046700, a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference,

RAB #1

by which, according to the terms and conditions set out therein, Anthony M. Whitfield promised to pay to Harbor National Bank the sum of One Hundred Thirty-Seven Thousand and no/100 (\$137,000.00) Dollars, together with interest thereon at the rate of 7.25 % per annum on the unpaid balance, with a maturity date of October 13, 2012.

6. The payment due under the Note referred to in the preceding paragraph is in default, and the conditions of said Note have been broken.

7. Defendant Anthony M. Whitfield has committed an act of default under the aforesaid Note.

8. The Plaintiff has made demand upon Defendant Anthony M. Whitfield to pay the entire amount due under the Note, but the said Defendant has failed and refused to make such payment.

9. The failure of Defendant Anthony M. Whitfield to make payment of the balance due constitutes a breach of the Note.

10. Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note as November 30, 2012, the principal sum of One Hundred Twenty-Nine Thousand, Three Hundred Forty-Five and 86/100 (\$129,345.86) Dollars, accumulated interest of Two Thousand, Four Hundred Twenty-Two and 54/100 (\$2,422.54) Dollars, late fees of \$47.26, and interest continuing to accumulate at the current rate of \$26.0488 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

11. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable

RAB
#2

attorneys' fees incurred with respect to this action.

12. By reason of the aforesaid breach of contract, the Plaintiff has suffered damages in the amount of One Hundred Twenty-Nine Thousand, Three Hundred Forty-Five and 86/100 (\$129,345.86) Dollars, accumulated interest of Two Thousand, Four Hundred Twenty-Two and 54/100 (\$2,422.54) Dollars, late fees of \$47.26, and interest continuing to accumulate at the current rate of \$26.0488 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

FOR A SECOND CAUSE OF ACTION
(Mortgage Foreclosure)

13. The allegations of paragraphs One (1) through Twelve (12) of this Complaint are realleged as if repeated herein verbatim.

14. To further secure his obligation under the aforesaid Promissory Note, on October 9, 2007, Anthony M. Whitfield executed a Real Estate Mortgage, whereby to secure the liability under the Promissory Note and any further advances thereof, a mortgage was granted to and upon the following described property, to wit:

ALL that piece, parcel or lot of land, with improvements thereon, lying and being in the county of Dorchester, in the State of South Carolina, measuring and containing 0.5 of an acre, and butting and bounding as follows, to wit: North generally on lands of Mrs. Annie J. Roszell, 105 feet; East generally on lands of Mrs. Annie J. Roszell, 201 feet; South generally on a public road known as Jamison Road, 105 feet; and West generally on lands of Mrs. Annie J. Roszell, 210 feet; be the said dimensions, more or less, and having such shape, form and marks, curses, distances buttings, boundings and content as delineated on a plat of the same by H.H. Foster, R.L.S., surveyed October 25, 1958 a copy of which is made a pat of this by reference and is recorded in the RMC Office for Charleston County in Plat Book Tat Page 25. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

Being the same property conveyed to Anthony M. Whitfield by deed of

PA 3
#3

Patrick R. Watts, Master in Equity for Dorchester County dated April 19, 2006 and recorded in the Register of Deeds Office for at Book 5312 at Page 243.

TMS # 154-03-00-006.000

Address: 9708 Jamison Road, Ladson, SC 29456

(hereinafter referred to as the JAMISON ROAD PROPERTY); a true and correct copy of the said Mortgage is attached hereto as Exhibit "B."

15. On October 18, 2007, the said Mortgage was recorded in the Office of the Register of Deeds for Dorchester County in Book 6318, at page 57.

16. According to the terms and conditions of the aforesaid Real Estate Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable without notice, at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all cost of collection, including a reasonable attorney's fees, shall become an obligation of the Defendant Anthony M. Whitfield, to be secured by the said mortgage as part of the debt secured thereby.

RAB
#4

17. Further, under the terms and conditions of the said Mortgages, it was agreed that the mortgagor would pay all taxes, assessments, water rates, other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if the mortgagor failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

18. According to the terms of the said Mortgages and the Assignment of Leases and Rents, and as additional security, the Defendant assigned all rents, issues and profits of the mortgaged premises from and after any default thereunder, and should legal proceedings be instituted

pursuant to said mortgage, the mortgagee, its successors or assigns, were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the debt secured by said mortgage.

19. The payment due under said Note is due and has been in default since October 13, 2012, and the conditions of said mortgage have been broken.

20. The entire balance of said indebtedness due and payable, and that there is due on said note as of November 30, 2012, the sum of One Hundred Twenty-Nine Thousand, Three Hundred Forty-Five and 86/100 (\$129,345.86) Dollars, accumulated interest of Two Thousand, Four Hundred Twenty-Two and 54/100 (\$2,422.54) Dollars, late fees of \$47.26, and interest continuing to accumulate at the current rate of \$26.0488 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

21. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

22. The Plaintiff is entitled to an Order foreclosing the mortgage upon the JAMISON ROAD PROPERTY, and the proceeds of the said foreclosure to be distributed first to the costs and expenses of the sale thereof, second to be applied against accrued principal and interest under the Note and mortgage, third to payment of the costs, expenses and reasonable attorneys fees incurred by the Plaintiff in prosecuting this foreclosure action, and the Court should thereafter pay any excess proceeds of sale to such claimants in such priorities as their interests may appear.

FOR A THIRD CAUSE OF ACTION
(Appointment of Receiver)

23. The allegations of Paragraphs One (1) through Twenty-Two (22) of this Complaint are realleged as if repeated herein verbatim.

24. To further secure his obligation under the aforesaid Promissory Note, on October 9, 2007, Anthony M. Whitfield executed an Assignment of Leases and Rents, whereby to secure the liability under the Promissory Note and any further advances thereof, the Defendant assigned all leases and rents from the subject PROPERTY to the Plaintiff; a true and correct copy of the said Assignment of Leases and Rents is attached hereto as Exhibit "C."

25. On October 18, 2007, the said Assignment of Leases and Rents was recorded in the Office of the Register of Deeds for Dorchester County in Book 6318, at Page 67.

26. According to the terms of the said Assignment of Leases and Rents, and as additional security, the Defendant assigned all rents, issues and profits of the JAMISON ROAD PROPERTY from and after any default thereunder, and should legal proceedings be instituted pursuant to said Assignment of Leases and Rents, the Plaintiff were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the secured debt.

27. The payments due under said Note is due and has been in default since October 13, 2012, and the conditions of said Assignment of Leases and Rents have been broken.

28. The entire balance of said indebtedness is due and payable, and that there is due on said note as of November 30, 2012, the sum of One Hundred Twenty-Nine Thousand, Three

Hundred Forty-Five and 86/100 (\$129,345.86) Dollars, accumulated interest of Two Thousand, Four Hundred Twenty-Two and 54/100 (\$2,422.54) Dollars, late fees of \$47.26, and interest continuing to accumulate at the current rate of \$26.0488 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

29. The Plaintiff is entitled to have a Receiver appointed for the JAMISON ROAD PROPERTY to collect all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt hereunder.

FOR A FOURTH CAUSE OF ACTION
(Action on Note)

5 30. Heretofore, on or about October 9, 2007, for value received the Defendant Anthony M. Whitfield executed and delivered to Harbor National Bank, a certain Promissory Note, Loan No. 40047100, a copy of which is attached hereto as Exhibit "D" and made a part hereof by reference, by which, according to the terms and conditions set out therein, Anthony M. Whitfield promised to pay to Harbor National Bank the sum of One Hundred Twenty Thousand and no/100 (\$120,000.00) Dollars, together with interest thereon at the rate of 7.25 % per annum on the unpaid balance, with a maturity date of October 13, 2012.

6 31. The payment due under the Note referred to in the preceding paragraph is in default, and the conditions of said Note have been broken.

7 32. Defendant Anthony M. Whitfield has committed an act of default under the aforesaid Note.

8 33. The Plaintiff has made demand upon Defendant Anthony M. Whitfield to pay the

entire amount due under the Note, but the said Defendant has failed and refused to make such payment.

9 34. The failure of Defendant Anthony M. Whitfield to make payment of the balance due constitutes a breach of the Note.

10 35. Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note as November 30, 2012, the principal sum of One Hundred Thirteen Thousand, Two Hundred Ninety-Three and 56/100 (\$113,293.56) Dollars, accumulated interest of Two Thousand, One Hundred Twenty-One and 89/100 (\$2,121.89) Dollars, late fees of \$41.40, and interest continuing to accumulate at the current rate of \$22.8161 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

11 36. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

12 37. By reason of the aforesaid breach of contract, the Plaintiff has suffered damages in the amount of One Hundred Thirteen Thousand, Two Hundred Ninety-Three and 56/100 (\$113,293.56) Dollars, accumulated interest of Two Thousand, One Hundred Twenty-One and 89/100 (\$2,121.89) Dollars, late fees of \$41.40, and interest continuing to accumulate at the current rate of \$22.8161 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

FOR A FIFTH CAUSE OF ACTION
(Mortgage Foreclosure)

13 38. The allegations of paragraphs Thirty (30) through Thirty-Seven (37) of this Complaint are realleged as if repeated herein verbatim.

14 39. To further secure his obligation under the aforesaid Promissory Note, on October 9, 2007, Anthony M. Whitfield executed a Real Estate Mortgage, whereby to secure the liability under the Promissory Note and any further advances thereof, a mortgage was granted to and upon the following described property, to wit:

ALL that certain piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being in the County of Dorchester, State of South Carolina, and being known and designated as Lot 46, Section B, of Auburn Hills at Scott's Mill, as shown on that certain plat entitled: "AUBURN HILLS AT SCOTT'S MILL LOTS 1 THRU 51, LOTS 202 THRU 2209", dated July 22, 2003, and recorded in the Register of Deeds Office for Dorchester County in Plat Book K, Page 70. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

Being the same premises as conveyed to Anthony M. Whitfield by deed of Patrick R. Watts, Master in Equity for Dorchester County dated September 11, 2006 and recorded in the Dorchester County Register of Deeds in Book 5582at Page 020.

TMS # 129-12-11-034.000

Address: 131 Tyron Road, Summerville, SC 29483

(hereinafter referred to as the TYRON ROAD PROPERTY); a true and correct copy of the said Mortgage is attached hereto as Exhibit "E."

15 40. On October 18, 2007, the said Mortgage was recorded in the Office of the Register of Deeds for Dorchester County in Book 6318, at page 18.

16 41. According to the terms and conditions of the aforesaid Real Estate Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal

and accrued interest shall at once become due and payable without notice, at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all cost of collection, including a reasonable attorney's fees, shall become an obligation of the Defendant Anthony M. Whitfield, to be secured by the said mortgage as part of the debt secured thereby.

17 42. Further, under the terms and conditions of the said Mortgages, it was agreed that the mortgagor would pay all taxes, assessments, water rates, other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if the mortgagor failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

18 43. According to the terms of the said Mortgages and the Assignment of Leases and Rents, and as additional security, the Defendant assigned all rents, issues and profits of the mortgaged premises from and after any default thereunder, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the debt secured by said mortgage.

19 44. The payment due under said Note is due and has been in default since October 13, 2012, and the conditions of said mortgage have been broken.

20 45. The entire balance of said indebtedness due and payable, and that there is due on said note as of November 30, 2012, the sum of One Hundred Thirteen Thousand, Two Hundred Ninety-Three and 56/100 (\$113,293.56) Dollars, accumulated interest of Two Thousand, One Hundred Twenty-One and 89/100 (\$2,121.89) Dollars, late fees of \$41.40, and interest continuing to

accumulate at the current rate of \$22.8161 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

71 46. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

22 47. The Plaintiff is entitled to an Order foreclosing the mortgage upon the TYRON ROAD PROPERTY, and the proceeds of the said foreclosure to be distributed first to the costs and expenses of the sale thereof, second to be applied against accrued principal and interest under the Note and mortgage, third to payment of the costs, expenses and reasonable attorneys fees incurred by the Plaintiff in prosecuting this foreclosure action, and the Court should thereafter pay any excess proceeds of sale to such claimants in such priorities as their interests may appear.

FOR A SIXTH CAUSE OF ACTION
(Appointment of Receiver)

23 48. The allegations of Paragraphs Thirty (30) through Forty-Seven (47) of this Complaint are realleged as if repeated herein verbatim.

24 49. To further secure his obligation under the aforesaid Promissory Note, on October 9, 2007, Anthony M. Whitfield executed an Assignment of Leases and Rents, whereby to secure the liability under the Promissory Note and any further advances thereof, the Defendant assigned all leases and rents from the subject TYRON ROAD PROPERTY to the Plaintiff; a true and correct copy of the said Assignment of Leases and Rents is attached hereto as Exhibit "F."

25 50. On October 18, 2007, the said Assignment of Leases and Rents was recorded in the Office of the Register of Deeds for Dorchester County in Book 6318, at Page 28.

26 51. According to the terms of the said Assignment of Leases and Rents, and as additional security, the Defendant assigned all rents, issues and profits of the TYRON ROAD PROPERTY from and after any default thereunder, and should legal proceedings be instituted pursuant to said Assignment of Leases and Rents, the Plaintiff were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the secured debt.

27 52. The payments due under said Note is due and has been in default since October 13, 2012, and the conditions of said Assignment of Leases and Rents have been broken.

28 53. The entire balance of said indebtedness is due and payable, and that there is due on said note as of November 30, 2012, the sum of One Hundred Thirteen Thousand, Two Hundred Ninety-Three and 56/100 (\$113,293.56) Dollars, accumulated interest of Two Thousand, One Hundred Twenty-One and 89/100 (\$2,121.89) Dollars, late fees of \$41.40, and interest continuing to accumulate at the current rate of \$22.8161 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

29 54. The Plaintiff is entitled to have a Receiver appointed for the TYRON ROAD PROPERTY to collect all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt hereunder.

WHEREFORE, the Plaintiff prays for judgment as follows:

(1) Under the First Cause of Action, for judgment against Defendant Anthony M. Whitfield in the amount of One Hundred Twenty-Nine Thousand, Three Hundred Forty-Five and

86/100 (\$129,345.86) Dollars, accumulated interest of Two Thousand, Four Hundred Twenty-Two and 54/100 (\$2,422.54) Dollars, late fees of \$47.26, and interest continuing to accumulate at the current rate of \$26.0488 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees;

(2) Under the Second Cause of Action, that

(a) That the amount due upon the said Note and Mortgage against the JAMISON ROAD PROPERTY held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys fees and the costs of this action.

(b) That the Plaintiff's Mortgage against the JAMISON ROAD PROPERTY be declared a first lien and that Plaintiff has judgment of foreclosure for the amount found to be due and owing under the promissory note, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and the costs of this action.

(c) That the JAMISON ROAD PROPERTY be sold under the direction of this Court, the equities of redemption are barred, and that the proceeds of sale are applied as follows:

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

Second, to the payment and discharge of the amount due on the Plaintiff's Note and Mortgage, with the costs and disbursements of this action together with attorneys' fees, and

Third, the surplus, if any, be distributed according to law; and

3) Under the Third Cause of Action, for the Appointment of a Receiver to collect all income from the said JAMISON ROAD PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt; and

(4) Under the Fourth Cause of Action, for judgment against Defendant Anthony M. Whitfield in the amount of One Hundred Thirteen Thousand, Two Hundred Ninety-Three and 56/100 (\$113,293.56) Dollars, accumulated interest of Two Thousand, One Hundred Twenty-One and 89/100 (\$2,121.89) Dollars, late fees of \$41.40, and interest continuing to accumulate at the current rate of \$22.8161 per diem from November 30, 2012 until paid in full, together with late charges, the

costs and disbursements of this action, and attorney's fees;

(5) Under the Fifth Cause of Action, that

(a) That the amount due upon the said Note and Mortgage against the TYRON ROAD PROPERTY held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys fees and the costs of this action.

(b) That the Plaintiff's Mortgage against the TYRON ROAD PROPERTY be declared a first lien and that Plaintiff has judgment of foreclosure for the amount found to be due and owing under the promissory note, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and the costs of this action.

(c) That the TYRON ROAD PROPERTY be sold under the direction of this Court, the equities of redemption are barred, and that the proceeds of sale are applied as follows:

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

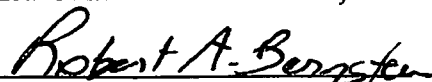
Second, to the payment and discharge of the amount due on the Plaintiff's Note and Mortgage, with the costs and disbursements of this action together with attorneys' fees, and

Third, the surplus, if any, be distributed according to law; and

6) Under the Sixth Cause of Action, for the Appointment of a Receiver to collect all income from the said TYRON ROAD PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt; and

7) For such other and further relief as may be just and proper.

BERNSTEIN & BERNSTEIN, P.A.



Robert A. Bernstein
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)

ATTORNEYS FOR THE PLAINTIFF

December 4, 2012
Charleston, South Carolina

2012 DEC -6 PM 3:09
CERTIFIED COPY

Exhibit "A" to Complaint
Harbor National Bank v. Anthony M. Whitfield

CLERK OF COURT
DORCHESTER COUNTY

ANTHONY M. WHITFIELD 2141 DORCHESTER ROAD NORTH CHARLESTON, SC 29405 BORROWER'S NAME AND ADDRESS <small>*Includes such borrower above, jointly and severally.</small>	Harbor National Bank 1503 Old Towne Road Charleston, SC 29407 LENDER'S NAME AND ADDRESS <small>*"You" means the lender, its successors and assigns.</small>	247-86-7213 Loan Number <u>400046700</u> Date <u>10/09/2007</u> Maturity Date <u>10/13/2012</u> Loan Amount \$ <u>137,000.00</u> Renewal Of _____
---	---	--

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of One Hundred Thirty-Seven Thousand Dollars Dollars \$ 137,000.00

Single Advance: I will receive all of this principal sum on 10/09/2007. No additional advances are contemplated under this note.

Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 10/09/2007 at the rate of 7.250% per year until Maturity

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

Index Rate: The future rate will be _____ the following index rate: _____

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

Frequency and Timing: The rate on this note may change as often as _____ A change in the interest rate will take effect _____

Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ % The rate may not change more than _____ % each _____

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

The amount of each scheduled payment will change. The amount of the final payment will change.

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

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

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

at a rate equal to 14.000%

LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the payment amount with a minimum of \$20.00

ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which are are not included in the principal amount above: ORIGINATION FEE \$685, FLOOD SEARCH \$15, APPRAISAL FEE \$325

PAYMENTS: I agree to pay this note as follows:

Interest: I agree to pay accrued interest: _____

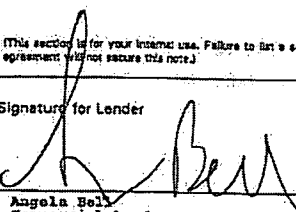
Principal: I agree to pay the principal: _____

Installments: I agree to pay this note in 60 payments. The first payment will be in the amount of \$ 945.25 and will be due 11/13/2007. A payment of \$ 945.25 will be due on the 13th day of each Month thereafter. The final payment of the entire unpaid balance of principal and interest will be due October 13, 2012

ADDITIONAL TERMS: _____

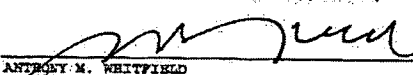
SECURITY: This note is separately secured by (describe separate document by type and date):
MORTGAGE; ASSIGNMENT OF LEASES & RENTS OF EVEN DATE

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

Signature for Lender

 Angela Bell
 Commercial Lender

PURPOSE: The purpose of this loan is TO REFINANCE RENTAL PROPERTY @ 9708 JAMISON ROAD, LADSON, SC

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


 ANTHONY M. WHITFIELD



Recording Date: 10/18/2007

Instrument: 93

Book: 6318 Page: 57-66

FILED-RECORDED
RMC / ROD

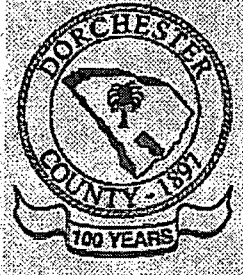
2007 Oct 18 PM 1:28:35

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 15.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

Margaret L. Bailey
CLERK OF COURT
DORCHESTER COUNTY

2012 DEC -60 PM 3:13

Exhibit "B" to Complaint
CERTIFIED Copy of National Bank v. Anthony M. Whifield



THIS PAGE IS HEREBY ATTACHED AND MADE PART OF THE PERMANENT RECORD OF THIS DOCUMENT. IT IS NOT TO BE DETACHED OR REMOVED AND MUST BE CITED AS THE FIRST PAGE OF THE RECORDED DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR RECORDING PURPOSES AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

RETURN TO:
J. STANLEY CLAYPOOLE, PA
2155 NORTH PARK LANE
NORTH CHARLESTON, S.C. 29406
07-1228/DDB

1500

This document was prepared by (name, address, phone):

Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

FILED/RECORDED
October 18, 2007
DORCHESTER COUNTY
REGISTER OF DEEDS

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 10/09/2007 and the parties and their addresses are as follows:

MORTGAGOR: ANTHONY M WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

SEE ATTACHED EXHIBIT 'A'

The property is located in DORCHESTER at 9708 JAMISON
(County)

ROAD, LADSON, South Carolina 29456
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 137,000.00 . This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date):

One note of even date in the principal amount of 137,000.00 with final payment due 10/13/2012

B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.

C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.

E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.

6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.

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

8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:

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

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

C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

- 10. TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.
- 11. ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:
- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
 - B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
 - C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.
- 12. PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

- 13. AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

- 14. ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).
- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
 - B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

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

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

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

(page 4 of 8)

characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time; Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

- Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**
- Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- Additional Terms.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

Actual authority was granted to the parties signing below by resolution signed and dated _____.

Entity Name: _____

Entity Name: _____


 (Signature) ANTHONY M. WHITFIELD (Date) 10/09/2007 (Seal)

 (Signature) (Date) (Seal)

Signed, Sealed and delivered in the presence of:


 (Witness)


 (Witness)

Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

PROBATE:

STATE OF South Carolina, COUNTY OF Charleston) ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 9th day
of October, 2007

Melissa Cole
Notary Public for South Carolina



My commission expires: 06/20/2015

EXHIBIT "A"

ALL that piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Dorchester, in the State of South Carolina, measuring and containing 0.5 of an acre, and butting and bounding as follows, to wit: North generally on lands of Mrs. Annie J. Roszell, 105 feet; East, generally on lands of Mrs. Annie J. Roszell, 210 feet; South, generally on a public road known as the Jamison Road, 105 feet; and West, generally on lands of Mrs. Annie J. Roszell, 210 feet; be the said dimensions, more or less, and having such shape, form and marks, courses, distances, buttings, boundings and content as are delineated on a plat of the same by H. H. Foster, R.L.S. surveyed October 25, 1958 a copy of which is made a part of this by reference and is recorded in the RMC Office for *Charleston* County in Plat Book T at Page 25. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

BEING the same property conveyed to the mortgagor herein by deed of Patrick R. Watts, Master in Equity for Dorchester County, dated April 19, 2006, and recorded in the Register of Deeds office in Dorchester County at Book 5312 at Page 243.



Recording Date: 10/18/2007

Instrument: 94

Book: 6318 Page: 67-75

FILED-RECORDED
RMC / ROD

2007 Oct 18 PM 1:29:03

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 14.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

*Exhibit "C" to Complaint
Harbor National Bank v. Anthony M. Whitfield*



CLERK OF COURT
DORCHESTER COUNTY

2012 DEC -6 PM 3:07

CERTIFIED COPY

THIS PAGE IS HEREBY ATTACHED AND MADE PART OF
THE PERMANENT RECORD OF THIS DOCUMENT. IT IS
NOT TO BE DETACHED OR REMOVED AND MUST BE
CITED AS THE FIRST PAGE OF THE RECORDED
DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR
RECORDING PURPOSES AND IS NOT TO BE USED FOR
ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

1400

RETURN TO:
J. STANLEY CLAYPOOLE, PA
2155 NORTHPARK LANE
NORTH CHARLESTON, S.C. 29406

FILED/RECORDED
October 18, 2007
DORCHESTER COUNTY
REGISTER OF DEEDS

_____ State of South Carolina _____ Space Above This Line For Recording Data _____

This document was prepared by (name, address, phone number): **Harbor National Bank**
1503 Old Towne Road
Charleston, SC 29407

(843) 852-6400

ASSIGNMENT OF LEASES AND RENTS

1. **DATE AND PARTIES.** The date of this Assignment of Leases and Rents (Assignment) is 10/09/2007. The parties and their addresses are:

ASSIGNOR: ANTHONY M WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

Refer to the Addendum that is attached and incorporated herein for additional Assignors.


LENDER: Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

2. **ASSIGNMENT OF LEASES AND RENTS.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Assignor's performance under this Assignment, Assignor irrevocably assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (all referred to as Property).

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as Leases).
- B. Rents, issues and profits (all referred to as Rents), including but not limited to security deposits, minimum rent, percentage rent, additional rent, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Assignor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property.

C. The term Property as used in this Assignment shall include the following described real property:
SEE ATTACHED EXHIBIT 'A'

SOUTH CAROLINA ASSIGNMENT OF LEASES AND RENTS
(NOT FOR FNMA, FHLMC, OR VA USE AND NOT FOR CONSUMER PURPOSES)
Expert © 2001 Bankers Systems, Inc., St. Cloud, MN Form ASMT-RENT-SC 2/27/2002

 (page 1 of 7)

The Property is located in DORCHESTER County at
9708 JAMISON ROAD LADSON, SC 29456 (Address, City, State,
ZIP Code).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Assignment at any one time will not exceed \$ 137,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Assignment. Also, this limitation does not apply to advances made under the terms of this Assignment to protect Lender's security and to perform any of the covenants contained in this Assignment. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.
4. **SECURED DEBTS.** This Assignment will secure the following Secured Debts:
- A. **Specific Debts.** The following debts and all extensions, renewals, refinancings, modifications and replacements. (include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)
- One or more of the debts secured by this Assignment contains a future advance provision.
- B. **All Debts.** All present and future debts from Assignor and _____

to Lender, even if this Assignment is not specifically referenced or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Assignment, each agrees that it will secure debts incurred either individually or with others who may not sign this Assignment. Nothing in this Assignment constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide notice of the right of rescission, Lender waives any subsequent security interest in the Assignor's principal dwelling that is created by this Assignment. This Assignment will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Assignment will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. **Sums Advanced.** All sums advanced and expenses incurred by Lender under the terms of this Assignment.

5. **PAYMENTS.** Assignor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Assignment.
6. **COLLECTION OF RENTS.** Assignor may collect, receive, enjoy and use the Rents so long as Assignor is not in default. Assignor will not collect in advance any Rents due in future lease periods, unless Assignor first obtains Lender's written consent. Upon default, Assignor will receive any Rents in trust for Lender and Assignor will not commingle the Rents with any other funds. When Lender so directs, Assignor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Assignor agrees that this Assignment is immediately effective between Assignor and Lender and effective as to third parties on the recording of this Assignment.
7. **WARRANTIES AND REPRESENTATIONS.** To induce Lender to enter into the Loan, Assignor makes these representations and warranties for as long as this Assignment is in effect.
- A. **Power.** Assignor is duly organized, validly existing and in good standing under the laws in the jurisdiction where Assignor was organized and is duly qualified, validly existing and in good standing in all jurisdictions in which Assignor operates or Assignor owns or leases property. Assignor has the power and authority to enter into this transaction and to carry on Assignor's business or activity as now conducted.
- B. **Authority.** The execution, delivery and performance of this Assignment and the obligation evidenced by this Assignment: are within Assignor's duly authorized powers; has received all necessary governmental approval; will not violate any provision of law or order of court or governmental agency; and will not violate any agreement to which Assignor is a party or to which Assignor is or any of Assignor's property is subject.

- C. **Name and Place of Business.** Other than previously disclosed in writing to Lender, Assignor has not changed Assignor's name or principal place of business within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Assignor does not and will not use any other name and will preserve Assignor's existing name, trade names and franchises.
- D. **Ownership or Lease of Property.** Assignor owns or leases all property that Assignor needs to conduct Assignor's business and activities. All of Assignor's property is free and clear of all liens, security interests, encumbrances and other adverse claims and interests, except those Lender previously agreed to in writing.
- E. **Compliance with Laws.** Assignor is not violating any laws, regulations, rules, orders, judgments or decrees applicable to Assignor or Assignor's property, except for those that Assignor is challenging in good faith through proper proceedings after providing adequate reserves to fully pay the claim and its challenge should Assignor lose.
- F. **Title.** Assignor has good title to the Leases, Rents and Property and the right to assign, grant, bargain, convey and mortgage to Lender as additional security the Leases and Rents, and no other person has any right in the Leases and Rents.
- G. **Recordation.** Assignor has recorded the Leases as required by law or as otherwise prudent for the type and use of the Property.
- H. **Default.** No default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Assignor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Assignor or any party to the Lease defaults or fails to observe any applicable law, Assignor will promptly notify Lender.
- I. **Lease Modification.** Assignor has not sublet, modified, extended, canceled, or otherwise altered the Leases, or accepted the surrender of the Property covered by the Leases (unless the Leases so required).
- J. **Encumbrance.** Assignor has not assigned, compromised, subordinated or encumbered the Leases and Rents.
8. **COVENANTS.** Assignor agrees to the following covenants:
- A. **Rent Abatement and Insurance.** When any Lease provides for an abatement of Rents due to fire, flood or other casualty, Assignor will insure against this risk of loss with a policy satisfactory to Lender. Assignor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.
- B. **Copies of Leases.** Assignor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed.
- C. **Right to Rents.** Immediately after the execution of this Assignment, Assignor will notify all current and future tenants and others obligated under the Leases of Lender's right to the Leases and Rents, and will request that they immediately pay all future Rents directly to Lender when Assignor or Lender asks them to do so.
- D. **Accounting.** When Lender requests, Assignor will provide to Lender an accounting of Rents, prepared in a form acceptable to Lender, subject to generally accepted accounting principles and certified by Assignor or Assignor's accountant to be current, accurate and complete as of the date requested by Lender.
- E. **Lease Modification.** Assignor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so required) without Lender's written consent.
- F. **Encumbrance.** Assignor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent.
- G. **Future Leases.** Assignor will not enter into any future Leases without prior written consent from Lender. Assignor will execute and deliver such further assurances and assignments as to these future Leases as Lender requires from time to time.
- H. **Personal Property.** Assignor will not sell or remove any personal property on the Property, unless Assignor replaces this personal property with like kind for the same or better value.
- I. **Prosecution and Defense of Claims.** Assignor will appear in and prosecute its claims or defend its title to the Leases and Rents against any claims that would impair Assignor's interest under this Assignment and, on Lender's request, Assignor will also appear in any action or proceeding on behalf of Lender. Assignor agrees to assign to Lender, as requested by Lender, any right, claims or defenses which Assignor may have against parties who supply labor or materials to improve or maintain the leaseholds subject to the Leases and/or the Property.
- J. **Liability and Indemnification.** Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses or damages due to Lender's gross negligence or intentional torts to the extent permitted by law. Otherwise, Assignor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.
- K. **Leasehold Estate.** Assignor will not cause or permit the leasehold estate under the Leases to merge with Assignor's reversionary interest, and agrees that the Leases shall remain in full force and effect regardless of any merger of the Assignor's interests and of any merger of the interests of Assignor and any party obligated under the Leases.
- L. **Insolvency.** Lender will be the creditor of each tenant and of anyone else obligated under the Leases who is subject to an assignment for the benefit of creditors, an insolvency, a dissolution or a receivership proceeding, or a bankruptcy.

(page 3 of 7)

9. **TRANSFER OF AN INTEREST IN THE ASSIGNOR.** If Assignor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
- A. A beneficial interest in Assignor is sold or transferred.
 - B. There is a change in either the identity or number of members of a partnership or similar entity.
 - C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Assignment.
10. **DEFAULT.** Assignor will be in default if any of the following occur with regard to the Secured Debts that are secured by this Assignment:
- A. **Payments.** Assignor fails to make a payment in full when due.
 - B. **Insolvency or Bankruptcy.** Assignor makes an assignment for the benefit of creditors or becomes insolvent, either because Assignor's liabilities exceed Assignor's assets or Assignor is unable to pay Assignor's debts as they become due; or Assignor petitions for protection under federal, state or local bankruptcy, insolvency or debtor relief laws, or is the subject of a petition or action under such laws and fails to have the petition or action dismissed within a reasonable period of time not to exceed 60 days.
 - C. **Death or Incompetency.** If Assignor is an individual, Assignor dies or is declared legally incompetent.
 - D. **Business Termination.** If Assignor is not an individual, Assignor merges, dissolves, reorganizes or ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.
 - E. **Failure to Perform.** Assignor fails to perform any condition or to keep any promise or covenant of this Assignment, any other document evidencing or pertaining to the Loan, or any other debt or agreement Assignor has with Lender.
 - F. **Misrepresentation.** Assignor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
 - G. **Property Transfer.** Assignor transfers all or a substantial part of Assignor's money or property.
 - H. **Property Value.** The value of the Property declines or is impaired.
 - I. **Name Change.** Assignor changes Assignor's name or assumes an additional name without notifying Lender before making such a change.
 - J. **Material Change.** Without first notifying Lender, there is a material change in Assignor's business, including ownership, management, and financial conditions.
 - K. **Insecurity.** Lender reasonably believes that Lender is insecure.
11. **REMEDIES.** After Assignor defaults, and after Lender gives any legally required notice and opportunity to cure the default, Lender may at Lender's option do any one or more of the following:
- A. **Acceleration.** Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due.
 - B. **Additional Security.** Lender may demand additional security or additional parties to be obligated to pay the Secured Debts.
 - C. **Sources.** Lender may use any and all remedies Lender has under the state law where the Property is located or federal law or in any instrument evidencing or pertaining to the Secured Debts.
 - D. **Insurance Benefits.** Lender may make a claim for any and all insurance benefits or refunds that may be available on Assignor's default.
 - E. **Payments Made On Assignor's Behalf.** Amounts advanced on Assignor's behalf will be immediately due and may be added to the Secured Debts.
 - F. **Rents.** Lender may terminate Assignor's right to collect Rents and directly collect and retain Rents in Lender's name without taking possession of the Property and to demand, collect, receive, and sue for the Rents, giving proper receipts and releases. In addition, after deducting all reasonable expenses of collection from any collected and retained Rents, Lender may apply the balance as provided for by the Secured Debts.
 - G. **Entry.** Lender may enter, take possession, manage and operate all or any part of the Property; make, modify, enforce or cancel or accept the surrender of any Leases; obtain or evict any tenants and licensees; increase or reduce Rents; decorate, clean and make repairs or do any other act or incur any other cost Lender deems proper to protect the Property as fully as Assignor could do. Any funds collected from the operation of the Property may be applied in such order as Lender may deem proper, including, but not limited to, payment of the following: operating expenses, management, brokerage, attorneys' and accountants' fees, the Secured Debts, and toward the maintenance of reserves for repair or replacement. Lender may take such action without regard to the adequacy of the security, with or without any action or proceeding, through any person or agent, or receiver to be appointed by a court, and irrespective of Assignor's possession. The collection and application of the Rents or the entry upon and taking possession of the Property as set out in this section shall not cure or waive any notice of default under the Secured Debts, this Assignment, or invalidate any act pursuant to such notice. The enforcement of such remedy by Lender, once exercised, shall continue for so long as Lender shall elect, notwithstanding that such collection and application of Rents may have cured the original default.

- H. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up 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.
12. **APPOINTMENT OF A RECEIVER.** On or after an Assignor's default, Assignor agrees to Lender making an application to the court for an appointment of a receiver for the benefit of Lender to take possession of the Property and the Leases, with the power to receive, collect and apply the Rents. Any Rents collected will be applied as the court authorizes to pay taxes, to provide insurance, to make repairs and to pay costs or any other expenses relating to the Property, the Leases and Rents, and any remaining sums shall be applied to the Secured Debts. Assignor agrees that this appointment of a receiver may be without giving bond, without reference to the then-existing value of the Property, and without regard to the insolvency of any person liable for any of the Secured Debts.
13. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** To the extent permitted by law, Assignor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Assignment. Unless the applicable law that governs this Assignment is North Dakota, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. These expenses will bear interest from the date of payment until paid in full at the contract interest rate then in effect for the Loan. To the extent permitted by the United States Bankruptcy Code, Assignor agrees to pay the reasonable attorneys' fees Lender incurs to collect this Assignment as awarded by any court exercising jurisdiction under the Bankruptcy Code.
14. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste," "hazardous substance," or "regulated substances" under any Environmental Law.

Assignor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Assignor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Assignor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Assignor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Assignor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Assignor or any tenant of any Environmental Law. Assignor will immediately notify Lender in writing as soon as Assignor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Assignor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Assignor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Assignor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Assignor and any tenant are in compliance with applicable Environmental Law.

- I. Upon Lender's request and at any time, Assignor agrees, at Assignor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
 - J. Lender has the right, but not the obligation, to perform any of Assignor's obligations under this section at Assignor's expense.
 - K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Assignor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses to the extent permitted by law, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Assignment and in return Assignor will provide Lender with collateral of at least equal value to the Property secured by this Assignment without prejudice to any of Lender's rights under this Assignment.
 - L. Notwithstanding any of the language contained in this Assignment to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Assignment regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.
15. **TERM.** This Assignment will remain in full force and effect until the Secured Debts are paid or otherwise discharged and Lender is no longer obligated to advance funds under any loan or credit agreement which is a part of the Secured Debts. If any or all payments of the Secured Debts are subsequently invalidated, declared void or voidable, or set aside and are required to be repaid to a trustee, custodian, receiver or any other party under any bankruptcy act or other state or federal law, then the Secured Debts will be revived and will continue in full force and effect as if this payment had not been made.
16. **CO-SIGNERS.** If Assignor signs this Assignment but does not sign the Secured Debts, Assignor does so only to assign Assignor's interest in the Property to secure payment of the Secured Debts and Assignor does not agree to be personally liable on the Secured Debts. If this Assignment secures a guaranty between Lender and Assignor, Assignor agrees to waive any rights that may prevent Lender from bringing any action or claim against Assignor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.
17. **WAIVERS.** Except to the extent prohibited by law, Assignor waives all homestead exemption rights relating to the Property.
18. **U.C.C. PROVISIONS.**
- Construction Loan.** This Assignment secures an obligation incurred for the construction of an improvement on the Property.
19. **OTHER TERMS.** If checked, the following are applicable to this Assignment:
- Line of Credit.** The Secured Debts include a revolving line of credit provision. Although the Secured Debts may be reduced to a zero balance, this Assignment will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.
 - Additional Terms.**
20. **APPLICABLE LAW.** This Assignment is governed by the laws of South Carolina, except to the extent otherwise required by the laws of the jurisdiction where the Property is located, and the United States of America.
21. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** Each Assignor's obligations under this Assignment are independent of the obligations of any other Assignor. Lender may sue each Assignor individually or together with any other Assignor. Lender may release any part of the Property and Assignor will still be obligated under this Assignment for the remaining Property. The duties and benefits of this Assignment will bind and benefit the successors and assigns of Lender and Assignor.
22. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Assignment may not be amended or modified by oral agreement. No amendment or modification of this Assignment is effective unless made in writing and executed by Assignor and Lender. This Assignment is the complete and final expression of the agreement. If any provision of this

Assignment is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

23. **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 Assignment.

24. **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 and by registered or certified mail, return receipt requested, to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. Assignor will inform Lender in writing of any change in Assignor's name, address or other application information. Assignor will provide Lender any financial statements or information Lender requests. All financial statements and information Assignor gives Lender will be correct and complete. Assignor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Assignor's obligations under this Assignment and to confirm Lender's lien status on any Property. Time is of the essence.

25. **SIGNATURES.** By signing under seal, Assignor agrees to the terms and covenants contained in this Assignment. Assignor also acknowledges receipt of a copy of this Assignment.

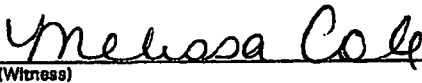
(Entity Name)


(Signature) ANTHONY M. WHITFIELD (Seal)

(Signature) (Seal)

Signed, sealed and delivered in the presence of:


(Witness)


(Witness)

PROBATE:

STATE OF South Carolina, COUNTY OF Charleston } ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Assignor (and each Assignor if more than one) sign, seal and deliver the foregoing Assignment and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 9th day

of October, 2007


Notary Public for South Carolina (Seal)



(Seal)

My commission expires: 06/20/2015

EXHIBIT "A"

ALL that piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Dorchester, in the State of South Carolina, measuring and containing 0.5 of an acre, and butting and bounding as follows, to wit: North generally on lands of Mrs. Annie J. Roszell, 105 feet; East, generally on lands of Mrs. Annie J. Roszell, 210 feet; South, generally on a public road known as the Jamison Road, 105 feet; and West, generally on lands of Mrs. Annie J. Roszell, 210 feet; be the said dimensions, more or less, and having such shape, form and marks, courses, distances, buttings, boundings and content as are delineated on a plat of the same by H. H. Foster, R.L.S. surveyed October 25, 1958 a copy of which is made a part of this by reference and is recorded in the RMC Office for *Charleston* County in Plat Book T at Page 25. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

BEING the same property conveyed to the mortgagor herein by deed of Patrick R. Watts, Master in Equity for Dorchester County, dated April 19, 2006, and recorded in the Register of Deeds office in Dorchester County at Book 5312 at Page 243.

ANTHONY M. WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

247-86-7213

Loan Number 400047100

Date 10/09/2007

Maturity Date 10/13/2012

Loan Amount \$ 120,000.00

Renewal Of _____

BORROWER'S NAME AND ADDRESS
* Includes each borrower above, jointly and severally.

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

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of One Hundred Twenty Thousand Dollars Dollars \$ 120,000.00

Single Advance: I will receive all of this principal sum on 10/09/2007. No additional advances are contemplated under this note.

Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 10/09/2007 at the rate of 7.250 % per year until Maturity

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

Index Rate: The future rate will be _____ the following index rate: _____

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

Frequency and Timing: The rate on this note may change as often as _____ A change in the interest rate will take effect _____

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

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

The amount of each scheduled payment will change. The amount of the final payment will change.

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

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

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

at a rate equal to 14.000%

LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the payment amount with a minimum of \$20.00

ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which are are not: Included in the principal amount above: ORIGINATION FEE \$600, APPRAISAL FEE \$325, FLOOD SEARCH \$15

PAYMENTS: I agree to pay this note as follows:

Interest: I agree to pay accrued interest

Principal: I agree to pay the principal

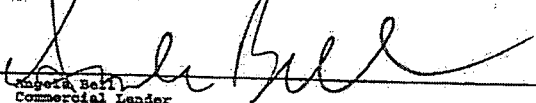
Installments: I agree to pay this note in 60 payments. The first payment will be in the amount of \$ 827.95 and will be due 11/13/2007. A payment of \$ 827.95 will be due on the 13th day of each Month thereafter. The final payment of the entire unpaid balance of principal and interest will be due October 13, 2012

ADDITIONAL TERMS:

SECURITY: This note is separately secured by (describe separate document by type and date): MORTGAGE, ASSIGNMENT OF LEASES & RENTS OF EVEN DATE

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

Signature for Lender:


Angela Bell
Commercial Lender

PURPOSE: The purpose of this loan is TO REFINANCE EXISTING PROPERTY @ 131 TYRON ROAD, SUMMERVILLE, SC

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


ANTHONY M. WHITFIELD

DORCHESTER COUNTY
DORCHESTER COUNTY

2012 DEC - 6 PM 3:14

CERTIFIED COPY

Exhibit "D" to Complaint
Harbor National Bank v. Anthony M. Whitfield



Recording Date: 10/18/2007

Instrument: 88

Book: 6318 Page: 18-27

FILED-RECORDED
RMC / ROD

2007 Oct 18 PM 1:26:06

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 15.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

*Exhibit 'E' to Complaint
Harbor National Bank v. Anthony M. Whitfield*



CLERK OF COURT
DORCHESTER COUNTY

2012 DEC -6 PM 3:15

CERTIFIED COPY

THIS PAGE IS HEREBY ATTACHED AND MADE PART OF THE PERMANENT RECORD OF THIS DOCUMENT. IT IS NOT TO BE DETACHED OR REMOVED AND MUST BE CITED AS THE FIRST PAGE OF THE RECORDED DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR RECORDING PURPOSES AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

RETURN TO:
J. STANLEY CLAYPOOLE, PA
2155 NORTHPARK LANE
NORTH CHARLESTON, S.C. 29406
07-1230/DDB

KDD

FILED/RECORDED
October 18, 2007
DORCHESTER COUNTY
REGISTER OF DEEDS

This document was prepared by (name, address, phone):
Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 10/09/2007 and the parties and their addresses are as follows:

MORTGAGOR: ANTHONY M WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

Refer to the Addendum which is attached and incorporated herein for additional Mortgagors.

LENDER: Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

SEE ATTACHED EXHIBIT 'A'

The property is located in DORCHESTER at 131 TYRON ROAD
(County)
SUMMERVILLE, South Carolina 29483
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

mw

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 120,000.00 . This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.
4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:
- A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date):
- One note of even date in the principal amount of 120,000.00 with final payment due 10/13/2012
- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
- C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

10. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. ENTITY WARRANTIES AND REPRESENTATIONS. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. AUTHORITY TO PERFORM. If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

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

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgage is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

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

characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.


25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

 (page 6 of 8)

- Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**
- Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- Additional Terms.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

Actual authority was granted to the parties signing below by resolution signed and dated _____.

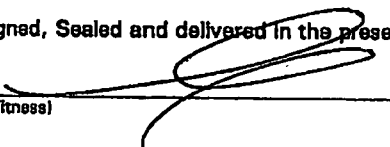
Entity Name: _____

Entity Name: _____


 (Signature) ANTHONY M. WHITFIELD (Date) 10/09/2007 (Seal)

 (Signature) (Date) (Seal)

Signed, Sealed and delivered in the presence of:


 (Witness)


 (Witness)

Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

PROBATE:

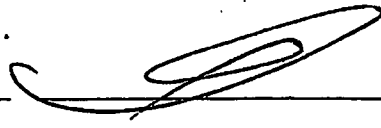
STATE OF South Carolina, COUNTY OF Charleston) ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 9th day

of October, 2007

Melissa Cole
Notary Public for South Carolina

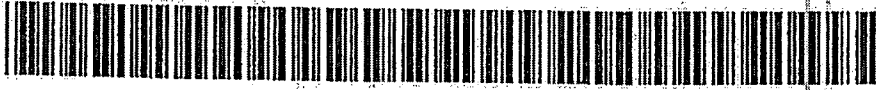


My commission expires: 06/20/2015

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being in the County of Dorchester, State of South Carolina, and being known and designated as Lot 46, Section B of Auburn Hills at Scott's Mill, as shown on that certain plat entitled: "AUBURN HILLS AT SCOTT'S MILL LOTS 1 THRU 51, LOTS 202 THRU 209", dated July 22, 2003 and recorded in the Register of Deeds Office for Dorchester County in Plat Book K, Page 70. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING the same property conveyed to the mortgagor herein by deed of Patrick R. Watts, Master in Equity for Dorchester County, dated September 11, 2006 and recorded in the Dorchester County Register of Deeds Office in Book 5582 at Page 020.



Recording Date: 10/18/2007

Instrument: 89

Book: 6318 Page: 28-36

FILED-RECORDED
RMC / ROD

2007 Oct 18 PM 1:26:43

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 14.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds



George H. ...
CLERK OF COURT
DORCHESTER COUNTY

2012 DEC -6 PM 3:15

CERTIFIED COPY

*Exhibit "F" to Complaint
Harbor National Bank v. Anthony M. Whitfield*

THIS PAGE IS HEREBY ATTACHED AND MADE PART OF
THE PERMANENT RECORD OF THIS DOCUMENT. IT IS
NOT TO BE DETACHED OR REMOVED AND MUST BE
CITED AS THE FIRST PAGE OF THE RECORDED
DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR
RECORDING PURPOSES AND IS NOT TO BE USED FOR
ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

14.00
RETURN TO:
J. STANLEY CLAYPOOLE, PA
2155 NORTHPARK LANE
NORTH CHARLESTON, S.C. 29406

FILED/RECORDED
October 18, 2007
DORCHESTER COUNTY
REGISTER OF DEEDS

_____ State of South Carolina _____ Space Above This Line For Recording Data _____

This document was prepared by (name, address, phone number): Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

(843) 852-6400

ASSIGNMENT OF LEASES AND RENTS

1. **DATE AND PARTIES.** The date of this Assignment of Leases and Rents (Assignment) is 10/09/2007. The parties and their addresses are:

ASSIGNOR: ANTHONY M WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

Refer to the Addendum that is attached and incorporated herein for additional Assignors.

LENDER: Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

2. **ASSIGNMENT OF LEASES AND RENTS.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Assignor's performance under this Assignment, Assignor irrevocably assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (all referred to as Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as Leases).

B. Rents, issues and profits (all referred to as Rents), including but not limited to security deposits, minimum rent, percentage rent, additional rent, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Assignor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property.

C. The term Property as used in this Assignment shall include the following described real property:

SEE ATTACHED EXHIBIT 'A'

SOUTH CAROLINA ASSIGNMENT OF LEASES AND RENTS
(NOT FOR FNMA, FHLMC, OR VA USE AND NOT FOR CONSUMER PURPOSES)
EXTRA © 2001 Bankers Systems, Inc., St. Cloud, MN Form ASMT-RENT-SC 2/27/2002

 (page 1 of 7)

The Property is located in DORCHESTER County at
131 TYRON ROAD SUMMERVILLE, SC 29483 (Address, City, State,
ZIP Code).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Assignment at any one time will not exceed \$ 120,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Assignment. Also, this limitation does not apply to advances made under the terms of this Assignment to protect Lender's security and to perform any of the covenants contained in this Assignment. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.
4. **SECURED DEBTS.** This Assignment will secure the following Secured Debts:
- A. **Specific Debts.** The following debts and all extensions, renewals, refinancings, modifications and replacements.
(Include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)

- One or more of the debts secured by this Assignment contains a future advance provision.
- B. **All Debts.** All present and future debts from Assignor and _____

to Lender, even if this Assignment is not specifically referenced or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Assignment, each agrees that it will secure debts incurred either individually or with others who may not sign this Assignment. Nothing in this Assignment constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide notice of the right of rescission, Lender waives any subsequent security interest in the Assignor's principal dwelling that is created by this Assignment. This Assignment will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Assignment will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. **Sums Advanced.** All sums advanced and expenses incurred by Lender under the terms of this Assignment.

5. **PAYMENTS.** Assignor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Assignment.
6. **COLLECTION OF RENTS.** Assignor may collect, receive, enjoy and use the Rents so long as Assignor is not in default. Assignor will not collect in advance any Rents due in future lease periods, unless Assignor first obtains Lender's written consent. Upon default, Assignor will receive any Rents in trust for Lender and Assignor will not commingle the Rents with any other funds. When Lender so directs, Assignor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Assignor agrees that this Assignment is immediately effective between Assignor and Lender and effective as to third parties on the recording of this Assignment.
7. **WARRANTIES AND REPRESENTATIONS.** To induce Lender to enter into the Loan, Assignor makes these representations and warranties for as long as this Assignment is in effect.
- A. **Power.** Assignor is duly organized, validly existing and in good standing under the laws in the jurisdiction where Assignor was organized and is duly qualified, validly existing and in good standing in all jurisdictions in which Assignor operates or Assignor owns or leases property. Assignor has the power and authority to enter into this transaction and to carry on Assignor's business or activity as now conducted.
- B. **Authority.** The execution, delivery and performance of this Assignment and the obligation evidenced by this Assignment: are within Assignor's duly authorized powers; has received all necessary governmental approval; will not violate any provision of law or order of court or governmental agency; and will not violate any agreement to which Assignor is a party or to which Assignor is or any of Assignor's property is subject.

- C. **Name and Place of Business.** Other than previously disclosed in writing to Lender, Assignor has not changed Assignor's name or principal place of business within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Assignor does not and will not use any other name and will preserve Assignor's existing name, trade names and franchises.
- D. **Ownership or Lease of Property.** Assignor owns or leases all property that Assignor needs to conduct Assignor's business and activities. All of Assignor's property is free and clear of all liens, security interests, encumbrances and other adverse claims and interests, except those Lender previously agreed to in writing.
- E. **Compliance with Laws.** Assignor is not violating any laws, regulations, rules, orders, judgments or decrees applicable to Assignor or Assignor's property, except for those that Assignor is challenging in good faith through proper proceedings after providing adequate reserves to fully pay the claim and its challenge should Assignor lose.
- F. **Title.** Assignor has good title to the Leases, Rents and Property and the right to assign, grant, bargain, convey and mortgage to Lender as additional security the Leases and Rents, and no other person has any right in the Leases and Rents.
- G. **Recordation.** Assignor has recorded the Leases as required by law or as otherwise prudent for the type and use of the Property.
- H. **Default.** No default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Assignor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Assignor or any party to the Lease defaults or fails to observe any applicable law, Assignor will promptly notify Lender.
- I. **Lease Modification.** Assignor has not sublet, modified, extended, canceled, or otherwise altered the Leases, or accepted the surrender of the Property covered by the Leases (unless the Leases so required).
- J. **Encumbrance.** Assignor has not assigned, compromised, subordinated or encumbered the Leases and Rents.
8. **COVENANTS.** Assignor agrees to the following covenants:
- A. **Rent Abatement and Insurance.** When any Lease provides for an abatement of Rents due to fire, flood or other casualty, Assignor will insure against this risk of loss with a policy satisfactory to Lender. Assignor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.
- B. **Copies of Leases.** Assignor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed.
- C. **Right to Rents.** Immediately after the execution of this Assignment, Assignor will notify all current and future tenants and others obligated under the Leases of Lender's right to the Leases and Rents, and will request that they immediately pay all future Rents directly to Lender when Assignor or Lender asks them to do so.
- D. **Accounting.** When Lender requests, Assignor will provide to Lender an accounting of Rents, prepared in a form acceptable to Lender, subject to generally accepted accounting principles and certified by Assignor or Assignor's accountant to be current, accurate and complete as of the date requested by Lender.
- E. **Lease Modification.** Assignor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so required) without Lender's written consent.
- F. **Encumbrance.** Assignor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent.
- G. **Future Leases.** Assignor will not enter into any future Leases without prior written consent from Lender. Assignor will execute and deliver such further assurances and assignments as to these future Leases as Lender requires from time to time.
- H. **Personal Property.** Assignor will not sell or remove any personal property on the Property, unless Assignor replaces this personal property with like kind for the same or better value.
- I. **Prosecution and Defense of Claims.** Assignor will appear in and prosecute its claims or defend its title to the Leases and Rents against any claims that would impair Assignor's interest under this Assignment and, on Lender's request, Assignor will also appear in any action or proceeding on behalf of Lender. Assignor agrees to assign to Lender, as requested by Lender, any right, claims or defenses which Assignor may have against parties who supply labor or materials to improve or maintain the leaseholds subject to the Leases and/or the Property.
- J. **Liability and Indemnification.** Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses or damages due to Lender's gross negligence or intentional torts to the extent permitted by law. Otherwise, Assignor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.
- K. **Leasehold Estate.** Assignor will not cause or permit the leasehold estate under the Leases to merge with Assignor's reversionary interest, and agrees that the Leases shall remain in full force and effect regardless of any merger of the Assignor's interests and of any merger of the interests of Assignor and any party obligated under the Leases.
- L. **Insolvency.** Lender will be the creditor of each tenant and of anyone else obligated under the Leases who is subject to an assignment for the benefit of creditors, an insolvency, a dissolution or a receivership proceeding, or a bankruptcy.

9. **TRANSFER OF AN INTEREST IN THE ASSIGNOR.** If Assignor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
- A. A beneficial interest in Assignor is sold or transferred.
 - B. There is a change in either the identity or number of members of a partnership or similar entity.
 - C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.
- However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Assignment.
10. **DEFAULT.** Assignor will be in default if any of the following occur with regard to the Secured Debts that are secured by this Assignment:
- A. **Payments.** Assignor fails to make a payment in full when due.
 - B. **Insolvency or Bankruptcy.** Assignor makes an assignment for the benefit of creditors or becomes insolvent, either because Assignor's liabilities exceed Assignor's assets or Assignor is unable to pay Assignor's debts as they become due; or Assignor petitions for protection under federal, state or local bankruptcy, insolvency or debtor relief laws, or is the subject of a petition or action under such laws and fails to have the petition or action dismissed within a reasonable period of time not to exceed 60 days.
 - C. **Death or Incompetency.** If Assignor is an individual, Assignor dies or is declared legally incompetent.
 - D. **Business Termination.** If Assignor is not an individual, Assignor merges, dissolves, reorganizes or ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.
 - E. **Failure to Perform.** Assignor fails to perform any condition or to keep any promise or covenant of this Assignment, any other document evidencing or pertaining to the Loan, or any other debt or agreement Assignor has with Lender.
 - F. **Misrepresentation.** Assignor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
 - G. **Property Transfer.** Assignor transfers all or a substantial part of Assignor's money or property.
 - H. **Property Value.** The value of the Property declines or is impaired.
 - I. **Name Change.** Assignor changes Assignor's name or assumes an additional name without notifying Lender before making such a change.
 - J. **Material Change.** Without first notifying Lender, there is a material change in Assignor's business, including ownership, management, and financial conditions.
 - K. **Insecurity.** Lender reasonably believes that Lender is insecure.
11. **REMEDIES.** After Assignor defaults, and after Lender gives any legally required notice and opportunity to cure the default, Lender may at Lender's option do any one or more of the following:
- A. **Acceleration.** Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due.
 - B. **Additional Security.** Lender may demand additional security or additional parties to be obligated to pay the Secured Debts.
 - C. **Sources.** Lender may use any and all remedies Lender has under the state law where the Property is located or federal law or in any instrument evidencing or pertaining to the Secured Debts.
 - D. **Insurance Benefits.** Lender may make a claim for any and all insurance benefits or refunds that may be available on Assignor's default.
 - E. **Payments Made On Assignor's Behalf.** Amounts advanced on Assignor's behalf will be immediately due and may be added to the Secured Debts.
 - F. **Rents.** Lender may terminate Assignor's right to collect Rents and directly collect and retain Rents in Lender's name without taking possession of the Property and to demand, collect, receive, and sue for the Rents, giving proper receipts and releases. In addition, after deducting all reasonable expenses of collection from any collected and retained Rents, Lender may apply the balance as provided for by the Secured Debts.
 - G. **Entry.** Lender may enter, take possession, manage and operate all or any part of the Property; make, modify, enforce or cancel or accept the surrender of any Leases; obtain or evict any tenants and licensees; increase or reduce Rents; decorate, clean and make repairs or do any other act or incur any other cost Lender deems proper to protect the Property as fully as Assignor could do. Any funds collected from the operation of the Property may be applied in such order as Lender may deem proper, including, but not limited to, payment of the following: operating expenses, management, brokerage, attorneys' and accountants' fees, the Secured Debts, and toward the maintenance of reserves for repair or replacement. Lender may take such action without regard to the adequacy of the security, with or without any action or proceeding, through any person or agent, or receiver to be appointed by a court, and irrespective of Assignor's possession. The collection and application of the Rents or the entry upon and taking possession of the Property as set out in this section shall not cure or waive any notice of default under the Secured Debts, this Assignment, or invalidate any act pursuant to such notice. The enforcement of such remedy by Lender, once exercised, shall continue for so long as Lender shall elect, notwithstanding that such collection and application of Rents may have cured the original default.

H. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up 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.

12. APPOINTMENT OF A RECEIVER. On or after an Assignor's default, Assignor agrees to Lender making an application to the court for an appointment of a receiver for the benefit of Lender to take possession of the Property and the Leases, with the power to receive, collect and apply the Rents. Any Rents collected will be applied as the court authorizes to pay taxes, to provide insurance, to make repairs and to pay costs or any other expenses relating to the Property, the Leases and Rents, and any remaining sums shall be applied to the Secured Debts. Assignor agrees that this appointment of a receiver may be without giving bond, without reference to the then-existing value of the Property, and without regard to the insolvency of any person liable for any of the Secured Debts.

13. COLLECTION EXPENSES AND ATTORNEYS' FEES. To the extent permitted by law, Assignor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Assignment. Unless the applicable law that governs this Assignment is North Dakota, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. These expenses will bear interest from the date of payment until paid in full at the contract interest rate then in effect for the Loan. To the extent permitted by the United States Bankruptcy Code, Assignor agrees to pay the reasonable attorneys' fees Lender incurs to collect this Assignment as awarded by any court exercising jurisdiction under the Bankruptcy Code.

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

Assignor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Assignor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Assignor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Assignor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Assignor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Assignor or any tenant of any Environmental Law. Assignor will immediately notify Lender in writing as soon as Assignor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Assignor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Assignor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Assignor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Assignor and any tenant are in compliance with applicable Environmental Law.

- I. Upon Lender's request and at any time, Assignor agrees, at Assignor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Assignor's obligations under this section at Assignor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Assignor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses to the extent permitted by law, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Assignment and in return Assignor will provide Lender with collateral of at least equal value to the Property secured by this Assignment without prejudice to any of Lender's rights under this Assignment.
- L. Notwithstanding any of the language contained in this Assignment to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Assignment regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.
15. **TERM.** This Assignment will remain in full force and effect until the Secured Debts are paid or otherwise discharged and Lender is no longer obligated to advance funds under any loan or credit agreement which is a part of the Secured Debts. If any or all payments of the Secured Debts are subsequently invalidated, declared void or voidable, or set aside and are required to be repaid to a trustee, custodian, receiver or any other party under any bankruptcy act or other state or federal law, then the Secured Debts will be revived and will continue in full force and effect as if this payment had not been made.
16. **CO-SIGNERS.** If Assignor signs this Assignment but does not sign the Secured Debts, Assignor does so only to assign Assignor's interest in the Property to secure payment of the Secured Debts and Assignor does not agree to be personally liable on the Secured Debts. If this Assignment secures a guaranty between Lender and Assignor, Assignor agrees to waive any rights that may prevent Lender from bringing any action or claim against Assignor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.
17. **WAIVERS.** Except to the extent prohibited by law, Assignor waives all homestead exemption rights relating to the Property.
18. **U.C.C. PROVISIONS.**
- Construction Loan.** This Assignment secures an obligation incurred for the construction of an improvement on the Property.
19. **OTHER TERMS.** If checked, the following are applicable to this Assignment:
- Line of Credit.** The Secured Debts include a revolving line of credit provision. Although the Secured Debts may be reduced to a zero balance, this Assignment will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.
- Additional Terms.**
20. **APPLICABLE LAW.** This Assignment is governed by the laws of South Carolina, except to the extent otherwise required by the laws of the jurisdiction where the Property is located, and the United States of America.
21. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** Each Assignor's obligations under this Assignment are independent of the obligations of any other Assignor. Lender may sue each Assignor individually or together with any other Assignor. Lender may release any part of the Property and Assignor will still be obligated under this Assignment for the remaining Property. The duties and benefits of this Assignment will bind and benefit the successors and assigns of Lender and Assignor.
22. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Assignment may not be amended or modified by oral agreement. No amendment or modification of this Assignment is effective unless made in writing and executed by Assignor and Lender. This Assignment is the complete and final expression of the agreement. If any provision of this

Assignment is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

23. **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 Assignment.

24. **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 and by registered or certified mail, return receipt requested, to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. Assignor will inform Lender in writing of any change in Assignor's name, address or other application information. Assignor will provide Lender any financial statements or information Lender requests. All financial statements and information Assignor gives Lender will be correct and complete. Assignor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Assignor's obligations under this Assignment and to confirm Lender's lien status on any Property. Time is of the essence.

25. **SIGNATURES.** By signing under seal, Assignor agrees to the terms and covenants contained in this Assignment. Assignor also acknowledges receipt of a copy of this Assignment.

(Entity Name)



(Signature) ANTHONY M. WHITFIELD

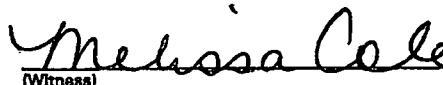
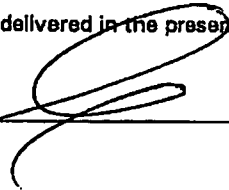
(Seal)

(Signature)

(Seal)

Signed, sealed and delivered in the presence of:

(Witness)



(Witness)

PROBATE:

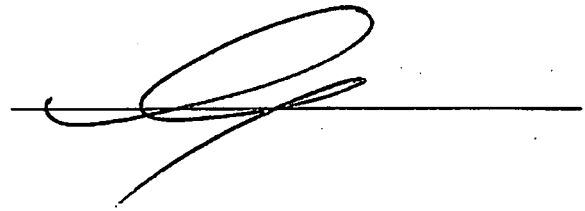
STATE OF South Carolina, COUNTY OF Charleston) ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Assignor (and each Assignor if more than one) sign, seal and deliver the foregoing Assignment and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 9th day

of October, 2007

 (Seal)
Notary Public for South Carolina



My commission expires: 06/20/2015

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being in the County of Dorchester, State of South Carolina, and being known and designated as Lot 46, Section B of Auburn Hills at Scott's Mill, as shown on that certain plat entitled: "AUBURN HILLS AT SCOTT'S MILL LOTS 1 THRU 51, LOTS 202 THRU 209", dated July 22, 2003 and recorded in the Register of Deeds Office for Dorchester County in Plat Book K, Page 70. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING the same property conveyed to the mortgagor herein by deed of Patrick R. Watts, Master in Equity for Dorchester County, dated September 11, 2006 and recorded in the Dorchester County Register of Deeds Office in Book 5582 at Page 020.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

BANK OF NORTH CAROLINA,
Plaintiff,

vs.

ANTHONY WHITFIELD, CINDY
WHITFIELD, AND DAVID SWANSON
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-18-358

**DEFENDANT'S AMENDED
ANSWER, AFFIRMATIVE
DEFENSES AND
COUNTERCLAIMS**

(Breach of Contract, Negligent
Misrepresentation, Fraud in the
Inducement, Unfair Trade Practices,
Promissory Estoppel, Interference with
Prospective Contractual Relations, and
Breach of Contract Accompanied by
Fraudulent Act, Abuse of Process, Civil
Conspiracy, and Equitable Indemnity)

(Jury Trial Demanded)

TO: BRIAN DUFFY AND SETH WHITAKER, ATTORNEYS FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter "Mr. Whitfield") and responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 6, 8, 14, 15, 16, 17, 18 and 25.
2. Mr. Whitfield denies, the allegations of Paragraphs 13 and 23 to the extent such Paragraphs reference previous allegations which are herein denied.
3. Mr. Whitfield admits the allegations of Paragraph 5, but denies that he chose the stated interest rate and alleges that at all material times Plaintiff represented the maturity date of the loan would be automatically extended by Plaintiff.

4. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 24, 26 and 29.

5. Mr. Whitfield denies Paragraphs 1, 4, 7, 9, 10, 11, 12, 19, 20, 21, 22, 27, 28 and 29.

6. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

7. Plaintiffs claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as required under the Note and was told by Plaintiff numerous times that the October 16, 2013 maturity date as referenced in the Note would be automatically extended, and in fact agreed orally and in writing to renew the loan.

SECOND AFFIRMATIVE DEFENSE

8. Plaintiffs claims in equity are barred by the doctrine of unclean hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

9. Plaintiffs action should be barred by the doctrine of unconscionability, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

10. Upon information and belief, the subject note attempted to be foreclosed upon is not the original note and therefore Plaintiff does not have standing pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

11. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

12. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a % point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

13. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the property at 98 Willow Lane, Ladson, SC 29456 (hereinafter, "the Subject Property").

14. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ % (See Exhibit.A" attached hereto).

15. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ %, Mr. Whitfield was provided the higher 7.25% rate as opposed to the lower floating rate of prime minus

¼ %.

16. Despite being provided documents at the closing with an October 16, 2013 maturity date on the loan, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

17. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject property from the origination of the loan every month until the renewal date.

18. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals. On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The following day, Ms. Bell informed Harbor National Bank personnel (but not Mr. Whitfield) that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never told Mr. Whitfield that he needed to move the loans- at any point in time.

Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

19. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

20. Despite making assurances his loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity of the April 13, 2012 maturities; and (g) credit Mr. Whitfield's overpayment of interest.

21. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed

new loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 20 (d) herein).

22. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for one of the properties that Cindy Whitfield resided in (hereinafter, the "Black Rush Property")¹. At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties - Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

23. Despite Harbor National Bank's representations that a title endorsement was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor National Bank failed to renew any of the loans listed in the June 26, 2012 commitment letter despite agreeing to do so, willfully breaching their agreements, and causing Mr.

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in a fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM

(Breach of Contract)

24. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

25. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property would be automatically renewed.

26. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

27. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION

(Negligent Misrepresentation)

28. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

29. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus 0%. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

30. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

31. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

32. At or about the time of the initial loan originations, Plaintiff made

affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus $\frac{1}{4}$ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

33. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

34. These false representations were made to induce the Mr. Whitfield to enter a high cost loan, and were made by the Plaintiff with the knowledge of their falsity.

35. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr. Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

36. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral

mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

37. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.25%. The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(As made applicable through SC Code §39-5-10 et.seq.)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

40. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

41. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material. In this case, Plaintiff's actions were deceptive because Plaintiff clearly misrepresented that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION

(Promissory Estoppel/ Detrimental Reliance)

42. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

43. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

44. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

45. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

46. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION

(Tortious Interference with Prospective Contractual Relations)

47. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

48. The acts of Plaintiff described herein constituted an interference with Mr. Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing

these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent the subject property.

49. As a result of Plaintiffs actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of the subject property. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of their property in the eyes of third parties, loss of income and loss of profits.

50. Plaintiffs actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell the subject property to third parties who met requirements for sale and/or rental of the subject property; b) foreclosure proceedings having been instituted on the subject property; c) a diminished value of the subject property in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges, f) financial damage for his inability to sell the subject property following filing of the lis pendens and lawsuit, g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit, i) emotional distress to Mr. Whitfield, j) injury to his health and mental pain and suffering.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

51. Mr. Whitfield hereby incorporates the allegations of the

foregoing paragraphs as if fully restated herein.

52. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

53. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

54. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent Scott Warren)

55. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

56. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

57. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

58. Despite providing such **sworn testimony** by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is **no evidence of any such phone call** as the phone records from Mr.

David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

59. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact evidence shows it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

60. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

61. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

62. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given. The acts described above and herein have caused damage to Mr. Whitfield by incurring actual damages, both mental and pecuniary, including by way of example only and without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will

continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent Scott Warren)

63. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

64. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

65. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

66. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

67. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

68. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the

advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

69. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

70. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

71. Mr. David Swanson's actions described above and herein were made for his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

72. The actions of David Swanson and Scott Warren as alleged above and herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION
(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

75. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing¹ and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

76. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr.

¹ Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

Whitfield, including but not limited to consequential and special damages, and the imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

77. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:

- a. Actual damages;
- b. Statutory damages;
- c. Compensatory damages
- d. Special damages
- e. Treble Damages

- f. Disgorgement of profits;
- g. Restitution;
- h. Rescission;
- g. Injunctive relief; and
- h. Attorneys' fees and costs

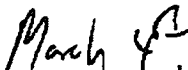
DEMAND FOR JURY TRIAL

Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994)

HALVERSEN & ASSOCIATES, LLC

By: _____


Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com


2016.
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Amended Answer by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this 4th day of March, 2016.

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Charleston, South Carolina
March 4th, 2016.

2016 MAR - 8 PM 12: 03
CLERK OF COURT
ROCHESTER COUNTY

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
 BANK OF NORTH CAROLINA,)
 Plaintiff,)
 vs.)
 ANTHONY WHITFIELD, CINDY)
 WHITFIELD, AND DAVID SWANSON)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2014-CP-18-1792

2016 MAR -8 PH12:00
 JUDGE - TER...

DEFENDANT'S FOURTH AMENDED ANSWER, AFFIRMATIVE DEFENSES, CROSSCLAIM AND COUNTERCLAIMS

(Breach of Contract, Negligent Misrepresentation, Fraud in the Inducement, Unfair Trade Practices, Promissory Estoppel, Tortious Interference with Prospective Contractual Relations, and Breach of Contract Accompanied by Fraudulent Act, Abuse of Process, Civil Conspiracy, and Equitable Indemnification)

(Jury Trial Demanded)

TO: ROBERT A. BERNSTEIN, ATTORNEY FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter, "Mr. Whitfield") and responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 8, 14, 15, 16, 17, 18, 25, 33, 39, 40, 41, 42, 43 and 50.
2. Mr. Whitfield denies, the allegations of Paragraphs 13, 23, 38 and 48 to the extent such Paragraphs reference previous allegations which are herein denied.
3. Mr. Whitfield admits the allegations of Paragraph 5 and 30, but denies that he chose the stated interest rate and alleges that at all material times Plaintiff represented the maturity date of the loan would be automatically extended by Plaintiff.

4. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 24, 26, 29, 49, 51 and 54.

5. Mr. Whitfield denies Paragraphs 1, 4, 6, 7, 9, 10, 11, 12, 19, 20, 21, 22, 27, 28, 31, 32, 34, 35, 36, 37, 44, 45, 46, 47, 52 and 53.

6. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

7. Plaintiff's claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as was required under the Note and was told by Plaintiff numerous times that the October 13, 2012 maturity date as referenced in the Note would be automatically extended.

SECOND AFFIRMATIVE DEFENSE

8. Plaintiff's claims in equity are barred by the doctrine of unclean hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

9. Plaintiff's action should be barred by the doctrine of unconscionability, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

10. Upon information and belief, the subject notes attempted to be foreclosed upon are not the original notes and therefore Plaintiff does not have standing pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

11. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

12. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a ½ point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

13. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the property at 9708 Jamison Road and 131 Tyron Road (hereinafter, "the Subject Property").

14. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ % (See Exhibit "A" attached hereto).

15. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ %, Mr. Whitfield was provided the higher 7.5% rate as opposed to the lower floating rate of prime minus

¼ %.

16. Despite being provided documents at the closing with a April 13, 2012 maturity date on some of the loans, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

17. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject properties from the origination of the loan every month until the renewal date.

18. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals." On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The following day, Ms. Bell informed Harbor National Bank personnel (but not Mr. Whitfield) that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never told Mr. Whitfield that he needed to move the loans- at any point in time. Had Mr. Whitfield

known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

19. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

20. Despite making assurances the loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity of the April 13, 2012 maturities; and (g) credit Mr. Whitfield's overpayment of interest.

21. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed new

loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 18 (d) herein).

22. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for one of the properties that Cindy Whitfield resided in (hereinafter, the "Black Rush Property")¹. At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties -Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

23. Despite Harbor National Bank's representations that a title endorsement was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor National Bank failed to renew any of the loans listed in the June 26, 2012 commitment

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in a fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

letter despite agreeing to do so, willfully breaching their agreements, and causing Mr. Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM
(Breach of Contract)

24. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

25. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property would be automatically renewed.

26. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

27. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

28. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

29. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

30. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

31. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

32. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus $\frac{1}{4}$ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

33. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

34. These false representations were made to induce the Mr. Whitfield to enter a high cost loan, and were made by the Plaintiff with the knowledge of their falsity.

35. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr.

Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

36. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

37. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.5%. The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(As made applicable through SC Code §39-5-10 et.seq.)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

40. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

41. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material. In this case, Plaintiff's actions were deceptive because Plaintiff clearly misrepresented that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor

National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Promissory Estoppel / Detrimental Reliance)

42. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

43. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

44. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

45. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

46. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations)

47. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

48. The acts of Plaintiff described herein constituted an interference with Mr.

Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent the subject properties.

49. As a result of Plaintiff's actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of the subject properties. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of his properties in the eyes of third parties, loss of income and loss of profits.

50. Plaintiff's actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell the subject properties to third parties who met requirements for sale and/or rental of the subject properties; b) foreclosure proceedings having been instituted on the subject properties; c) a diminished value of the subject properties in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges, f) financial damage for his inability to sell the subject properties following filing of the lis pendens and lawsuit, g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit, i) emotional distress to Mr. Whitfield, j) injury to his health and mental pain and suffering.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

51. Mr. Whitfield hereby incorporates the allegations of the foregoing

paragraphs as if fully restated herein.

52. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

53. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

54. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent Scott Warren)

55. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

56. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

57. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

58. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012

closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

59. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact evidence shows it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

60. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

61. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

62. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given. The acts described above and herein have caused damage to Mr. Whitfield by incurring

actual damages, both mental and pecuniary, including by way of example only and without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

63. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

64. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

65. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

66. Despite providing such **sworn testimony** by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is **no evidence of any such phone call** as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

67. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

68. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

69. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

70. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

71. Mr. David Swanson's actions described above and herein were made for his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

72. The actions of David Swanson and Scott Warren as alleged above and

herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION

(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

75. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy

Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing² and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

76. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr. Whitfield, including but not limited to consequential and special damages, and the imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

77. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled

² Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:

- a. Actual damages;
- b. Compensatory damages
- c. Special damages;
- d. Statutory damages;
- e. Treble Damages
- f. Disgorgement of profits;
- g. Restitution;
- h. Rescission;
- i. Injunctive relief; and
- j. Attorneys' fees and costs

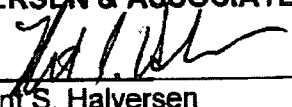
DEMAND FOR JURY TRIAL

Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994)

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: _____


Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
Attorneys for the Defendant

March 4th, 2016.
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Fourth Amended Answer, Affirmative Defenses Crossclaim and Counterclaims upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this 4th day of March, 2016.

HALVERSEN & ASSOCIATES, LLC

By: *[Signature]*
Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

2016 MAR -8 PM 12:00
CLERK OF COURT
RICHIESTER COUNTY

Charleston, South Carolina
March 4th, 2016

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

BANK OF NORTH CAROLINA,
Plaintiff,

vs.

ANTHONY WHITFIELD, CINDY
WHITFIELD, AND DAVID SWANSON
Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-18-1793

2016 MAR -8 PM 12:01
DORCHESTER COUNTY

**DEFENDANT'S FOURTH AMENDED
ANSWER, AFFIRMATIVE DEFENSES,
CROSSCLAIM AND COUNTERCLAIM**

(Breach of Contract, Negligent
Misrepresentation, Fraud in the
Inducement, Unfair Trade Practices,
Promissory Estoppel, Interference with
Prospective Contractual Relations, and
Breach of Contract Accompanied by
Fraudulent Act, Abuse of Process, Civil
Conspiracy, and Equitable Indemnity)

(Jury Trial Demanded)

TO: ROBERT A. BERNSTEIN, ATTORNEY FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter, "Mr. Whitfield") and responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 8, 14, 15, 16, 17, 18 and 25.
2. Mr. Whitfield denies, the allegations of Paragraphs 13 and 23 to the extent such Paragraphs reference previous allegations which are herein denied.
3. Mr. Whitfield admits the allegations of Paragraph 5, but denies that he chose the stated interest rate and alleges that at all material times Plaintiff represented the maturity date of the loan would be automatically extended by Plaintiff.

4. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 24, 26 and 29.

5. Mr. Whitfield denies Paragraphs 1, 4, 6, 7, 9, 10, 11, 12, 19, 20, 21, 22, 27 and 28.

6. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

7. Plaintiff's claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as was required under the Note and was told by Plaintiff numerous times that the April 13, 2012 maturity date as referenced in the Note would be automatically extended.

SECOND AFFIRMATIVE DEFENSE

8. Plaintiff's claims in equity are barred by the doctrine of unclean hands hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

9. Plaintiff's action should be barred by the doctrine of unconscionability, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

10. Upon information and belief, the subject note attempted to be foreclosed upon is not the original note and therefore Plaintiff does not have standing pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

11. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

12. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a ½ point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

13. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the property at 732 Gahagan Drive, Summerville, SC 29485 (hereinafter, "the Subject Property").

14. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ % (See Exhibit "A" attached hereto).

15. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ %, Mr. Whitfield

was provided the higher 7.5% rate as opposed to the lower floating rate of prime minus ¼ %.

16. Despite being provided documents at the closing with a April 13, 2012 maturity date on some of the loans, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

17. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject property from the origination of the loan every month until the renewal date.

18. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals." On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The following day, Ms. Bell informed Harbor National Bank personnel (but not Mr. Whitfield) that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never

told Mr. Whitfield that he needed to move the loans- at any point in time. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

19. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

20. Despite making assurances the loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity of the April 13, 2012 maturities; and (g) credit Mr. Whitfield's overpayment of interest.

21. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the

renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed new loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 20 (d) herein).

22. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for one of the properties that Cindy Whitfield resided in (hereinafter, the "Black Rush Property")¹. At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties - Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

23. Despite Harbor National Bank's representations that a title endorsement was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in a fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

National Bank failed to renew any of the loans listed in the June 26, 2012 commitment letter despite agreeing to do so, willfully breaching their agreements, and causing Mr. Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM
(Breach of Contract)

24. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

25. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property would be automatically renewed.

26. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

27. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

28. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

29. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus $\frac{1}{4}$ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

30. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

31. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

32. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

33. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

34. These false representations were made to induce the Mr. Whitfield to enter a high cost loan, and were made by the Plaintiff with the knowledge of their falsity.

35. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr.

Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

36. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

37. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.5%. The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(As made applicable through SC Code §39-5-10 et.seq.)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

40. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

41. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material. In this case, Plaintiff's actions were deceptive because Plaintiff clearly misrepresented that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor

National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Promissory Estoppel / Detrimental Reliance)

42. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

43. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

44. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

45. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

46. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations)

47. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

48. The acts of Plaintiff described herein constituted an interference with Mr.

Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent the subject property.

49. As a result of Plaintiff's actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of the subject property. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of their property in the eyes of third parties, loss of income and loss of profits.

50. Plaintiff's actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell the subject property to third parties who met requirements for sale and/or rental of the subject property; b) foreclosure proceedings having been instituted on the subject property; c) a diminished value of the subject property in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges, f) financial damage for his inability to sell the subject property following filing of the lis pendens and lawsuit, g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit, i) emotional distress to Mr. Whitfield, j) injury to his health and mental pain and suffering.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

51. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

52. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

53. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

54. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

55. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

56. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

57. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

58. Despite providing such **sworn testimony** by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is **no evidence of any such phone call** as the phone records from Mr.

David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

59. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact evidence shows it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

60. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

61. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

62. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given. The acts described above and herein have caused damage to Mr. Whitfield by incurring actual damages, both mental and pecuniary, including by way of example only and

without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

63. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

64. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

65. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

66. Despite providing such **sworn testimony** by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is **no evidence of any such phone call** as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

67. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

68. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

69. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

70. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

71. Mr. David Swanson's actions described above and herein were made for his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

72. The actions of David Swanson and Scott Warren as alleged above and

herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION
(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

75. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy

Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing² and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

76. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr. Whitfield, including but not limited to consequential and special damages, and the imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

77. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled

² Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:

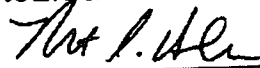
- a. Actual damages;
- b. Compensatory damages
- c. Special damages;
- d. Statutory damages;
- e. Treble Damages
- f. Disgorgement of profits;
- g. Restitution;
- h. Rescission;
- i. Injunctive relief; and
- j. Attorneys' fees and costs

DEMAND FOR JURY TRIAL

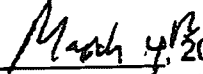
Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994)

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
Attorneys for the Defendant

 4/13/2016.
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Fourth Amended Answer, Affirmative Defenses and Counterclaims upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this 4th day of March, 2016.

HALVERSEN & ASSOCIATES, LLC

By: *Brent S. Halversen*

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

2016 MAR - 8 PH 12: 02
SOUTH CAROLINA
CHARLESTON COUNTY

Charleston, South Carolina
March 4th, 2016

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-18-358

BANK OF NORTH CAROLINA,

Plaintiff,

v.

ANTHONY M. WHITFIELD,

Defendant.

PLAINTIFF BANK OF NORTH
CAROLINA AND COUNTERCLAIM
DEFENDANT BNC BANCORP'S REPLY
TO AMENDED ANSWER, AFFIRMATIVE
DEFENSES, CROSSCLAIM AND
COUNTERCLAIMS

ANTHONY M. WHITFIELD,

Counterclaim Plaintiff,

v.

BNC BANCORP and DAVID SWANSON,

Counterclaim Defendants.

ANTHONY M. WHITFIELD,

Third-Party Plaintiff,

v.

CINDY WHITFIELD,

Third-Party Defendant.

RECEIVED
DORCHESTER COUNTY
MAY 21 11:26 AM '14

Plaintiff Bank of North Carolina and Counterclaim Defendant BNC Bancorp,¹ replying to the allegations of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims,

1. It is unclear whether Defendant intended to name Bank of North Carolina as a Counterclaim Defendant in the Eighth and Ninth Counterclaims; however, Defendant actually named BNC Bancorp. BNC Bancorp is a holding company that owns the Bank of North Carolina. Harbor Bank Group, Inc. is a holding company that owned Harbor National Bank. In 2014, Harbor Bank Group, Inc. and Harbor National Bank merged with and into BNC Bancorp and Bank of North Carolina, respectively. Neither BNC Bancorp nor Harbor Bank Group, Inc. has ever done business as Harbor National Bank. For present purposes only, Bank of North Carolina and BNC Bancorp will be referred to collectively as "Plaintiff."

would show unto this Court:

1. Each and every allegation contained in said Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims not hereinafter specifically admitted is denied.

2. The allegations of Paragraphs One (1) through Ten (10) of the Answer, Affirmative Defenses, and Counterclaims fail to make allegations against Plaintiff requiring a response; to the extent they make such allegations, the same are hereby denied.

3. Responding to the allegations of Paragraph Eleven (11) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Defendant applied to Plaintiff for a credit commitment to purchase and refinance commercial real estate in the furtherance of his business in the Berkeley, Dorchester, and Charleston County areas and that Defendant had financed other transactions with Southtrust Bank; the remaining allegations of Paragraph Eleven (11) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

4. The allegations of Paragraphs Twelve (12) and Thirteen (13) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

5. Responding to the allegations of Paragraph Fourteen (14) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that it provided the attached Exhibit "A" to Defendant setting forth the terms and conditions upon which it would agree to extend credit to Defendant, the terms and conditions of which are explicitly set forth in the said correspondence, and Plaintiff craves reference to the said correspondence to determine the terms and conditions of such commitment; any allegations contained in Paragraph Fourteen (14) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims not hereinafter specifically admitted are denied.

6. Responding to the allegations of Paragraph Fifteen (15) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that the Defendant chose a fixed interest rate as set forth in the applicable Note; any allegations contained in Paragraph Fifteen (15) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

7. The allegations of Paragraph Sixteen (16) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

8. Responding to the allegations of Paragraph Seventeen (17) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Defendant made payments under the terms of and pursuant to the Promissory Note; any allegations contained in Paragraph Seventeen (17) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

9. Responding to the allegations of Paragraph Eighteen (18) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that it requested copies of Defendant's tax returns pursuant to the terms of line of credit and the note and mortgage, that Defendant requested to be provided with a lower interest rate, and that Plaintiff was considering terminating the loans due to Defendant's failure to provide necessary documentation; any allegations contained in Paragraph Eighteen (18) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

10. Responding to the allegations of Paragraph Nineteen (19) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that it wrote to Defendant again advising of the need for sufficient financial information, including tax returns,

to evaluate the proposal to renew loans with Defendant, that Defendant thereafter advised of the completion of the tax returns, that Defendant requested modified terms for the loans, and that Angela Bell communicated with a senior credit analyst regarding the successful receipt of required documentation from Defendant; any allegations contained in Paragraph Nineteen (19) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

11. Responding to the allegations of Paragraph Twenty (20) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that the Notes secured by mortgages on 732 Gahagan and 110 Mepkin matured by their terms, that in a meeting with Defendant an agreement was reached to agree regarding certain terms and conditions upon which certain loans could be renewed in the future pursuant to ordinary bank requirements, and that renewal terms included the terms contained in a June 26, 2012 letter to Defendant; any allegations contained in Paragraph Twenty (20) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

12. Responding to the allegations of Paragraph Twenty-One (21) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Scott Warren issued a terms sheet to Defendant setting forth terms and conditions under which it would agree to renew the loans in existence and that the letter is attached to the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims as Exhibit "B"; any allegations contained in Paragraph Twenty-One (21) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

13. Responding to the allegations of Paragraph Twenty-Two (22) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Mr. Warren

attended a scheduled closing at the office of attorney Mark Weeks, that it was discovered that Defendant had transferred an interest in the Black Rush property to his ex-wife, Cindy Whitfield, and that Plaintiff required as a condition of the closing either that Mrs. Cindy Whitfield sign the new mortgage or that a title endorsement be obtained; any allegations contained in Paragraph Twenty-Two (22) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

14. Responding to the allegations of Paragraph Twenty-Three (23) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that the closing of the new loans never took place; any allegations contained in Paragraph Twenty-Three (23) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

FOR A FIRST DEFENSE TO THE FIRST COUNTERCLAIM
(Denial)

15. Responding to the allegations of Paragraph Twenty-Four (24) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Fourteen (14) of this Reply as if repeated herein verbatim.

16. The allegations of Paragraphs Twenty-Five (25), Twenty-Six (26), and Twenty-Seven (27) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SECOND COUNTERCLAIM
(Denial)

17. Responding to the allegations of Paragraph Twenty-Eight (28) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the

allegations of Paragraphs One (1) through Sixteen (16) of this Reply as if repeated herein verbatim.

18. Responding to the allegations of Paragraph Twenty-Nine (29) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that it proposed to finance the line of credit through either a fixed rate or floating rate to be chosen by Defendant and that it stated its intention to agree to refinance the book of loans Defendant had with Plaintiff provided that Defendant met the terms and conditions imposed upon the proposed transaction; the remaining allegations of Paragraph Twenty-Nine (29) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

19. The allegations of Paragraph Thirty (30) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE THIRD COUNTERCLAIM
(Denial)

20. Responding to the allegations of Paragraph Thirty-One (31) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Nineteen (19) of this Reply as if repeated herein verbatim.

21. The allegations of Paragraphs Thirty-Two (32), Thirty-Three (33), Thirty-Four (34), Thirty-Five (35), Thirty-Six (36), and Thirty-Seven (37) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FOURTH COUNTERCLAIM
(Denial)

22. Responding to the allegations of Paragraph Thirty-Eight (38) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the

allegations of Paragraphs One (1) through Twenty-One (21) of this Reply as if repeated herein verbatim.

23. Responding to the allegations of Paragraphs Thirty-Nine (39) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that it proposed to finance the line of credit through either a fixed rate or floating rate to be chosen by Defendant and that it stated its intention to agree to refinance the book of loans Defendant had with Plaintiff provided that Defendant met the terms and conditions imposed upon the proposed transaction; the remaining allegations of Paragraph Thirty-Nine (39) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

24. The allegations of Paragraphs Forty (40) and Forty-One (41) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FIFTH COUNTERCLAIM
(Denial)

25. Responding to the allegations of Paragraph Forty-Two (42) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Four (24) of this Reply as if repeated herein verbatim.

26. The allegations of Paragraphs Forty-Three (43), Forty-Four (44), Forty-Five (45), and Forty-Six (46) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SIXTH COUNTERCLAIM
(Denial)

27. Responding to the allegations of Paragraph Forty-Seven (47) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the

allegations of Paragraphs One (1) through Twenty-Six (26) of this Reply as if repeated herein verbatim.

28. The allegations of Paragraphs Forty-Eight (48), Forty-Nine (49), and Fifty (50) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SEVENTH COUNTERCLAIM
(Denial)

29. Responding to the allegations of Paragraph Fifty-One (51) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Eight (28) of this Reply as if repeated herein verbatim.

30. The allegations of Paragraphs Fifty-Two (52), Fifty-Three (53), and Fifty-Four (54) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE EIGHTH COUNTERCLAIM
(Denial; Plaintiff denies that Scott Warren was an employee or agent of BNC Bancorp)

31. Responding to the allegations of Paragraph Fifty-Five (55) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Thirty (30) of this Reply as if repeated herein verbatim.

32. Responding to the allegations of Paragraph Fifty-Six (56) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Scott Warren has testified that he sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; any allegations contained in Paragraph Fifty-Six (56) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

33. Responding to the allegations of Paragraph Fifty-Seven (57) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that David Swanson has testified that Scott Warren sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; any allegations contained in Paragraph Fifty-Seven (57) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

34. The allegations of Paragraphs Fifty-Eight (58) and Fifty-Nine (59) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

35. Responding to the allegations of Paragraph Sixty (60) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that David Swanson has testified that Scott Warren sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; the remaining allegations of Paragraph Sixty (60) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

36. The allegations of Paragraphs Sixty-One (61) and Sixty-Two (62) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE NINTH COUNTERCLAIM
(Denial; Plaintiff denies that Scott Warren was an employee or agent of BNC Bancorp)

37. Responding to the allegations of Paragraph Sixty-Three (63) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Thirty-Six (36) of this Reply as if repeated herein verbatim.

38. Responding to the allegations of Paragraph Sixty-Four (64) of the Amended

Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Scott Warren has testified that he sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; any allegations contained in Paragraph Sixty-Four (64) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

39. Responding to the allegations of Paragraph Sixty-Five (65) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that David Swanson has testified that Scott Warren sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; any allegations contained in Paragraph Sixty-Five (65) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

40. The allegations of Paragraphs Sixty-Six (66) and Sixty-Seven (67) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

41. Responding to the allegations of Paragraph Sixty-Eight (68) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that David Swanson has testified that Scott Warren sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; the remaining allegations of Paragraph Sixty-Eight (68) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

42. The allegations of Paragraphs Sixty-Nine (69), Seventy (70), Seventy-One (71), and Seventy-Two (72) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FIRST THIRD-PARTY CLAIM²
(Denial)

43. Responding to the allegations of Paragraph Seventy-Three (73) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Forty-Two (42) of this Reply as if repeated herein verbatim.

44. Responding to the allegations of Paragraphs Seventy-Four (74), Seventy-Five (75), Seventy-Six (76), and Seventy-Seven (77) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff asserts that these allegations are not directed to, at, or against Plaintiff such that a response from Plaintiff is required; to the extent a response from Plaintiff is required, the allegations of Paragraphs Seventy-Four (74), Seventy-Five (75), Seventy-Six (76), and Seventy-Seven (77) of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A SECOND DEFENSE
(Statutes of Limitations)

45. Further responding to the allegations of all Counterclaims, Plaintiff would show that such claims are barred by the applicable statutes of limitations, for which reason Defendant cannot recover in any sum whatsoever.

FOR A THIRD DEFENSE
(Failure To State A Claim)

46. Further responding to the allegations of all Counterclaims, Plaintiff would show that such Counterclaims fail to state claims upon which relief can be granted, for which reason Defendant cannot recover in any sum whatsoever.

2. Although Defendant's Tenth Cause of Action is identified as a "Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield," Mrs. Whitfield is not a defendant in this action. Therefore, Defendant's claim

FOR A FOURTH DEFENSE
(Lack of Reliance)

47. Further responding to the allegations of the Second and Third Counterclaims, Plaintiff would show that Defendant failed to rely or have any right to rely upon the alleged representations other than as contained in the written contracts between the parties, for which reason Defendant cannot recover in any sum whatsoever.

FOR A FIFTH DEFENSE
(Regulated Transactions)

48. Further responding to the allegations of the Fourth Counterclaim, Plaintiff would show that the actions and activities of Plaintiff are regulated by the state and federal government, that the performance of said actions were in compliance with said state and federal regulations, and thus that the transactions are exempt from S.C. Code Ann. §§ 39-5-10 *et seq.*

FOR A SIXTH DEFENSE
(Other Claim Already Pending)

49. Further responding to the allegations of the Counterclaims, Plaintiff would show that another action is pending between the same parties for the same counterclaims, for which reason the said counterclaims are improper and should be dismissed pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH DEFENSE
(Statute of Frauds)

50. Further responding to the allegations of the Counterclaims, Plaintiff would show that Defendant's claim fails to comply with the statute of frauds, S.C. Code Ann. § 32-3-10, and the lender liability statute of frauds, S.C. Code Ann. § 37-10-107.

against Mrs. Whitfield is, in fact, a third-party claim.

FOR AN EIGHTH DEFENSE
(Failure to Plead Special Damages)

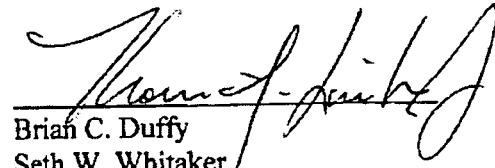
51. Further responding to the allegations of the Ninth Counterclaim, Plaintiff would show that Defendant has failed to specifically plead and sufficiently allege special damages separate and apart from those damages sought by way of the other Counterclaims asserted in the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims.

FOR A NINTH DEFENSE
(Failure to Mitigate)

52. Further responding to the allegations of the Counterclaims, Plaintiff would show that Defendant has failed to mitigate his damages, if any.

WHEREFORE, having fully responded to the allegations of the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff prays that the same be dismissed and that this Court enter judgment for the relief sought in the Complaint.

[SIGNATURE ON FOLLOWING PAGE]



Brian C. Duffy
Seth W. Whitaker
Thomas A. Limehouse, Jr.
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)

and

Robert A. Bernstein
BERNSTEIN & BERNSTEIN, P.A.
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)
*Attorneys for Plaintiff Bank of North
Carolina and Counterclaim Defendant BNC
Bancorp*

March 21, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-18-358

BANK OF NORTH CAROLINA,

Plaintiff,

v.

ANTHONY M. WHITFIELD,

Defendant.

CERTIFICATE OF SERVICE

2016 MAR 24 AM 11:26
DORCHESTER COUNTY

ANTHONY M. WHITFIELD,

Counterclaim Plaintiff,

v.

BNC BANCORP and DAVID SWANSON,

Counterclaim Defendants.

ANTHONY M. WHITFIELD,

Third-Party Plaintiff,

v.

CINDY WHITFIELD,

Third-Party Defendant.

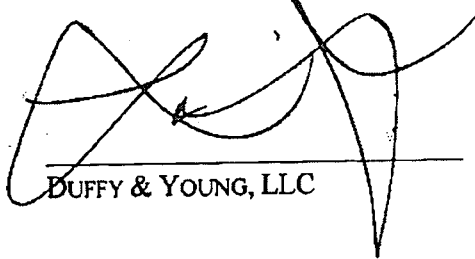
The undersigned, an employee of Duffy & Young, LLC, does hereby certify that on March 21, 2016, he/she served a copy of Plaintiff Bank of North Carolina and Counterclaim Defendant BNC Bancorp's Reply to the Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims upon Anthony M. Whitfield, Cindy Whitfield, and David Swanson by placing a copy of the same in the United States Mail, postage prepaid, and addressed to the following:

Brent S. Halversen, Esquire
HALVERSEN & ASSOCIATES, LLC
171 Church Street, Suite 330
Charleston, SC 29401
Attorney for Anthony Whitfield

Daniel S. Slotchiver, Esq.
Andrew J. McCumber, Esq.
SLOTCHIVER & SLOTCHIVER, LLP
44 State Street
Charleston, SC 29401
Attorney for Anthony Whitfield

David W. Overstreet, Esq.
EARHART OVERSTREET, LLC
PO Box 22528
Charleston, SC 29413
Attorney for David Swanson

Paul B. Ferrara, III, Esq.
Ferrara Law Firm, PLLC
2300 Otranto Road
North Charleston, SC 29406
Attorney for Cindy Whitfield



DUFFY & YOUNG, LLC

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-18-1792

BANK OF NORTH CAROLINA,

Plaintiff,

v.

ANTHONY M. WHITFIELD,

Defendant.

PLAINTIFF BANK OF NORTH
CAROLINA AND COUNTERCLAIM
DEFENDANT BNC BANCORP'S REPLY
TO FOURTH AMENDED ANSWER,
AFFIRMATIVE DEFENSES,
CROSSCLAIM AND COUNTERCLAIMS

ANTHONY M. WHITFIELD,

Counterclaim Plaintiff,

v.

BNC BANCORP and DAVID SWANSON,

Counterclaim Defendants.

RECORDED
FEBRUARY 24 AM 11:28
CLERK OF COURT
DORCHESTER COUNTY

ANTHONY M. WHITFIELD,

Third-Party Plaintiff,

v.

CINDY WHITFIELD,

Third-Party Defendant.

Plaintiff Bank of North Carolina and Counterclaim Defendant BNC Bancorp,¹ replying to the allegations of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and

1. It is unclear whether Defendant intended to name Bank of North Carolina as a Counterclaim Defendant in the Eighth and Ninth Counterclaims; however, Defendant actually named BNC Bancorp. BNC Bancorp is a holding company that owns the Bank of North Carolina. Harbor Bank Group, Inc. is a holding company that owned Harbor National Bank. In 2014, Harbor Bank Group, Inc. and Harbor National Bank merged with and into BNC Bancorp and Bank of North Carolina, respectively. Neither BNC Bancorp nor Harbor Bank Group, Inc. has ever done business as Harbor National Bank. For present purposes only, Bank of North Carolina and BNC Bancorp will be

Counterclaims, would show unto this Court:

1. Each and every allegation contained in said Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims not hereinafter specifically admitted is denied.

2. The allegations of Paragraphs One (1) through Ten (10) of the Answer, Affirmative Defenses, Crossclaim and Counterclaims fail to make allegations against Plaintiff requiring a response; to the extent they make such allegations, the same are hereby denied.

3. Responding to the allegations of Paragraph Eleven (11) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Defendant applied to Plaintiff for a credit commitment to purchase and refinance commercial real estate in the furtherance of his business in the Berkeley, Dorchester, and Charleston County areas and that Defendant had financed other transactions with Southtrust Bank; the remaining allegations of Paragraph Eleven (11) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

4. The allegations of Paragraphs Twelve (12) and Thirteen (13) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

5. Responding to the allegations of Paragraph Fourteen (14) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that it provided the attached Exhibit "A" to Defendant setting forth the terms and conditions upon which it would agree to extend credit to Defendant, the terms and conditions of which are explicitly set forth in the said correspondence, and Plaintiff craves reference to the said correspondence to determine the terms and conditions of such commitment; any allegations contained in Paragraph Fourteen (14) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims not

referred to collectively as "Plaintiff."

hereinafter specifically admitted are denied.

6. Responding to the allegations of Paragraph Fifteen (15) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that the Defendant chose a fixed interest rate as set forth in the applicable Note; any allegations contained in Paragraph Fifteen (15) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

7. The allegations of Paragraph Sixteen (16) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

8. Responding to the allegations of Paragraph Seventeen (17) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Defendant made payments under the terms of and pursuant to the Promissory Note; any allegations contained in Paragraph Seventeen (17) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

9. Responding to the allegations of Paragraph Eighteen (18) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that it requested copies of Defendant's tax returns pursuant to the terms of line of credit and the note and mortgage, that Defendant requested to be provided with a lower interest rate, and that Plaintiff was considering terminating the loans due to Defendant's failure to provide necessary documentation; any allegations contained in Paragraph Eighteen (18) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

10. Responding to the allegations of Paragraph Nineteen (19) of the Fourth Amended

Answer, Affirmative Defenses, Crossclaim, and Counterclaims, Plaintiff admits that it wrote to Defendant again advising of the need for sufficient financial information, including tax returns, to evaluate the proposal to renew loans with Defendant, that Defendant thereafter advised of the completion of the tax returns, that Defendant requested modified terms for the loans, and that Angela Bell communicated with a senior credit analyst regarding the successful receipt of required documentation from Defendant; any allegations contained in Paragraph Nineteen (19) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

11. Responding to the allegations of Paragraph Twenty (20) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that the Notes secured by mortgages on 732 Gahagan and 110 Mepkin matured by their terms, that in a meeting with Defendant an agreement was reached to agree regarding certain terms and conditions upon which certain loans could be renewed in the future pursuant to ordinary bank requirements, and that renewal terms included the terms contained in a June 26, 2012 letter to Defendant; any allegations contained in Paragraph Twenty (20) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

12. Responding to the allegations of Paragraph Twenty-One (21) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Scott Warren issued a terms sheet to Defendant setting forth terms and conditions under which it would agree to renew the loans in existence and that the letter is attached to the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims as Exhibit "B"; any allegations contained in Paragraph Twenty-One (21) of the Fourth Amended Answer, Affirmative Defenses,

Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

13. Responding to the allegations of Paragraph Twenty-Two (22) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Mr. Warren attended a scheduled closing at the office of attorney Mark Weeks, that it was discovered that Defendant had transferred an interest in the Black Rush property to his ex-wife, Cindy Whitfield, and that Plaintiff required as a condition of the closing either that Mrs. Cindy Whitfield sign the new mortgage or that a title endorsement be obtained; any allegations contained in Paragraph Twenty-Two (22) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

14. Responding to the allegations of Paragraph Twenty-Three (23) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that the closing of the new loans never took place; any allegations contained in Paragraph Twenty-Three (23) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

FOR A FIRST DEFENSE TO THE FIRST COUNTERCLAIM
(Denial)

15. Responding to the allegations of Paragraph Twenty-Four (24) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Fourteen (14) of this Reply as if repeated herein verbatim.

16. The allegations of Paragraphs Twenty-Five (25), Twenty-Six (26), and Twenty-Seven (27) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SECOND COUNTERCLAIM
(Denial)

17. Responding to the allegations of Paragraph Twenty-Eight (28) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Sixteen (16) of this Reply as if repeated herein verbatim.

18. Responding to the allegations of Paragraph Twenty-Nine (29), Plaintiff admits that it proposed to finance the line of credit through either a fixed rate or floating rate to be chosen by Defendant and that it stated its intention to agree to refinance the book of loans Defendant had with Plaintiff provided that Defendant met the terms and conditions imposed upon the proposed transaction; the remaining allegations of Paragraph Twenty-Nine (29) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

19. The allegations of Paragraph Thirty (30) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE THIRD COUNTERCLAIM
(Denial)

20. Responding to the allegations of Paragraph Thirty-One (31) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Nineteen (19) of this Reply as if repeated herein verbatim.

21. The allegations of Paragraphs Thirty-Two (32), Thirty-Three (33), Thirty-Four (34), Thirty-Five (35), Thirty-Six (36), and Thirty-Seven (37) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FOURTH COUNTERCLAIM
(Denial)

22. Responding to the allegations of Paragraph Thirty-Eight (38) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-One (21) of this Reply as if repeated herein verbatim.

23. Responding to the allegations of Paragraphs Thirty-Nine (39) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that it proposed to finance the line of credit through either a fixed rate or floating rate to be chosen by Defendant and that it stated its intention to agree to refinance the book of loans Defendant had with Plaintiff provided that Defendant met the terms and conditions imposed upon the proposed transaction; the remaining allegations of Paragraph Thirty-Nine (39) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

24. The allegations of Paragraphs Forty (40) and Forty-One (41) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FIFTH COUNTERCLAIM
(Denial)

25. Responding to the allegations of Paragraph Forty-Two (42) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Four (24) of this Reply as if repeated herein verbatim.

26. The allegations of Paragraphs Forty-Three (43), Forty-Four (44), Forty-Five (45), and Forty-Six (46) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SIXTH COUNTERCLAIM
(Denial)

27. Responding to the allegations of Paragraph Forty-Seven (47) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Six (26) of this Reply as if repeated herein verbatim.

28. The allegations of Paragraphs Forty-Eight (48), Forty-Nine (49), and Fifty (50) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SEVENTH COUNTERCLAIM
(Denial)

29. Responding to the allegations of Paragraph Fifty-One (51) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Eight (28) of this Reply as if repeated herein verbatim.

30. The allegations of Paragraphs Fifty-Two (52), Fifty-Three (53), and Fifty-Four (54) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE EIGHTH COUNTERCLAIM
(Denial; Plaintiff denies that Scott Warren was an employee or agent of BNC Bancorp)

31. Responding to the allegations of Paragraph Fifty-Five (55) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Thirty (30) of this Reply as if repeated herein verbatim.

32. Responding to the allegations of Paragraph Fifty-Six (56) of the Fourth Amended

Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Scott Warren has testified that he sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; any allegations contained in Paragraph Fifty-Six (56) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

33. Responding to the allegations of Paragraph Fifty-Seven (57) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that David Swanson has testified that Scott Warren sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; any allegations contained in Paragraph Fifty-Seven (57) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

34. The allegations of Paragraphs Fifty-Eight (58) and Fifty-Nine (59) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

35. Responding to the allegations of Paragraph Sixty (60) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that David Swanson has testified that Scott Warren sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; the remaining allegations of Paragraph Sixty (60) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

36. The allegations of Paragraphs Sixty-One (61) and Sixty-Two (62) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE NINTH COUNTERCLAIM
(Denial; Plaintiff denies that Scott Warren was an employee or agent of BNC Bancorp)

37. Responding to the allegations of Paragraph Sixty-Three (63) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Thirty-Six (36) of this Reply as if repeated herein verbatim.

38. Responding to the allegations of Paragraph Sixty-Four (64) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Scott Warren has testified that he sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; any allegations contained in Paragraph Sixty-Four (64) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

39. Responding to the allegations of Paragraph Sixty-Five (65) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that David Swanson has testified that Scott Warren sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; any allegations contained in Paragraph Sixty-Five (65) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

40. The allegations of Paragraphs Sixty-Six (66) and Sixty-Seven (67) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

41. Responding to the allegations of Paragraph Sixty-Eight (68) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that David Swanson has testified that Scott Warren sought and received, on behalf of Plaintiff, advice

in connection with the closing scheduled to take place on or about June 28, 2012; the remaining allegations of Paragraph Sixty-Eight (68) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

42. The allegations of Paragraphs Sixty-Nine (69), Seventy (70), Seventy-One (71), and Seventy-Two (72) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FIRST THIRD-PARTY CLAIM²
(Denial)

43. Responding to the allegations of Paragraph Seventy-Three (73) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Forty-Two (42) of this Reply as if repeated herein verbatim.

44. Responding to the allegations of Paragraphs Seventy-Four (74), Seventy-Five (75), Seventy-Six (76), and Seventy-Seven (77) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff asserts that these allegations are not directed to, at, or against Plaintiff such that a response from Plaintiff is required; to the extent a response from Plaintiff is required, the allegations of Paragraphs Seventy-Four (74), Seventy-Five (75), Seventy-Six (76), and Seventy-Seven (77) of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A SECOND DEFENSE
(Statutes of Limitations)

45. Further responding to the allegations of all Counterclaims, Plaintiff would show

2. Although Defendant's Tenth Cause of Action is identified as a "Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield," Mrs. Whitfield is not a defendant in this action. Therefore, Defendant's claim against Mrs. Whitfield is, in fact, a third-party claim.

that such claims are barred by the applicable statutes of limitations, for which reason Defendant cannot recover in any sum whatsoever.

FOR A THIRD DEFENSE
(Failure To State A Claim)

46. Further responding to the allegations of all Counterclaims, Plaintiff would show that such Counterclaims fail to state claims upon which relief can be granted, for which reason Defendant cannot recover in any sum whatsoever.

FOR A FOURTH DEFENSE
(Lack of Reliance)

47. Further responding to the allegations of the Second and Third Counterclaims, Plaintiff would show that Defendant failed to rely or have any right to rely upon the alleged representations other than as contained in the written contracts between the parties, for which reason Defendant cannot recover in any sum whatsoever.

FOR A FIFTH DEFENSE
(Regulated Transactions)

48. Further responding to the allegations of the Fourth Counterclaim, Plaintiff would show that the actions and activities of Plaintiff are regulated by the state and federal government, that the performance of said actions were in compliance with said state and federal regulations, and thus that the transactions are exempt from S.C. Code Ann. §§ 39-5-10 *et seq.*

FOR A SIXTH DEFENSE
(Other Claim Already Pending)

49. Further responding to the allegations of the Counterclaims, Plaintiff would show that another action is pending between the same parties for the same counterclaims, for which reason the said counterclaims are improper and should be dismissed pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH DEFENSE
(Statute of Frauds)

50. Further responding to the allegations of the Counterclaims, Plaintiff would show that Defendant's claim fails to comply with the statute of frauds, S.C. Code Ann. § 32-3-10, and the lender liability statute of frauds, S.C. Code Ann. § 37-10-107.

FOR AN EIGHTH DEFENSE
(Failure to Plead Special Damages)

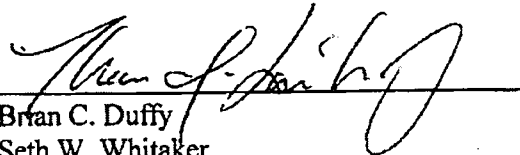
51. Further responding to the allegations of the Ninth Counterclaim, Plaintiff would show that Defendant has failed to specifically plead and sufficiently allege special damages separate and apart from those damages sought by way of the other Counterclaims asserted in the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims.

FOR A NINTH DEFENSE
(Failure to Mitigate)

52. Further responding to the allegations of the Counterclaims, Plaintiff would show that Defendant has failed to mitigate his damages, if any.

WHEREFORE, having fully responded to the allegations of the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff prays that the same be dismissed and that this Court enter judgment for the relief sought in the Complaint.

[SIGNATURE ON FOLLOWING PAGE]



Brian C. Duffy
Seth W. Whitaker
Thomas A. Limehouse, Jr. -101289
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)

and

Robert A. Bernstein
BERNSTEIN & BERNSTEIN, P.A.
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)
*Attorneys for Plaintiff Bank of North
Carolina and Counterclaim Defendant BNC
Bancorp*

March 21, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

BANK OF NORTH CAROLINA,

Plaintiff,

v.

ANTHONY M. WHITFIELD,

Defendant.

ANTHONY M. WHITFIELD,

Counterclaim Plaintiff,

v.

BNC BANCORP and DAVID SWANSON,

Counterclaim Defendants.

ANTHONY M. WHITFIELD,

Third-Party Plaintiff,

v.

CINDY WHITFIELD,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-18-1792

CERTIFICATE OF SERVICE

RECORDED
2016 MAR 24 AM 11:28
CHERYL L. BENTON
CLERK OF COURT
DORCHESTER COUNTY

The undersigned, an employee of Duffy & Young, LLC, does hereby certify that on March 21, 2016, he/she served a copy of Plaintiff Bank of North Carolina and Counterclaim Defendant BNC Bancorp's Reply to the Fourth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims upon Anthony M. Whitfield, Cindy Whitfield, and David Swanson by placing a copy of the same in the United States Mail, postage prepaid, and addressed

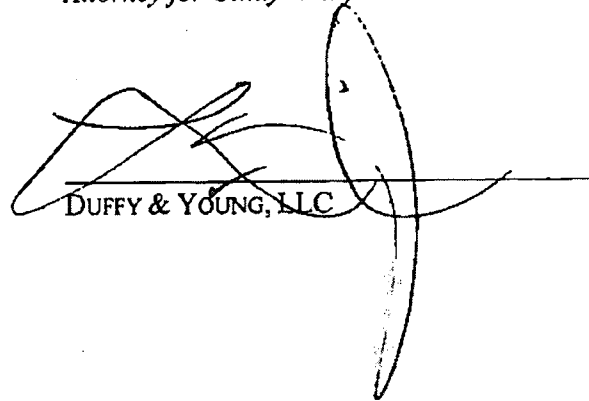
to the following:

Brent S. Halversen, Esquire
HALVERSEN & ASSOCIATES, LLC
171 Church Street, Suite 330
Charleston, SC 29401
Attorney for Anthony Whitfield

Daniel S. Slotchiver, Esq.
Andrew J. McCumber, Esq.
SLOTCHIVER & SLOTCHIVER, LLP
44 State Street
Charleston, SC 29401
Attorney for Anthony Whitfield

David W. Overstreet, Esq.
EARHART OVERSTREET, LLC
PO Box 22528
Charleston, SC 29413
Attorney for David Swanson

Paul B. Ferrara, III, Esq.
Ferrara Law Firm, PLLC
2300 Otranto Road
North Charleston, SC 29406
Attorney for Cindy Whitfield



DUFFY & YOUNG, LLC

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

BANK OF NORTH CAROLINA,

Plaintiff,

v.

ANTHONY M. WHITFIELD,

Defendant.

ANTHONY M. WHITFIELD,

Counterclaim Plaintiff,

v.

BNC BANCORP and DAVID SWANSON,

Counterclaim Defendants.

ANTHONY M. WHITFIELD,

Third-Party Plaintiff,

v.

CINDY WHITFIELD,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-18-1793

PLAINTIFF BANK OF NORTH
CAROLINA AND COUNTERCLAIM
DEFENDANT BNC BANCORP'S REPLY
TO FIFTH (MISLABELED FOURTH)
AMENDED ANSWER, AFFIRMATIVE
DEFENSES, CROSSCLAIM AND
COUNTERCLAIMS

FILED - RECORD
2016 MAR 24 AM 11:29
SHERYL STANLEY
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff Bank of North Carolina and Counterclaim Defendant BNC Bancorp,¹ replying to the allegations of the Fifth (mislabelled Fourth) Amended Answer, Affirmative Defenses,

1. It is unclear whether Defendant intended to name Bank of North Carolina as a Counterclaim Defendant in the Eighth and Ninth Counterclaims; however, Defendant actually named BNC Bancorp. BNC Bancorp is a holding company that owns the Bank of North Carolina. Harbor Bank Group, Inc. is a holding company that owned Harbor National Bank. In 2014, Harbor Bank Group, Inc. and Harbor National Bank merged with and into BNC Bancorp and Bank of North Carolina, respectively. Neither BNC Bancorp nor Harbor Bank Group, Inc. has ever done business as Harbor National Bank. For present purposes only, Bank of North Carolina and BNC Bancorp will be

Crossclaim and Counterclaims, would show unto this Court:

1. Each and every allegation contained in said Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims not hereinafter specifically admitted is denied.

2. The allegations of Paragraphs One (1) through Ten (10) of the Answer, Affirmative Defenses, Crossclaim and Counterclaims fail to make allegations against the Plaintiff requiring a response; to the extent they make such allegations, the same are hereby denied.

3. Responding to the allegations of Paragraph Eleven (11) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Defendant applied to Plaintiff for a credit commitment to purchase and refinance commercial real estate in the furtherance of his business in the Berkeley, Dorchester, and Charleston County areas and that Defendant had financed other transactions with Southtrust Bank; the remaining allegations of Paragraph Eleven (11) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

4. The allegations of Paragraphs Twelve (12) and Thirteen (13) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

5. Responding to the allegations of Paragraph Fourteen (14) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that it provided the attached Exhibit "A" to Defendant setting forth the terms and conditions upon which it would agree to extend credit to Defendant, the terms and conditions of which are explicitly set forth in the said correspondence, and Plaintiff craves reference to the said correspondence to determine the terms and conditions of such commitment; any allegations contained in Paragraph Fourteen

referred to collectively as "Plaintiff."

(14) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims not hereinafter specifically admitted are denied.

6. Responding to the allegations of Paragraph Fifteen (15) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that the Defendant chose a fixed interest rate as set forth in the applicable Note; any allegations contained in Paragraph Fifteen (15) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

7. The allegations of Paragraph Sixteen (16) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

8. Responding to the allegations of Paragraph Seventeen (17) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Defendant made payments under the terms of and pursuant to the Promissory Note; any allegations contained in Paragraph Seventeen (17) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

9. Responding to the allegations of Paragraph Eighteen (18) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that it requested copies of Defendant's tax returns pursuant to the terms of line of credit and the note and mortgage, that Defendant requested to be provided with a lower interest rate, and that Plaintiff was considering terminating the loans due to Defendant's failure to provide necessary documentation; any allegations contained in Paragraph Eighteen (18) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

10. Responding to the allegations of Paragraph Nineteen (19) of the Fifth Amended

Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that it wrote to Defendant again advising of the need for sufficient financial information, including tax returns, to evaluate the proposal to renew loans with Defendant, that Defendant thereafter advised of the completion of the tax returns, that Defendant requested modified terms for the loans, and that Angela Bell communicated with a senior credit analyst regarding the successful receipt of required documentation from Defendant; any allegations contained in Paragraph Nineteen (19) of the Fifth Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

11. Responding to the allegations of Paragraph Twenty (20) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that the Notes secured by mortgages on 732 Gahagan and 110 Mepkin matured by their terms, that in a meeting with Defendant an agreement was reached to agree regarding certain terms and conditions upon which certain loans could be renewed in the future pursuant to ordinary bank requirements, and that renewal terms included the terms contained in a June 26, 2012 letter to Defendant; any allegations contained in Paragraph Twenty (20) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

12. Responding to the allegations of Paragraph Twenty-One (21) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Scott Warren issued a terms sheet to Defendant setting forth terms and conditions under which it would agree to renew the loans in existence and that the letter is attached to the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims as Exhibit "B"; any allegations contained in Paragraph Twenty-One (21) of the Fifth Amended Answer, Affirmative Defenses,

Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

13. Responding to the allegations of Paragraph Twenty-Two (22) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Mr. Warren attended a scheduled closing at the office of attorney Mark Weeks, that it was discovered that Defendant had transferred an interest in the Black Rush property to his ex-wife, Cindy Whitfield, and that Plaintiff required as a condition of the closing either that Mrs. Cindy Whitfield sign the new mortgage or that a title endorsement be obtained; any allegations contained in Paragraph Twenty-Two (22) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

14. Responding to the allegations of Paragraph Twenty-Three (23) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that the closing of the new loans never took place; any allegations contained in Paragraph Twenty-Three (23) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

FOR A FIRST DEFENSE TO THE FIRST COUNTERCLAIM
(Denial)

15. Responding to the allegations of Paragraph Twenty-Four (24) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Fourteen (14) of this Reply as if repeated herein verbatim.

16. The allegations of Paragraphs Twenty-Five (25), Twenty-Six (26), and Twenty-Seven (27) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SECOND COUNTERCLAIM
(Denial)

17. Responding to the allegations of Paragraph Twenty-Eight (28) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Sixteen (16) of this Reply as if repeated herein verbatim.

18. Responding to the allegations of Paragraph Twenty-Nine (29), Plaintiff admits that it proposed to finance the line of credit through either a fixed rate or floating rate to be chosen by Defendant and that it stated its intention to agree to refinance the book of loans Defendant had with Plaintiff provided that Defendant met the terms and conditions imposed upon the proposed transaction; the remaining allegations of Paragraph Twenty-Nine (29) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

19. The allegations of Paragraph Thirty (30) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE THIRD COUNTERCLAIM
(Denial)

20. Responding to the allegations of Paragraph Thirty-One (31) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Nineteen (19) of this Reply as if repeated herein verbatim.

21. The allegations of Paragraphs Thirty-Two (32), Thirty-Three (33), Thirty-Four (34), Thirty-Five (35), Thirty-Six (36), and Thirty-Seven (37) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FOURTH COUNTERCLAIM
(Denial)

22. Responding to the allegations of Paragraph Thirty-Eight (38) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-One (21) of this Reply as if repeated herein verbatim.

23. Responding to the allegations of Paragraphs Thirty-Nine (39) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that it proposed to finance the line of credit through either a fixed rate or floating rate to be chosen by Defendant and that it stated its intention to agree to refinance the book of loans Defendant had with Plaintiff provided that Defendant met the terms and conditions imposed upon the proposed transaction; the remaining allegations of Paragraph Thirty-Nine (39) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

24. The allegations of Paragraphs Forty (40) and Forty-One (41) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FIFTH COUNTERCLAIM
(Denial)

25. Responding to the allegations of Paragraph Forty-Two (42) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Four (24) of this Reply as if repeated herein verbatim.

26. The allegations of Paragraphs Forty-Three (43), Forty-Four (44), Forty-Five (45), and Forty-Six (46) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SIXTH COUNTERCLAIM
(Denial)

27. Responding to the allegations of Paragraph Forty-Seven (47) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Six (26) of this Reply as if repeated herein verbatim.

28. The allegations of Paragraphs Forty-Eight (48), Forty-Nine (49), and Fifty (50) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SEVENTH COUNTERCLAIM
(Denial)

29. Responding to the allegations of Paragraph Fifty-One (51) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Eight (28) of this Reply as if repeated herein verbatim.

30. The allegations of Paragraphs Fifty-Two (52), Fifty-Three (53), and Fifty-Four (54) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE EIGHTH COUNTERCLAIM
(Denial; Plaintiff denies that Scott Warren was an employee or agent of BNC Bancorp)

31. Responding to the allegations of Paragraph Fifty-Five (55) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Thirty (30) of this Reply as if repeated herein verbatim.

32. Responding to the allegations of Paragraph Fifty-Six (56) of the Fifth Amended

Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Scott Warren has testified that he sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; any allegations contained in Paragraph Fifty-Six (56) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

33. Responding to the allegations of Paragraph Fifty-Seven (57) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that David Swanson has testified that Scott Warren sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; any allegations contained in Paragraph Fifty-Seven (57) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

34. The allegations of Paragraphs Fifty-Eight (58) and Fifty-Nine (59) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

35. Responding to the allegations of Paragraph Sixty (60) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that David Swanson has testified that Scott Warren sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; the remaining allegations of Paragraph Sixty (60) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

36. The allegations of Paragraphs Sixty-One (61) and Sixty-Two (62) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE NINTH COUNTERCLAIM
(Denial; Plaintiff denies that Scott Warren was an employee or agent of BNC Bancorp)

37. Responding to the allegations of Paragraph Sixty-Three (63) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Thirty-Six (36) of this Reply as if repeated herein verbatim.

38. Responding to the allegations of Paragraph Sixty-Four (64) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that Scott Warren has testified that he sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; any allegations contained in Paragraph Sixty-Four (64) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

39. Responding to the allegations of Paragraph Sixty-Five (65) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that David Swanson has testified that Scott Warren sought and received, on behalf of Plaintiff, advice in connection with the closing scheduled to take place on or about June 28, 2012; any allegations contained in Paragraph Sixty-Five (65) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims in addition to or other than this specific admission are denied.

40. The allegations of Paragraphs Sixty-Six (66) and Sixty-Seven (67) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

41. Responding to the allegations of Paragraph Sixty-Eight (68) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff admits that David Swanson has testified that Scott Warren sought and received, on behalf of Plaintiff, advice in

connection with the closing scheduled to take place on or about June 28, 2012; the remaining allegations of Paragraph Sixty-Eight (68) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

42. The allegations of Paragraphs Sixty-Nine (69), Seventy (70), Seventy-One (71), and Seventy-Two (72) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FIRST THIRD-PARTY CLAIM²
(Denial)

43. Responding to the allegations of Paragraph Seventy-Three (73) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Forty-Two (42) of this Reply as if repeated herein verbatim.

44. Responding to the allegations of Paragraphs Seventy-Four (74), Seventy-Five (75), Seventy-Six (76), and Seventy-Seven (77) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff asserts that these allegations are not directed to, at, or against Plaintiff such that a response from Plaintiff is required; to the extent a response from Plaintiff is required, the allegations of Paragraphs Seventy-Four (74), Seventy-Five (75), Seventy-Six (76), and Seventy-Seven (77) of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims are denied.

FOR A SECOND DEFENSE
(Statutes of Limitations)

45. Further responding to the allegations of all Counterclaims, Plaintiff would show

2. Although Defendant's Tenth Cause of Action is identified as a "Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield," Mrs. Whitfield is not a defendant in this action. Therefore, Defendant's claim against Mrs. Whitfield is, in fact, a third-party claim.

that such claims are barred by the applicable statutes of limitations, for which reason Defendant cannot recover in any sum whatsoever.

FOR A THIRD DEFENSE
(Failure To State A Claim)

46. Further responding to the allegations of all Counterclaims, Plaintiff would show that such Counterclaims fail to state claims upon which relief can be granted, for which reason Defendant cannot recover in any sum whatsoever.

FOR A FOURTH DEFENSE
(Lack of Reliance)

47. Further responding to the allegations of the Second and Third Counterclaims, Plaintiff would show that Defendant failed to rely or have any right to rely upon the alleged representations other than as contained in the written contracts between the parties, for which reason Defendant cannot recover in any sum whatsoever.

FOR A FIFTH DEFENSE
(Regulated Transactions)

48. Further responding to the allegations of the Fourth Counterclaim, Plaintiff would show that the actions and activities of Plaintiff are regulated by the state and federal government, that the performance of said actions were in compliance with said state and federal regulations, and thus that the transactions are exempt from S.C. Code Ann. §§ 39-5-10 *et seq.*

FOR A SIXTH DEFENSE
(Other Claim Already Pending)

49. Further responding to the allegations of the Counterclaims, Plaintiff would show that another action is pending between the same parties for the same counterclaims, for which reason the said counterclaims are improper and should be dismissed pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH DEFENSE
(Statute of Frauds)

50. Further responding to the allegations of the Counterclaims, Plaintiff would show that Defendant's claim fails to comply with the statute of frauds, S.C. Code Ann. § 32-3-10, and the lender liability statute of frauds, S.C. Code Ann. § 37-10-107.

FOR AN EIGHTH DEFENSE
(Failure to Plead Special Damages)

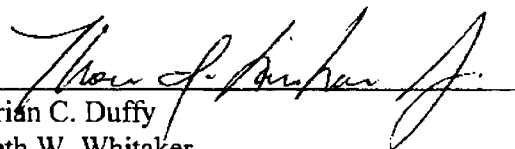
51. Further responding to the allegations of the Ninth Counterclaim, Plaintiff would show that Defendant has failed to specifically plead and sufficiently allege special damages separate and apart from those damages sought by way of the other Counterclaims asserted in the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims.

FOR A NINTH DEFENSE
(Failure to Mitigate)

52. Further responding to the allegations of the Counterclaims, Plaintiff would show that Defendant has failed to mitigate his damages, if any.

WHEREFORE, having fully responded to the allegations of the Fifth Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims, Plaintiff prays that the same be dismissed and that this Court enter judgment for the relief sought in the Complaint.

[SIGNATURE ON FOLLOWING PAGE]



Brian C. Duffy
Seth W. Whitaker
Thomas A. Limehouse, Jr.
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)

and

Robert A. Bernstein
BERNSTEIN & BERNSTEIN, P.A.
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)
*Attorneys for Plaintiff Bank of North
Carolina and Counterclaim Defendant BNC
Bancorp*

March 21, 2016
Charleston, South Carolina

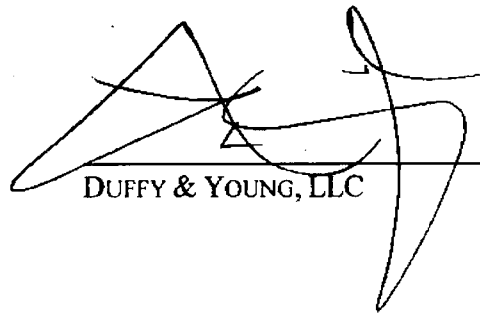
prepaid, and addressed to the following:

Brent S. Halversen, Esquire
HALVERSEN & ASSOCIATES, LLC
171 Church Street, Suite 330
Charleston, SC 29401
Attorney for Anthony Whitfield

Daniel S. Slotchiver, Esq.
Andrew J. McCumber, Esq.
SLOTCHIVER & SLOTCHIVER, LLP
44 State Street
Charleston, SC 29401
Attorney for Anthony Whitfield

David W. Overstreet, Esq.
EARHART OVERSTREET, LLC
PO Box 22528
Charleston, SC 29413
Attorney for David Swanson

Paul B. Ferrara, III, Esq.
Ferrara Law Firm, PLLC
2300 Otranto Road
North Charleston, SC 29406
Attorney for Cindy Whitfield



DUFFY & YOUNG, LLC

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

BANK OF NORTH CAROLINA,

Plaintiff,

v.

ANTHONY M. WHITFIELD,

Defendant.

ANTHONY M. WHITFIELD,

Counterclaim Plaintiff,

v.

BNC BANCORP and DAVID SWANSON,

Counterclaim Defendants.

ANTHONY M. WHITFIELD,

Third-Party Plaintiff,

v.

CINDY WHITFIELD,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-18-1793

CERTIFICATE OF SERVICE

2016 MAR 24 AM 11:29
CLERK OF COURT
DORCHESTER COUNTY
SECURE

The undersigned, an employee of Duffy & Young, LLC, does hereby certify that on March 21, 2016, he/she served a copy of Plaintiff Bank of North Carolina and Counterclaim Defendant BNC Bancorp's Reply to the Fifth (Mislabelled Fourth) Amended Answer, Affirmative Defenses, Crossclaim and Counterclaims upon Anthony M. Whitfield, Cindy Whitfield, and David Swanson by placing a copy of the same in the United States Mail, postage